Should You Talk to Police After a Self-Defense Incident? Part 1

INTRODUCTION

Don West [0:00]

My name is Don West. I am National Trial Counsel for CCW Safe and a practicing criminal defense trial lawyer. I'm so pleased today to be talking with Andrew Branca. Andrew, in my opinion, is the country's foremost expert in the law of self-defense. [0:15] Andrew, it's a pleasure to see you in person and talk with you one-on-one.

Andrew Branca [0:19]

Of course. Thank you.

Don West [0:20]

We'll talk about some of the challenges that people face as concealed carriers when confronted in a potential self-defense situation.

[0:30] What I want to talk about initially here for a few minutes: I get lots of questions. I imagine you do as well, when someone has been involved in a self-defense situation and they're about to interact with the police. Shots were fired, maybe someone died.

[0:45] Someone called the police, hopefully you did if you're the one involved in the case, and then the police are on their way. So what are your thoughts on that? I have my experiences and my thoughts as well, but I'd like to hear from you.

INTERACTING WITH POLICE

Andrew Branca [0:58]

Well, I really see it from two different perspectives, I think. Many firearms instructors teach kind of a series of things that you should say to the police when they get to the scene. And I think in theory there's an optimal way of interacting with the police, very specific things you can say that will help your defense, not hurt your defense.

[1:18] And I think if you could do just those things and only those things, that might be the best-case scenario. But here's the problem: I've learned over many years that people will not limit themselves to those things, both in real life and really under almost any degree of stress.

EFFECTS OF TRAUMA

Don West [1:38]

So is it pretty well established that just the fact of being in a traumatic event like a self-defense shooting is going to have some consequences, some emotional effect on you, and as a result your ability to process information and maybe to communicate effectively?

Andrew Branca [1:56]

Absolutely. So the way your brain captures and stores and recalls information under stress is completely different than the normal experience. And I've seen this literally hundreds and hundreds of times, because in our live classes we actually run people through a shooting simulator.

SIMULATION STUDY RESULTS

Andrew Branca [2:10]

We have a self-defense simulation system. It's very costly, a very high-end $20,000 system, so very good. But all it really does is show you a video of a prospective attacker, and you have to use essentially a toy gun and decide whether or not you're going to, quote-unquote, shoot that attacker.

[2:25] There's no actual threat. You can't be harmed. It's a totally artificial environment, and you're only watching the threat video for maybe 30 seconds or so. So it's a short-term experience.

[2:41] And yet, after that 30 seconds, when those students are done running through that simulator, their respiration is up, their heart rate is up, and we ask them three simple questions: Turn your back to the screen. Tell the class what you saw, what you did, and why you did it. What was the legal rationale, based on what you've learned over the day's class?

DANGERS OF IMMEDIATE STATEMENTS

Andrew Branca [2:57]

And they can't do it. They can't remember what they saw, or they say they saw things they didn't see. They can't remember what they did. And this is a classroom, and it just happened. I mean, they went through this experience only a minute ago.

[3:10] And either they can't remember what they did, or if they do remember what they did, they remember the timing incorrectly, when they did things. And of course that can be a very critical factor when you're recounting what you did, when you did it, in terms of whether or not it was legally justified.

PRIORITIZING LEGAL SAFETY

Andrew Branca [3:24]

And I've just come to realize that for probably the large majority of people, learning some optimal strategy for what to say to the police in a classroom setting may not be very helpful, and could be extremely damaging if you now try to replicate that classroom instruction in a real-world, real-threat environment.

[3:47] And I think it's far more likely that people would mess up that approach and say things that could be harmful to their defense than it is that they're likely to say things that are helpful.

Don West [3:59]

In this situation, we're talking about people that are doing their best to tell the truth. They intend to tell the truth. They're not trying to come up with a story to convince the police of their innocence when they're not.

[4:10] We're talking about law-abiding people that were in a self-defense event, that are struggling with being able to effectively communicate in such a way that protects them as they move forward. I'm sure you'll be the first to say you certainly have no control, no direct control, over whether you would be prosecuted, regardless of how innocent legally you may be.

Andrew Branca [4:35]

Right. So that touches upon a couple of issues. One is, one of the most common questions we get at Law of Self Defense is, "Hey, what can I say at the scene to the cops to keep from getting arrested?"

[4:47] And I'm like, you're looking at completely the wrong problem. I couldn't care less if you get arrested. Getting arrested is the least of your concerns. My concern is, how can we keep you from spending the rest of your life in prison? I mean, that's what you're looking at. That's what the real risk is.

[5:04] And anything you might say in an effort to not get arrested in the moment is far more likely to damage rather than help your long-term prospects.

GUIDELINES FOR TALKING TO POLICE

Don West [5:13]

And by saying something to try to keep yourself from getting arrested, you may mean trying to convince law enforcement of your innocence, trying to talk too much. With that idea in mind, are there some basic rules or basic guidelines that you've gleaned from your experiences teaching classes and reviewing cases that would be helpful for people to think about, practice and such?

Andrew Branca [5:41]

I think if people can limit themselves to very basic information, most of which they'll have to tell anyway, so it's going to be revealed. Right? Their name, for example. If you're calling 911, your location. There's no point to calling 911 if you're not going to give your location, right? Because they have to send resources someplace, so you have to tell them where to send the resources.

[6:05] And by the way, when you're doing even that much, you're already talking to the police. You know what I'm saying? People say never talk to the police. I ask them, why aren't you telling people not to call 911, then? Because once they call 911, they're talking to the police.

[6:17] So you can't just tell people don't talk to the police. You have to tell them what to say. And I think there's very basic information, like their name, their location, someone's been injured so send police and an ambulance, and if you can, "I had to defend myself."

[6:36] The trick is, what you don't want to do is then open up the door to some kind of extended explanation for what happened at the event.

[6:43] That's another piece of advice I see given that I really think is mistaken. A lot of, frankly, very high-profile self-defense instructors tell their students to tell the responding officers that you want to press charges against that person, the person who you just defended yourself against. "I want to press charges against that person.”

[7:03] Well, in theory they've committed a crime, right? If you acted in lawful self-defense, it was because they were committing a criminal act of violence against you. So in theory, wanting to press charges against them makes sense.

RISKS OF DETAILED EXPLANATIONS

Andrew Branca [7:14]

But if you're the responding officer, and you're talking to the person claiming self-defense, and they say, "I want to press charges against that person," what are you going to say as the responding officer? You're going to say, "Okay. For what?"

[7:24] What's going to happen? "Explain what happened." And now you're getting into a long, detailed explanation that's almost certain to not match other evidence, not match other witnesses' testimony about what happened.

[7:38] Because we all know, for example, if there's five witnesses to an event and you separate them and you get their statements, you don't get one recounting of what happened. You get five different versions of what happened. So there is no single reality of what happened.

[7:53] And your version is not going to be correct either, because of the stresses we've already talked about. The way your brain captures, stores, recalls information is grossly defective and different than the normal experience.

Don West [8:07]

So when you know the police are coming, while you're on the phone with 911, assuming you are the one, or if not, maybe you're relaying to the person on the phone, you of course want to include that identifying information.

[8:21] But of course you're the guy with the gun, and you know the police are coming. So you may think it's helpful, I certainly would, to describe what you look like or maybe what you're wearing, so that when the police get there they know that you're the person that called, especially if there's some confusion.

[8:38] Because the last thing you want is to get shot when the police show up and they don't know what's going on.

Andrew Branca [8:44]

Right. I think the best way to avoid getting shot is to not have the gun in your hand when they show up.

AVOIDING POLICE MISUNDERSTANDINGS

Andrew Branca [8:49]

Having the gun in your hand is an excellent way to get shot by responding officers. In terms of describing what you look like, frankly, if the system worked efficiently, that would be great.

[9:02] And by that I mean, if we can assume that the communications person on the other end of the phone line is hearing you correctly, understands that you're describing yourself and not some kind of suspect, that they then pass on that information accurately to the responding officers, so they know it's a description of the purportedly innocent person and not the description of a suspect they're looking for.

[9:27] I see a lot of points, like the game of telephone, where that communication can be imperfect.

Don West [9:33]

Sure.

Andrew Branca [9:34]

And the cops may arrive thinking, "Oh, that's the description of the suspect. That's the description I got of the dangerous person."

Don West [9:40]

And I think the point, I hadn't thought of it that way, yeah, you could actually contribute to some confusion.

INTERACTING WITH INVESTIGATORS

Andrew Branca [9:47]

Right. And I think most street cops, the kind of cops who would be responding to this kind of event, they know the communication is imperfect, so they're going to show up prepared to use force to defend themselves and other innocent persons and secure the scene.

Don West [10:00]

So the first officer on the scene would be called the responding officer, rather than the investigating officer or the detective. There's likely to be someone to whom the investigation is assigned, whose role is to sort of assemble the case package that would be submitted at a later date to the prosecution.

[10:20] But you will likely encounter the responding officer, a law enforcement officer. And what are your suggestions as to how you interact there? You've talked about some of the things you would say. How about when the officer says, "Tell me what happened"?

Andrew Branca [10:35]

So that raises another excellent point, and that is that there's not one single police interaction. There's at least three distinct police interactions you're likely to have. One is your interaction with 911, which is going to be different than your interaction with the responding officers, because they're physically present and of course 911 wasn't.

[10:54] And then your interaction with the investigators, that in most cases will follow the first responders. Generally the first responder, outside of really rural areas, will not be the investigative officer.

Don West [11:06]

You've already made it clear, and for good reason, why you don't talk in great detail to the responding officer, certainly not on the scene. You do communicate, I take it, that you intend to be cooperative, that you're there to be helpful to the extent that you can.

[11:24] However, my suggestion has been, when people ask me what do I say specifically when they want me to give a statement at the scene, my advice typically is: "I'll be glad to cooperate with you, but before I give a detailed statement, I'd like to consult with counsel."

[11:40] And in fact, at that point, decline to give a further statement, but communicate that you're willing. You just want to be under slightly different circumstances.

Andrew Branca [11:52]

Yeah, there's some subtleties here as well.

IDENTIFYING EVIDENCE AND WITNESSES

Andrew Branca [11:56]

So I think really the only things I encourage people to tell responding officers are what they've already told 911. So your name. You don't have to give your location, obviously; they're there. And that you acted in self-defense, as a blanket statement, no details about what happened.

[12:10] And identify for those responding officers any evidence or witnesses that you want to make sure aren't lost. So the person who attacked you, their knife went under a car. Make sure the cop knows to look under the car. You need that knife recovered as evidence.

[12:25] Now there's four patrol cars with flashing lights, or maybe a hundred people in a crowd looking to see what's going on, but only two of them were actually there when you defended yourself. You want those two people identified as witnesses so statements can be taken.

[12:38] But that's really it. In fact, I'm a little wishy-washy even about suggesting that people tell the police, "I'll be happy to cooperate later, after I've spoken with my lawyer," because what if you speak with your lawyer, and your lawyer says, "You know what, we don't want to cooperate anymore"?

CONCLUSION

Don West [12:55]

Let's talk about that, but let's do it next time. Okay? We didn't really have a chance at the beginning, my fault, for you to identify yourself and talk a little bit about your publications and your videos and your website. Take a minute, if you would, now, and then we'll end this segment and pick it up again.

Andrew Branca [13:15]

Sure. So of course, I'm attorney Andrew Branca. I always presume everybody knows who I am because I'm all over the internet, but I'm an attorney who specializes exclusively in use-of-force law.

[13:26] Our little slogan at my law practice, Law of Self Defense, is: You carry a gun so you're hard to kill; know the law so you're hard to convict. And when we say that, we don't mean learn legal tricks. We mean learn what the law actually is, so that you can conform your conduct in self-defense to be lawful.

[13:42] If it's lawful, it's very difficult to get a conviction. Not impossible, but very difficult. So we do a lot of legal consulting on use-of-force cases, but I would say our core mission is more educational: to teach people what they need to know so that their conduct in self-defense is lawful, so they

reduce the chances that they'll get criminally charged, get prosecuted, or, heaven forbid, get convicted.

Don West [14:06]

Thanks, Andrew. Pleasure talking with you.

Andrew Branca [14:09]

Sure. Thank you.

Don West [14:10]

I'm Don West, National Trial Counsel for CCW Safe. Thanks for watching.