Video: Anatomy of a Critical Incident Response

00:00
Kyle Sweet
Hi, my name is Kyle Sweet. I'm the general counsel and co-founder of CCW Safe, and my good friend Gary Eastridge, who is our critical response coordinator for CCW Safe, is here with me. We're going to have a conversation about some things that Gary and I do in our professional capacity: for myself as a lawyer, outside of the CCW Safe world, in my private practice law firm, and what Gary does through CCW Safe with his many years of experience investigating homicides.

We've created a protocol and a process that we want to explain to people, how it not only benefits the things we do for my clients, but the things we do for our members of CCW Safe.

So Gary, talk a little bit about how you and I and others have developed it, and what is the protocol that we use, and how we came up with it, combining my side from the legal world and a little bit of law enforcement experience, and your side from a lot of law enforcement experience, and living in the legal world on the criminal justice side in the DA's office.

01:00
Gary Eastridge
For me personally, it was a pretty easy transition coming from the district attorney's office to CCW Safe, because a lot of the same things that I did in that role apply in the role that I'm in now.

01:14
Kyle Sweet
And I should say that one of the things we do is we respond to officer-involved shootings on a call-out schedule for Fraternal Order of Police organizations. We literally respond, on my law firm side, as the attorneys for the officer, and Gary is there in a capacity as a consultant investigator who's working with us as an expert to analyze the situation. So explain to us how we developed this.

01:43
Gary Eastridge
Okay. Well, my background was 22 years with the Oklahoma City Police Department. I retired out of the Homicide Unit. One of my duties and responsibilities there was responding to officer-involved shootings: the immediate response, after the first responders, the investigators are called in, and I responded in that role.

Then, once I went to work for the District Attorney's Office, it was more of a role of reviewing the actions, reviewing that investigative product that was brought over from the police department, to look at the applicable state laws, to make sure that all laws were followed and that sort of thing.

Well, once I transitioned to CCW Safe, my knowledge and experience with investigating, the charging process if there are charges, the supporting roles that I had seen as an FOP member, all of those things are put together, and then a response is created from that.

02:50
Gary Eastridge

And our response, as you've been a part of several times here recently, is: the call goes out, we've had an officer that's involved in a shooting, one of us immediately responds, and we look after the officer's needs, which can be vast in the immediate aftermath of a critical incident.

03:21
Kyle Sweet

One thing that's important to remember is, in that capacity, defending the interest and protecting the freedom of the police officer who has just been involved in the shooting, we don't get access to the scene. We are not conducting a parallel investigation.

What we're doing is trying to basically download as much information as we can about what happened, get a sense of the terrain, get a sense of what the officer experienced from his or her perspective, so we can start building our preparation process, so we can begin to prepare that officer.

Because unlike most people who are civilians, police officers, through their collective bargaining agreement, have a negotiated waiting period before Internal Affairs, or the homicide detectives, whoever it is conducting the investigation into the shooting, which will eventually result in a report to the district attorney, whether they decline to press charges or accept the case and go forward with some type of criminal prosecution. So it's high stakes. We're talking about the career and the freedom of the individual, so it's something we take very seriously.

And one of the things that is important is to be self-aware as a lawyer and stay in my own lane of what my expertise is, and bring in somebody like Gary, who's seen it from the perspective of: you've been the guy in the shooting. You've been the guy in the chair when you're being interviewed. You've been the guy sitting across that interview table, investigating the officer-involved shooting and asking those questions, and then compiling a report and reporting it to the district attorney.

Then you've been in the situation where you're the consultant, expert, and investigator for the DA who's making the determination whether or not to accept this case and prosecute it or decline charges. Of course, most result in declined charges. But one thing that's critical for us, I think, a central point in our preparation process for our client, is: who is the audience for this interview?

So Gary, explain what you've seen officers, and civilians as well, the language they use: they're trying not to impress, but they're trying to sound professional, as a police officer, to the audience of the two homicide detectives sitting across from them.

05:37
Gary Eastridge

Well, it's fairly common, especially in law enforcement circles. Part of the traits you pick up as a law enforcement officer is a poker-face type demeanor, where everything's the facts and nothing but the facts, and you're unemotional. You can come across as very sterile, and things that can be shocking to the average person, you relate in almost medical terms, as you know. And each of those roles that I've been involved in, they're all similar, yet they're all unique.

The investigative role is just a fact-finding role: get everything together and present that to the district attorney. The district attorney role is reviewing all of that and looking to see if there are any violations of state statute or federal law. And then, as the responding consultant for the FOP, or in the case of a CCW Safe member, it's making sure that their physical needs and

emotional needs are addressed initially, that their rights are protected, and that they're afforded the same courtesies that a law enforcement officer would get.

One of the things that we routinely see, and you saw in each of those roles, is this kind of effect we see primarily out of law enforcement officers: they don't want to show emotion, and sometimes what they say can come across as extremely sterile.

07:32

Kyle Sweet

That's one of the things we focus on. Just to outline how our process works: as Gary said, we respond. A lawyer has to respond to the scene to provide legal counsel and guidance to the client. In a police shooting, a union representative is already there.

That's a difference in a civilian shooting: you have no union representative who's with you at the time. In a law enforcement shooting, you have some resources that you can't have in the civilian world, because if you don't have a collective bargaining agreement in place, where you have a negotiated response in a certain capacity.

The police department has what they call chaplain response teams, so many times by the time I get there, there have been other people in an advocacy role for the officer who are already there. In a civilian shooting, that's not going to happen. You're going to be, in fact, denied access to those who you care about, who are doing things in your interest, for some period of time as a civilian.

Whereas with officers, they don't ask any questions initially at the scene, other than what we call public safety type questions: questions so they can determine how many shooters were there, how many rounds were fired, what your backdrop may have been, loosely, not specifically, so they can look at whether there are other people who may be injured.

Just basic information to determine what happened, how many people are involved, and where they ran, that type of thing. So by the time I get there, that process is mostly taking place. The officer is going to be photographed. Their gun is going to be emptied. They actually have the plastic trays, like the ones that come in ammunition boxes, and they're going to count all the rounds, photograph all that, and photograph the officer.

09:19

We always want people in a civilian situation to know that self-defense is not something that's going to be advocated for by the people who are investigating to determine whether you violated the law. So if you have any scratches or wounds, you may not feel like you're hurt initially, but get evaluated medically. That's one of the things we've learned from all these processes: you've got to get evidence made for your case as soon as possible, and that's going to be evidence of self-defense.

A struggle, a wound that you have, the fact that you were struck, you have a red mark, whatever it may be, your clothes are torn. They may or may not photograph that, so if you do have those things, ask them to photograph them. If they don't, get a cell phone image of it, whatever you can do to help preserve that at the time.

Meanwhile, I notify Gary when I'm out on the response, because one thing we want to do is treat this as a beta test for how we can create best practices and raise the standards of what our response is going to be, whether for civilians or police officers. Then we get the officers settled. We find out everything we can about it. We don't want to put too much pressure on them that night.

We usually meet with them again the next day, Gary and I, and sometimes we'll have other people, maybe another investigator or another lawyer in my office, and we get them to slowly walk us through, factually, everything that happened. Explain, from your experience, Gary, how that's gone when we've done that.

10:54
Gary Eastridge
Well, it's a component, a courtesy that is extended to law enforcement. It's been recognized that in-depth interviews should not take place until sleep cycles have occurred. Those same processes that we utilize, working through these so many times, we see, just like in the most recent case that we were involved with: as we walk through that process, the involved officer remembers details that he didn't remember during the initial public safety type interview.

11:32
Kyle Sweet
Yeah, we have had that. We've had a lot of these over the last few years. One thing that we do is we want to walk them through everything that happened, so we can get them used to the concept of telling their story. And we want to focus initially, like we were talking about earlier, on the words they use. We don't want them to use sterile words, which you get in law enforcement. A normal person would say, "I pulled my gun out. I was in fear for my life.

I thought I was going to die, or they were going to kill my partner. I put my finger on the trigger, and when I could not get him to stop, I fired." But a police officer gets into that on-duty role and says, "Well, I drew my firearm and I accessed the trigger," that type of thing.

"I discharged my weapon." Well, those are clinical words to describe an incredibly emotional experience. What we want to convey is not the sterility of your professionalism. We want to convey the emotion of your humanity. And that's important because, like we talked about, who's the ultimate audience here?

The ultimate audience is not your two colleagues who are homicide investigators. It's ultimately a jury. Because if that jury is going to be satisfied by your response, and they feel they have something in common with you. The principle I've always tried cases under is: if the jury likes you, they like your cause. And we want to make sure that we are communicating to the ultimate finder of fact in the case, be it a criminal case or a civil case. We want our officer to be likable.

13:05
Gary Eastridge
And I think that can also play a role in the decision-making on whether or not to charge an officer, or, in the case of CCW Safe, a private citizen involved in a self-defense situation. If you consent to an interview too quickly, before things are clear to yourself, let alone what really occurred, you can come across as clinical. And the person who makes that decision on whether that action was criminal or not is, in most jurisdictions, a prosecutor's office.

So if they review a product where they've got this cold, sterile guy talking about the mechanics of taking another person's life, sometimes that could be the deciding factor on whether or not a district attorney may say, "Hey, this is one for the jury to decide."

14:03
Kyle Sweet
Right. And ultimately, they're the trier of fact. And one thing we've learned in this process, which I think is critically important, and I think Gary does as well, we've talked about it a lot as we've

developed it: in my world of my trial practice, defending physicians and executives in these large catastrophic injury cases, you cannot take somebody, no matter how smart they are, and put them in a situation they've never been in and expect excellence.

You can't do it. What we've all learned is, we put them in a controlled environment where it's safe for them to fail. In other words, our whole thing is leading up to a mock preparation, a mock interview. So once we walk this officer through all the facts several times and make sure we've got a pretty good command of things, the very next thing we do is go back to the scene, and we want to see the scene at the same time of day that the officer did.

Gary and I have been in really distressing neighborhoods at all hours of the day and night, because we want to see things. We drive from the perspective of where the officer came from, because we're going to pick up on things as we go that are going to be important to help that officer remember certain things, or things they may not have seen that may be important to the defense: the threat, or the communication they were receiving.

So we take the same route the officer did, and we look at it from multiple perspectives. We get out at times and walk the area and get a sense of what happened, and we do a sketch of the scene. That allows us, when we go back and do further preparation with the officer after that scene walkthrough, on our own, without it still being a crime scene, to orient ourselves, so we're better prepared to begin the mock interview process.

Gary has been on both sides of the table, as the officer involved in the shooting and as the person conducting the interview of the officer. So what's really critical is to give them a safe opportunity to fail so we can learn from it. And they do, as we all would. We have to continue, start over, and we make suggestions on better ways to communicate what they just went through.

A lot of times it's important to use language that a jury would understand, as opposed to, "I viewed that the person was a threat and could possibly have harmed myself or others, or committed great bodily injury." No, that's not right. The language we want to use is, "I was terrified he was going to kill me or my partner, and I couldn't get him to stop, and so I fired." That's the type of thing we want.

Gary basically conducts a mock interview, and we go over it again and again until we feel that officer is in a position where they have the best understanding of what happened.

16:53
Gary Eastridge

Yeah. And I think it's also important to note that the substance of what's being said doesn't change. It's not that we're telling anyone to say one thing or the other. It's the manner that they say it, the wording that is used, that sort of thing.

17:11
Kyle Sweet

We're not changing a no to a yes.

17:14
Gary Eastridge

No, absolutely. Nothing factual has changed. And another thing: this process of doing the scene walkthrough at a later time, when the officer's critical stress has somewhat diminished, we almost always have revelations of memory. Like you touched on, the perspective: when they get

there and the stress is not there, the perspective changes and things become a lot clearer, and it makes us able to help the officer give a clearer view of what happened.

17:51
Kyle Sweet
And we've seen that in Stephen's case as well. If you don't know anything about it, I'd encourage you to go back and look. It was a capital murder case that CCW Safe defended last year, and our member was acquitted of a first-degree murder charge. In that instance, it was a smaller jurisdiction, which could happen in a large one too, not belittling smaller departments in law enforcement, but this was a poorly resourced small-town police department that did not have a lot of experience investigating homicides.

In that instance, there were a lot of security cameras that captured footage of the events leading up to the shooting, and many of them had never been properly reviewed by law enforcement. So that's one of the important things to do these days. And when we're on an officer-involved shooting, we have access to data that you may not in a civilian shooting, and that's the body cam footage of officers, which is becoming standard practice for police to wear.

Furthermore, we recently had a shooting at a convenience store, and because the shooting occurred around midnight, it was harder to see because of the shadows outside the lights of the very well-lit parking lot. We wanted to get a sense of all of the surrounding surveillance cameras. Now, that was a very cut-and-dried shooting.

The officer was cleared within a few weeks, and things went well. But the way we do this is what I call beta testing. We're practicing to be excellent all the time. We're not going to hope we rise to the occasion. We're going to make sure that we do all the things.

So we were looking for every potential surveillance camera and security footage, and where they would be, so that if there was litigation, criminally or civilly, we would be able to ask through discovery to demand production of the security footage. And you can't ask for something you don't know exists.

So you've got to go out and affirmatively do that work. So in our process now, Gary has finished conducting multiple run-throughs of a mock interview. The officer goes home, we let him relax, and the next day, typically, we view the body cam footage.

Some of the departments won't allow our consultant expert investigator to go with us to review the footage, so the process we've negotiated is that the officer can review all of the body cam footage that's in existence as many times as we want, and then we have a chance to conference about it, myself and my client.

Then I get Gary on the phone and let him know what we saw: if there are any surprises, anything that reinforces something, any concerns we may have, and we talk through it. And then, at that point, we present the officer for the interview.

To this point, we've had comments from a lot of the investigators that they've never seen officers do this good of a job communicating the information that the district attorney needs to make his or her decision about whether to pursue charges, or to just decline to prosecute and recommend that the officer be returned to duty. And obviously, the reason we pay such close attention to honing this process, turning over every rock, is that at some point we're going to get that case that is not going to be cut and dried.

And when we do have that case, we want to make sure that the process we have has not been weakened or dulled by just going through the motions. So we're constantly asking for feedback

from our clients once they've been through this process. Was there anything that made you uncomfortable?

Was there anything you felt insecure about? We bounce ideas off of each other. Gary's brother Kyle is a longtime homicide investigator as well, and we'll call it a hot wash: we'll try to critique the way we did it and see how we can get better. And we bring that same fine eye to the detail of what we're doing to the response for CCW Safe. Gary was involved, and we had a member involved in a fatal shooting just a couple of weeks ago, and our response kicked in. We've learned from it.

We had boots on the ground and a lawyer in place immediately, and we do everything within our power to throw resources at that member, just like what we're learning on the officer-involved shooting side. So what are some of your final takeaways, Gary, from things that you've learned through this process of taking a preparation model for the first time in law enforcement, and based on the experience you had from your shooting many years ago? What are your thoughts on it?

22:36
Gary Eastridge

Well, the changes over the many decades since my shooting are vast. Number one, the recognition that memories that are tainted by extreme stress need a little bit of a healing process, which is usually accomplished in a couple of sleep cycles. And you touched on body camera footage, surveillance cameras, that sort of thing. The civilian shooter is not going to have the ability to request to look at those types of things, if in fact they exist, during the investigative stage, which is where we kick in for our law enforcement clients.

I think it's extremely important for us, as an advocate for the officer or for a CCW Safe member, to be able to provide that prosecuting authority with every perspective possible on these issues. And you touched on that response. I'm a firm believer that if someone is seeking self-defense coverage, they should research every company out there and reach the decision on which one best meets their needs. We are the only company in the industry that sends a response team to assist you after a critical incident.

In this recent case, that member was also a member of a couple of other services, and the responses were drastically different. Some of our competitors took days to return his phone call, and when they did, they gave him an attorney's name and said, "Sorry to hear you were involved. Here's your attorney. Good luck." And we had an attorney there with our member within an hour of our call, and we had boots on the ground.

The only difference between the two responses, really, is that with CCW Safe we're responding from a central location to anywhere in the United States, whereas our law enforcement clients are generally in the same metro area, and we're able to get somebody with them in hours instead of, maybe, 10 hours or 12 hours, or whatever the case might be.

25:06
Kyle Sweet

One thing that's important to realize: the decision whether to prosecute a police officer involved in a shooting, or the decision to prosecute a civilian, is being made from a lot of the same type of information. That's why our process involves gathering data, putting it through the algorithm of our collective experiences, and improving the process to prepare, prepare, prepare. And when we have that, we have a witness who adequately communicates this terrible experience they've had to the ultimate trier of fact, which is the jury.

So we're going to continue to share this information as we go forward, so we can make sure that members are aware and take advantage of the experiences that we're gathering. Look for more of this type of content through articles, additional videos, and podcasts.

We'd love to hear feedback if you have things you want to specifically ask about the process that we've come up with, and we'd love to share it as well, because we want it to be available for everybody. Please go to CCWSafe.com, look for additional content, and look for more to come. We appreciate your time, and thank you, Gary, for joining me.