

SAGA SNIPPETS

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Self-Defence: After the Attack - Related Consequences

By John Welch

Note: The words "he" and "him" are used for convenience only and no disrespect to any gender is intended.

The outcome of the legal process is that the accused is either acquitted or convicted by the court. As stated in my May article, upon conviction of a crime, the accused will be sentenced to any suitable sentence within the court's jurisdiction. However, the accused will be acquitted if the court is not satisfied that the state has proven beyond a reasonable doubt the guilt of the accused. Upon a finding of not guilty, the accused walks out a free man, but this does not mean it is the end of his sorrows.

Upon conviction of certain crimes, the accused is deemed to be unfit to possess a firearm in accordance with section 103 of the Firearms Control Act (FCA).

[My comments are shown in square brackets.]

The section provides as follows:

"(1) Unless the court determines otherwise, a person becomes unfit to possess a firearm if convicted of-

[The court does not have to make a declaration of unfitness, he becomes unfit upon conviction. However, the court needs to explain this to an unrepresented accused, while the represented accused's counsel is presumed to know the law and ought to have explained this consequence to his

client. The legal representative or the accused may convince the court to make a ruling that, despite the conviction, the accused is not unfit to possess a firearm.]

(a) the unlawful possession of a firearm or ammunition;

(b) any crime or offence involving the unlawful use or handling of a firearm, whether the firearm was used or handled by that person or by another participant in that offence;

(c) an offence regarding the failure to store firearms or ammunition in accordance with the requirements of this Act;

(d) an offence involving the negligent handling or loss of a firearm while the firearm was in his or her possession or under his or her direct control;

(e) an offence involving the handling of a firearm while under the influence of any substance which has an intoxicating or narcotic effect;

[The state must prove that the accused was actually under the influence of alcohol or drugs, not that he merely used it. Bear in mind that an alcohol test, such as performed when the police official suspects you of having driven your car under the influence of alcohol, is insufficient.]

(f) any other crime or offence in the commission of which a firearm was used, whether the firearm was used or handled by that person or by another participant in the offence;



[This may be illegal hunting or the discharge of a firearm contrary to municipal regulations.]

(g) any offence involving violence, sexual abuse or dishonesty, for which the accused is sentenced to a period of imprisonment without the option of a fine;

(h) any other offence under or in terms of this Act in respect of which the accused is sentenced to a period of imprisonment without the option of a fine;

(i) any offence involving physical or sexual abuse occurring in a domestic relationship as defined in section 1 of the Domestic Violence Act, 1998 (Act 116 of 1998);

(j) any offence involving the abuse of alcohol or drugs;

[The emphasis is on the abuse of alcohol or drugs, not mere possession or use. Although a previous

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conviction for possession of dagga, for instance, may be indicative of drug abuse, in itself, it is insufficient. An unrehabilitated alcoholic or drug addict may, however, be on thin ice.]

(k) any offence involving dealing in drugs;

(l) any offence in terms of the Domestic Violence Act, 1998 (Act 116 of 1998) in respect of which the accused is sentenced to a period of imprisonment without the option of a fine;

(m) any offence in terms of the Explosives Act, 1956 (Act 26 of 1956), in respect of which the accused is sentenced to a period of imprisonment without the option of a fine;

[Possession of nitro-cellulose powder is covered by the Explosives Act and therefore a conviction for possession of a quantity of powder in excess of what the law allows (currently 2,4kg), or possession of black powder without a permit, brings one squarely within the ambit of this provision.]

(n) any offence involving sabotage, terrorism, public violence, arson, intimidation, rape, kidnapping, or child stealing; or

(o) any conspiracy, incitement or attempt to commit an offence referred to above".

The becoming of unfit to possess firearms upon conviction as aforesaid is a serious consequence, and one appreciates that a firearm should not be entrusted to people who are a danger to themselves or to society. Should you, therefore, find yourself in a situation where you are charged with murder arising from the use of a firearm in a self-defence situation, you must make sure that you have the best possible legal counsel and that he clearly explains to you the implication of a conviction.

Section 102 of the FCA provides for an administrative enquiry by the police into the fitness of a person to possess firearms. And even though an accused was acquitted by a court, under certain circumstances the police may nevertheless hold such enquiry. My co-trustee Damian Enslin will deal with this matter in a future edition of Snippets.

Counsel is also expected to explain to a client that upon conviction and sentence, there is often the possibility of an appeal to a higher court. An accused who believes that he was wrongly convicted or sentenced to an inappropriate and unjust sentence, may appeal against such rulings, provided there are just grounds to lodge an appeal. The Supreme Court of Appeal is usually the highest court that will adjudicate legal and factual appeals, whereas the Constitutional Court is the highest court in the country and although it will usually only hear matters of a constitutional nature, it has jurisdiction to hear other appeals too.

A ruling that, despite the evidence of or representations by the accused, he nevertheless is unfit to possess, is also subject to appeal. Should the attorney not have explained the "automatic unfit" provision to his client, and should the accused, therefore, not have had the opportunity to contest such automatic finding, such matter cannot be taken on appeal, however, it is reviewable by a high court, which could set aside the "automatic unfit" and instruct the lower court to adjudicate that aspect of the trial.

One consequence of a criminal prosecution often conveniently neglected, because "it will not happen to me", is the cost of litigation. From the time you engage

an attorney the meter starts running, and it does not stop until the conclusion of the case. Although our Constitution stipulates that an accused is entitled to legal representation, even one at state expense should he not be able to afford an attorney, it is not so simple. If your income is higher than that stipulated by Legal Aid's "means test", you will not be provided legal counsel at state expense. And if you do not have insurance* that covers legal counsel you will have to fund such services yourself.

Bear in mind that unlike civil cases, the court will not make an order of costs against the state in the event of your acquittal. Such an order can be made in most exceptional circumstances only. Unless it was otherwise agreed, a client remains liable for payment of his attorney and advocate's costs even though he was convicted.

Once the criminal case is concluded, one can often expect a civil claim for damages based on loss of income or provision of maintenance or for medical expenses from the wife and/or children of the deceased, or if he did not die, medical expenses and pain and suffering from the attacker. This may happen even though the accused was acquitted. The reason being that the onus of proof in a civil claim is less than in a criminal case. When adjudicating a civil case, the judge only needs to be convinced of liability for damages on a balance of probabilities, whereas in a criminal case he must be convinced of the guilt of the accused beyond a reasonable doubt. Accordingly, the accused might have been acquitted because the judge had a reasonable doubt, however, such doubt might not necessarily exist in a civil case where the judge needs to weigh the probabilities

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and should they favour the plaintiff, she would have won. Should judgment be in favour of the plaintiff, the court will award damages (it depends on what has been proven) and make an order of costs. If the court rules in favour of the defendant, it will usually order the plaintiff to pay the legal costs (inclusive of the costs of counsel) of the defendant.

Another consequence is that the defender (accused of having shot and killed the attacker) may be subjected to intimidation, degradation and even physical abuse by groups or people associated with the deceased or who want to portray the accused as a racist or politicise the matter and even physical attacks. These protests and other action could take place at court, at the accused's home or anywhere he is seen. And although he is entitled to protection by the police, because of many reasons, they are incapable of providing it.

These psychological attacks could be extremely disruptive on the accused and his family. The accused may also consider obtaining a prohibitive interdict against the intimidators, provided he can identify them or the political party or other group whom they represent. Although a breach of the interdict amounts to contempt of court and is thus actionable by the police, their reaction time might be slower than expected and in the event of a serious and violent physical attack, the accused may be expected to, once again, be his own first responder. However, he now faces the problem that he no longer has any firearms to defend himself with. At the same time the accused might perceive he is being rejected by his own community.

The incident may also attract a fair degree of media coverage. On the one hand media coverage is positive since it may bring the plight of farm or home owners to the attention of the broader society, however, on the other hand it could be negative in the sense that it focusses on and identifies the defender/accused and his family and even their farm/home and journalists may entice the defender to say something he should not have said. The prosecution may use any media statement (inclusive of self-created social media) against the accused. Lastly must it be borne in mind that all (most?) people have consciences. Most people do not wish to be associated with violence and the application thereof.

Often people do not realise the traumatic nature of a violent attack and the impact thereof on themselves and their inter-marital and inter-social relationships. People even believe they can deal with this trauma without psychiatric or other medical intervention. There is nothing to be ashamed of to seek medical advice. In fact, in the long run it will benefit you and your relationships. It also may prove beneficial during the trial to show your non-violent character.

I trust that members now understand that personal defence is a very serious matter. It is not for the faint hearted. It is not merely buying a gun. However, this does not mean you should become apathetic. How serious you are about life (your own and your loved ones) and what steps you are prepared to take to preserve it, is up to you. Should it include firearms or other weaponry, seek expert advice how best to use them and practice regularly. Take the advice published in these and other related articles seriously. Handle your firearms and other weapons responsibly and safely.

I wish to reiterate that this article does not constitute legal or medical advice. It is a general overview of the legal process and consequences thereof.

*SAGA is not a provider of financial or insurance services, however, we have entered into an agreement with an insurance broker, Legal Ensure (see Snippets, April 2019) to provide insurance packages for SAGA members.

5 Biggest Mistakes Concealed Carriers Make

by Sheriff Jim Wilson
Tuesday, June 18, 2019



Personal defense and concealed carry are definitely hot topics today. More and more citizens are realizing that they are responsible for their own safety and they are taking steps to protect themselves and their families. All of this is good, but in many cases folks are getting bad information ("Well, Uncle Charlie says..."), or they are not thinking the process through in a rational manner. In no particular order, here are five of the biggest mistakes that concealed carriers can make.

#1...CARRYING TOO SMALL A HANDGUN:

Many people are attracted to small defensive handguns simply because they can be more easily concealed. What they fail to realize is that the smaller the handgun, the more difficult it is to shoot accurately.

Small handguns increase the felt recoil from a particular cartridge. Simply put, that little 9mm that fits so nicely in the pocket is going to kick more than a larger service pistol in the same caliber. Recoil may be so sharp that it causes the shooter to start flinching, that is, anticipating the gun firing and the

resultant recoil. When we flinch, we have trouble hitting the target in an accurate manner.

Taking the 9mm as an example, it is possible to find defensive handguns in small, medium and large. The shooter is well advised to select the handgun that is most comfortable to shoot. Comfort leads to accuracy, and accuracy leads to confidence in the gun and one's ability to deliver shots that will stop a criminal attack.

#2...FAILURE TO DRESS AROUND THE HANDGUN:

One of the main reasons that people end up with a gun that is so small they can't use it effectively is because it is easier to conceal with the clothes that they are used to wearing. In short, they haven't learned to dress around the gun.

Dressing around the gun is not as difficult as it may sound at first. It may just entail buying pants that are one size larger in the waist. It may involve wearing shirts or blouses without tucking them into the pants. It may involve wearing a lightweight fleece vest, although one should stay away from the khaki photographer's vests that were once so popular for concealed carry that they should have a sign across the back that says, "I have a gun!"

An excellent idea is to get concealment advice from people who have been carrying for a while. Find out how they manage to conceal during the various seasons of the year, what holsters they use and what other holsters might be available. In most cases, changes to the wardrobe are not all that severe. Use your imagination and learn to dress around the gun.

#3...OFF-BODY CARRY:

Many women solve the concealment problem by carrying in a purse. And, nowadays, it is not uncommon to see men using shoulder bags as well. Although it is certainly better to have a firearm in a bag than no firearm at all, there are two problems with this type of concealed carry.

The first is that it takes much longer to get the gun into action from a bag than it does a holster on the body. And it takes two hands to get the gun into action, one to draw the gun and the other to hold the bag still. Considering that the crook has to make his move before you can draw on him, time is the one thing you can't afford to waste.

The second problem with off-body carry is that people tend to lay their off-body devices down while they go about other tasks. The minute that bag is off your shoulder, you have lost control over it. It becomes more accessible to crooks, unauthorized people and children.

The defensive handgun is more quickly brought into action when it is holstered on the person. It is also easier to control who sees it and who touches it. Learning to dress around the gun makes carrying in a purse or bag unnecessary.

#4...LACK OF TRAINING:

We often hear people say that they have been shooting guns all their lives. While this may be true, in most cases, they have never learned to fight with a gun. And folks, there is a big difference between those two.

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Whether they want to admit it or not, what most people know about gunfighting is what they have gotten from movies or television. I don't think I need to go into any great detail about how faulty that sort of information is to real-world criminal attacks. If you wanted to learn to scuba dive or fly an airplane, a smart person would realize the importance of getting training. It is no different with personal defense: It only makes sense to get good professional training.

We are fortunate to have numerous, well-qualified defensive instructors working today. Some of these instructors will even travel to your home shooting range to put on classes. Get the training...and then get more training. And, after you have absorbed that, book another school. When your life depends on it, there is not much chance of getting too much training.

#5...NOT TAKING GUN SAFETY SERIOUSLY ENOUGH:

When you carry a gun you have the obligation to not place your fellow citizens in danger. Gun safety is a 24/7 proposition. It must be in effect whenever you handle a firearm. It must become second nature. It must be something that you are rabidly serious about any time, every time, and all the time. And you must demand it from your friends and family. When guns go off unintentionally it is rarely due to an accident; most often it is due to negligence.

Here are four easy-to-understand safety rules that will help avoid all sorts of grief:

ALL GUNS ARE ALWAYS LOADED

NEVER LET THE MUZZLE COVER ANYTHING THAT YOU AREN'T WILLING TO DESTROY

KEEP YOUR FINGER OFF THE TRIGGER UNTIL YOUR SIGHTS ARE ON THE TARGET

BE SURE OF YOUR TARGET AND WHAT IS BEHIND IT

Carrying a concealed handgun is a way of life. In many ways, it changes the way we dress, the way we act and the way we think. It changes our priorities to the point that we pass on a vacation in order to spend time and money on training. Taking it seriously will help a person avoid these five pitfalls to concealed carry.

<https://www.nrafamily.org/articles/2019/6/18/5-biggest-mistakes-concealed-carriers-make/>

Watch this space ...for more interesting firearm snippets

The Great Ammo Debate: Small & Fast vs. Big & Slow

<https://www.nrafamily.org/articles/2019/4/15/the-great-ammo-debate-small-fast-vs-big-slow/>

by Sheriff Jim Wilson
Monday, April 15, 2019

People who are new to handguns and defensive shooting may be somewhat surprised at the fervor that is exhibited during debates about the various defensive handgun calibers. The 9mm vs. .45ACP debate has been going on for years. And I am sure that this makes the .40 S&W and 10mm advocates feel discriminated against and inclined to add to the furor of debate. It occurs to me that all of these caliber wars may be more than a little bit confusing to new folks. So, making a concerted effort to keep from taking sides, let me see if I can explain what all the argument is about.

We use our defensive handgun only when our lives are in immediate danger. Our goal is to stop the criminal's attack immediately, before he can do any damage. This use of our defensive handgun may cause the death of our attacker, but his death is not our goal. What we want is for him to stop his attack immediately. Significant tissue damage is the only thing that can be relied upon to cause the incapacitation of the bad guy.

The 9mm cartridge is a stalwart for the Small & Fast fraternity. It pushes a 124-gr. bullet (.358 inches in diameter) in the neighborhood of 1150 feet per second (fps). This relatively high velocity can be expected to give a modern hollowpoint bullet some 15 to 17 inches of penetration into the bad guy. At the same time, these modern bullets will expand. It is this combination of penetration and expansion that is relied upon for incapacitation.



Most 9mm advocates will admit that 9mm ammo using a full-metal jacketed bullet is not a good fight stopper because, while it has velocity, it doesn't have the ability to expand. They point, and rightly so, to the huge improvements in the design of defensive handgun bullets within the past few years. We simply know a lot more about how to manufacture a proper defensive handgun bullet these days, and the 9mm has benefited from this technology.

The best example of the Big & Slow class is the .45 ACP cartridge. Traditionally, the .45 ACP has pushed a 230-gr. (.452 inches in diameter) bullet at some 850fps. While the .45 bullet is not traveling as fast as the 9mm, it relies on increased bullet weight to give the needed penetration.

The .45 ACP cartridge began life with a full-metal jacket bullet, must like the 9mm. However, the .45 FMJ bullet has a little better reputation as a fight stopper, undoubtedly because of its weight advantage. And, as with all defensive handgun calibers, the .45 ACP has benefited from the improved design of modern defensive bullets.

So one may wonder why there is this on-going debate when both the 9mm and the .45ACP penetrate sufficiently and, especially with modern ammo, expand sufficiently. They both should be able

to cause significant tissue damage and result in rapid incapacitation of the attacker.

Well, to confuse things even further, they are both capable of a failing at this task, too, and have on documented occasions. Think of all of the things that the defensive bullet might have to go through in order to impact the criminal. Glass, sheetrock, heavy clothing...these may not only slow down the bullet, reducing penetration, but they might clog up the hollowpoint and cause it to fail to expand.

One might come to the realization that caliber is not as important as finding a defensive handgun that is easy to operate and easy to shoot well. Once that is determined, one's time might be better spent researching the best defensive ammunition that is available and acquiring the same. After that, the smart thing is to get professional defensive training to learn proper tactics and proper bullet placement.

You will notice that I haven't taken sides in the Small & Fast vs. Big & Slow debate. I suppose some people are welcome to continue this debate ad nauseum. As for me, I think I'll go spend the afternoon at the shooting range, trying to get as good as I can with my chosen defense gun.

Why You Should Take Tactical Team Training With Your Spouse

by Brad Fitzpatrick
Monday, June 10, 2019

Alex Landeen and I had just ordered drinks at a café in Arizona when a man burst through the front door of the restaurant and began shouting at one of the employees. The exchange grew increasingly violent, and suddenly the unknown intruder drew a pistol and fired a shot at the restaurant employee. Landeen and I drew our own firearms, and as the shooter turned we both fired simultaneously at the attacker's chest, stopping the threat.

Thankfully, the entire episode was a pre-planned scenario and no live rounds were fired. Landeen was my partner, and we were using simulated firearms as part of Gunsite Team Tactics training course, a class that is designed to teach personal defense tactics for two people. Landeen and I are both gun writers, but throughout the duration of the class he and I had developed a trust and understood our respective roles in the event of an attack—skills that could very well save one or both of us if we were involved in a real gunfight.

Why Team Training?

Gunsite offers a long and growing list of course options, and Team Tactics is relatively new. Most of those courses focus on individual skill improvement, so what is the reasoning behind offering a course that is designed to teach two people to help one another in the event of a shooting? Simple—having a person with you that knows how to handle a deadly encounter greatly increases the odds of getting out alive.

The course that Landeen and I attended was sponsored by Mossberg and Federal Ammunition, and we used Mossberg's new MC1sc 9mm pistol and Federal

Syntech ammo for the live-fire training portion of the class. I've attended several courses at Gunsite, but the Team Tactics course was a way for the attending gun writers to learn the value of having a shooting partner who is competent and well-trained. Basic concealed-carry classes are a good start, but next-level training can be the key to surviving a violent encounter.

But who will you be with if you find yourself in the midst of a violent attack? It's impossible to say, but the odds are that it will be the person with whom you spend the most time. For me, that's my wife Bethany, and even though she's a good shot and skilled with a firearm, the Team Tactics course helped me realize that my wife and I need to have more than good shooting skills—we need the tactical knowledge to support one another and help neutralize a threat, whether that's in our home, in our place of worship, on vacation or while simply running errands.

How Team Training Works

Team Tactics is more than simply a training course to improve your skill with a firearm. It's as much about developing a defensive mindset for you and your partner and, perhaps as importantly, learning how to communicate effectively and serve as a useful teammate. The scenarios presented, like the one above, are less about accurate shooting (although gun handling is a crucial element of team training) than they are about using the resources available to you. And your primary resource in team training is a knowledgeable partner. The key is to learn to rely on your training partner's eyes, ears and marksmanship skills to effectively harden your defenses. Two people can visually cover far more areas than one person, and as the training

unfolds, you begin to learn to divide responsibility in a confrontation without using verbal communication. When your partner is engaging an armed attacker you can visually assess what's going on elsewhere. While they make a 911 call for help you can cover them, and if one partner is injured the other can provide assistance getting to cover or return fire until help arrives.

None of us want to become involved in a deadly confrontation, but the best defense is proper training. Having a partner who understands that and upon whom you can rely during such an encounter reduces the odds of being a victim. Humans naturally feel more secure when we have others around us; we're social creatures. But when you and the ones closest to you are on the same page with regard to personal defense and tactics, you increase the odds of surviving an attack.

<https://www.nrafamily.org/articles/2019/6/10/why-you-should-take-tactical-team-training-with-your-spouse/>