

SAGA SNIPPETS

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Self-Defence: After the Attack - The Legal Process

By John Welch

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

Where self-defence is obvious and the only conclusion to be drawn, the police will probably not arrest the shooter, but where it is not clear, the shooter will probably be arrested and charged. It is unfortunate that in many instances the police still arrest shooters despite the facts clearly showing justification for the killing. If the shooter is well-known with a fixed abode there often is no reason to arrest him but rather to wait for the investigations to be completed before action is taken against him.

Often people ask why the shooter is arrested? The main reason is that the police are not "judge, jury and executioner" – their constitutional function *inter alia* is to investigate crime and allow the prosecuting authority to take the decision whether or not to institute criminal proceedings. Only where it is obvious, where they do not have to evaluate facts, would the police simply open an inquest docket.

Accordingly, in most cases, the police will open a murder investigation and arrest the suspect (the shooter), and then leave it for the Director of Public Prosecutions (DPP) to take a decision. Usually, if the evidence points to the innocence of the suspect or if there is uncertainty after the conclusion of the investigations, the DPP may

ask for an inquest to be held to try and establish the cause and reasons for death.

When a decision to hold an inquest is taken the prosecutor will withdraw the murder-charge, whereafter the magistrate (not the prosecutor) peruses the case docket and decides whether to hold a formal or informal inquest. Bear in mind that in all cases of unnatural death, an inquest must be held. At the inquest the magistrate will, among others, determine the cause and circumstances of death and whether someone ought to be held criminally liable for such death. Should a finding be made that someone must be held liable, the magistrate will request the prosecutor to consider instituting criminal proceedings against such person.

The police are often accused of malice when they arrest and charge a shooter who had, on face value, justifiably shot a perpetrator. Put yourself in the police's shoes, if they have to evaluate evidence (not their task) or are faced with the cold evidence and no explanation by the shooter – can you really blame them? However, there is no doubt that there often is malice, in which case a person's chances of suing the police for wrongful arrest are so much stronger.

It is important to bear in mind that sections 14 and 35 of our Constitution prescribe the principles applicable to search and seizure, arrest, detention and trial. Section 35 (1) provides that "everyone



who is arrested for allegedly committing an offence has the right - (a) to remain silent; (b) to be informed promptly - (i) of the right to remain silent; and (ii) of the consequences of not remaining silent; (c) not to be compelled to make any confession or admission that could be used in evidence against that person; (d) to be brought before a court as soon as reasonably possible, but not later than - (i) 48 hours after the arrest; or (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day; (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and (f) to be released from detention if the interests of justice permit, subject to reasonable conditions."

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As explained previously, it is important to carefully take note of what happened when you are arrested, whether your constitutional rights are explained and in what detail. It may happen, for instance, that the police official explains your right to remain silent but nevertheless tries to convince you to make a statement before a magistrate, and although the latter has to explain to you that you are not obliged to make such a statement, you may believe it is in your own interest to rather do so. You may wish to again read the piece I wrote in Snippets of April 2019.

In addition to your constitutional rights, the Criminal Procedure Act prescribes how an arrest is to be effected and what happens after the arrest. Generally, the police have 48 hours during which to finalise their investigations and either charge you or release you. Should the 48 hours expire on a Sunday or public holiday the period is automatically extended to the first court day following the public holiday/Sunday.

Although section 14 of the Constitution protects citizens' privacy being invaded from arbitrary searches, the State may, in accordance with section 20 of the Criminal Procedure Act, "seize anything (a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere; (b) which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; or (c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence."

The police may also search an arrested person in a decent and orderly manner. Not only may evidentiary items be seized but also items which "may be used to cause bodily harm to himself or others". A female arrestee may only be searched by a female official.

The former National Commissioner of Police, Gen. Jackie Selebi, issued a very important Standing Instruction, dealing with arrest and detention of suspects, on 9 May 2005 (Reference # 26/5/1). This instruction seems still to apply today, however, like so many other instructions, police officials are either ignorant about them or do not receive the required training.

One of the examples Gen. Selebi mentioned is in regard to "(e) Instructions requiring members (police officials) to arrest persons for serious offences even though such offences were committed in circumstances where the person acted in, what appear to be, self defence or private defence and where there is reason to believe that the suspect will attend his or her trial since he or she has a fixed address ... or has a job and is unlikely to interfere with the further investigation and that the investigation may be completed and the docket referred to the public prosecutor to issue a summons in terms of section 54 of the Criminal Procedure act, to ensure his or her presence at the trial".

In paragraph 4 of the Standing Instructions Gen. Selebi instructs as follows: "Any instructions of the abovementioned or a similar nature are accordingly hereby **withdrawn with immediate effect**". In paragraph 6 he states the following:



*"Although arrest is **one** of these methods (to secure an accused's presence at trial), it constitutes one of the most drastic infringements of the rights of an individual and should therefore be regarded as an **absolute last resort**".*

Subsequent to an arrest a suspect is detained in police cells (these detention facilities are not conducive to anybody's physical or psychological wellbeing), whereafter he must then be arraigned before a court of law within 48 hours (or as explained above). On any serious charge the suspect cannot apply for bail before his first appearance in court (prosecutors and police officers may grant bail only for non-serious offences). In exceptional cases he may urgently approach the High Court with a motion to be released on bail.

Not only must the court of first instance inform the accused of his right to legal representation, it also must inform him that he has the right to apply to be released on bail. Section 60 of the Criminal Procedure Act provides that, "An accused who is in custody in respect of an offence shall, subject to the provisions of section 50 (6), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, if the court is satisfied that the interests of justice so permit".

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Usually, where the accused faces charges such as premeditated murder or ones that justify minimum sentences, the onus to prove that he should be released on bail, rests on the accused. In fact, the state could even ask the court to postpone the case for an additional seven days to allow the police to investigate the circumstances that possibly may affect the accused's release on bail. If bail is granted the usual order is that a sum of money must be deposited with the court and that the accused must return to court on every date the case is to be postponed to; that he must report (on certain dates) to the police; and/or that he may not interfere with the investigation of the case by communicating with listed witnesses; and any other condition the court believes is necessary for justice to prevail.

Because these conditions could be extremely prejudicial to an accused when he desires to conduct a parallel investigation, he needs to approach the court with a request to, for instance, visit and examine the crime scene or to consult with state witnesses. The prosecutor also will have to consent. Should the accused wish to obtain DNA or blood samples from state witnesses or the deceased or to have the firearm and/or bullets and cartridge cases examined by an independent forensic expert, he will require a court order to do so.

Do not be surprised if the case is postponed many times pending the finalisation of investigations, after which the court will determine a trial date, usually after consideration of the interests of the accused and the state. But even after the trial date has been set there is no guarantee that the trial will commence because the trial may be crowded out or the state witnesses are absent. All these postponements are at the ac-

cused's expense. Obviously, your lawyer may object to further postponements and a court may refuse to further postpone the case, in which case the prosecutor could withdraw the charge, or the magistrate or judge may strike the case off the roll.

Section 35 (3) of the Constitution provides for the basic principles/rights relevant to a trial. Because of its importance I quote it verbatim:

"Every accused person has a right to a fair trial, which includes the right-

- (a) to be informed of the charge with sufficient detail to answer it;*
- (b) to have adequate time and facilities to prepare a defence;*
- (c) to a public trial before an ordinary court;*
- (d) to have their trial begin and conclude without unreasonable delay;*
- (e) to be present when being tried;*
- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;*
- (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;*
- (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;*
- (i) to adduce and challenge evidence;*
- (j) not to be compelled to give self-incriminating evidence;*
- (k) to be tried in a language that the accused person understands or, if that is not practicable; to have the proceedings interpreted in that language;*
- (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;*
- (m) not to be tried for an offence in respect of an act or omission for which that person has previously*



been either acquitted or convicted; (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and (o) of appeal to, or review by, a higher court."

At the trial the indictment (charge sheet in a lower court) will be presented to the judge and the accused is expected to plea to the charge. In the event of a plea of guilty, the accused will usually submit a written explanation in which he admits all the facts, whereafter he will be convicted. In the event of a plea of not guilty, the accused may admit some facts (he is under no obligation to do so) whereafter the state must, beyond a reasonable doubt, prove all the elements of the crime. For instance, on a charge of murder, the state must prove that the accused unlawfully and intentionally killed the deceased. Should the accused's defence be private defence, he must at the very least raise a reasonable doubt in the court's mind, in which case the doubt will redound in favour of the accused and he will be acquitted. [Readers are referred to previous articles in Snippets in which the requirements were discussed.]

If the court is convinced of the guilt of the accused, he will be convicted on the charge proven,

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whereafter sentence proceedings will commence. If, however, the judge is of the opinion that the state only proved culpable homicide (that he unlawfully and negligently caused the death of the deceased), he will be convicted of such lesser crime. If the case is postponed for sentence proceedings, the accused is not automatically entitled to the extension of his bail, however, the judge may decide that it is in the interests of justice to extend his bail. Although the parties have a role to play in this regard, the decision remains that of the judge.

During the sentence proceedings the prosecutor may prove that the accused has a criminal record (previous convictions). All previous convictions of less than 10 years old may be taken into account, however, usually only the ones relevant to the charge for which he has been convicted will play a dominant role. In addition, the prosecution may lead evidence about the accused's character, such as his violent behaviour, court orders in terms of the Domestic Violence Act, previous threats he had made towards

other people – generally evidence that the court would consider in aggravation of sentence. Counsel for the accused may introduce evidence in mitigation of sentence, such as good conduct, and in particular, a lesser degree of culpability. The judge will now also consider minimum sentences, for instance, had the crime been committed in an organised fashion, or had the deceased been a law enforcement officer, or had the accused used a semi-automatic firearm, or does the accused have a previous conviction for a similar violent crime? After having considered all evidence adduced and arguments presented on sentence, including the seriousness of the crime, real remorse shown by the accused, the interests of the accused and that of the community, the judge will impose a competent and suitable sentence.

Unless there are substantial and compelling circumstances which justify the imposition of a lesser sentence, the prescribed minimum sentence must be imposed. This concludes the (initial) legal process.

In the final article I shall deal with related but indirect legal and other consequences of a shooting incident.

Members are (once again) reminded that this article does not constitute legal advice. It is a general overview of the legal process subsequent to a serious and violent invasion of your rights, your physical and mental integrity and your property, and certain legal principles. You were the victim, you have rights and an expectation that these rights will be protected.

HuntEx 2019 - Firearm Safety is the Only Safety

HuntEx 2019 started early on Wednesday 24 April as the Durbanites jetted into OR Thambo for Set-up day. Set-up day is always hectic, but it is great to see the familiar faces of those who we have met over the years. This year, the stand went up with no hitches and we were smooth sailing and ready by 18h00 for VIP day on Thursday 25 April 2019.

Thursday and Friday started slowly, but we had a steady flow of members coming to renew and 23 new members, which was wonderful.

On Saturday the show was much busier and we were really stretched. At times we even had a long queue of people patiently waiting for our attention. Thank you guys and girls for your understanding. Another 20 new members on Saturday put a real smile on our faces and we welcomed them all with zest!

Sunday was a short show day, so fewer people in all but still another 6 new members in addition to the renewals and lapsed members that we processed.

We were heartened to see that over the 4 days, 29 lapsed members came 'back' to SAGA and again we welcomed them all.

The best part of the show is to meet up with all the regular members who wait for HuntEx to renew their membership. There is always time for a friendly chat and a 'catch up'. Thank you all for your support and kind words.

We were fortunate to be donated two beautiful handmade knives by Dennis Kappetijn. Members who renewed or joined at the show were entered into the lucky draws and two VERY happy members are now the proud owners of these knives.

Our SAGA insignia was quite slow-moving this year but our popular Knife and Multi-Tool are always a winner. We discounted the price of our Pink Beanies on Saturday and were thrilled to sell 10 of them - all to little girls, who were begging their Dads for one. We only sold one Golf Shirt this year, to a lady whose husband was considering joining SAGA but decided not to, but she loved the shirt so much that she bought one!

SAGA received many accolades from members and non-members alike and we were congratulated on our efforts and the professionalism of the Association. Besides our tiny office in Durban, we do have a wonderful Board of Trustees who drop everything to assist us with difficult or legal queries for which we are grateful.

A HUGE thank you to our helpers at the show. They are all volunteers and SAGA members and have a wealth of knowledge with regards firearms and the Association. We would not be able to do it without you.

Next year is HuntEx's 10th anniversary and the organisers are already emailing their plans for 2020, so all being well....

SEE YOU AT HUNTEX 2020.



Range Bill a Win



NSSF: The Firearms Industry Trade Association

May 2, 2019

Range Bill a Win for Industry, Recreational Shooters and Conservation

By Larry Keane

This is how Congress should work. The U.S. House of Representatives passed H.R. 1222, the Target Practice and Marksmanship Training Support Act, referred to as the "Range Bill." The bill's passage means legislation that will make it easier for state wildlife and resource management agencies to have greater flexibility to use Pittman-Robertson funds to build more and improve existing recreational shooting ranges.

It's a bill that's been considered for more than a decade, introduced as 29 separate numbered bills and included in 15 expansive legislative packages. For reasons unrelated making it easier to build new public gun ranges, the bill always failed. Sometimes right at the finish line. The most frustrating part was the legislation always had broad bipartisan support.

This week, though, Congress put aside differences and with a voice vote, passed the bill. Since it's virtually identical to a U.S. Senate bill of the same name, S. 94, which the Senate already passed earlier this year, Senate Majority Leader Mitch McConnell (R-Ky.) used Senate rules to deem the bill

passed when it comes back to the Senate's Clerks Office. That means it is headed to the White House to be signed into law.

How Does it Work?

Here's what the bill will do. The legislation would give the states more flexibility in how they can use their Pittman Robertson allocation to pay for the construction of new ranges and expansion or improvements to existing ones. It would also give states more time to complete these projects before funds would be required to be returned to the U.S. Treasury. States would now be only required to have a 10 percent down payment for these projects instead of the currently required 25 percent.

In simple terms, if a state wildlife agency decides to build a new recreational shooting range that cost \$1 million, the state would only need to apply \$100,000 of state funds to access the remaining \$900,000 from Pittman-Robertson funds, instead of the \$250,000 down payment currently required. It would also give states up to five years to use those funds, which is crucial when navigating the approvals for acquiring lands, permits and approvals for projects.

How Does It Help?

Here's what it means for gun owners.

The National Shooting Sports Foundation knows that access is one of the biggest obstacles for hunters and recreational shooters. Many want to get started in the sports, but don't know where they can go. This will help alleviate that by making it easier for states to create more accessible and safe ranges. It will mean more places for firearm safety education training and for hunters to sight in their firearm for the hunting season.

Here's what it means for the firearms industry.

Pittman-Robertson funds are derived from an excise tax on the production of firearms and ammunition. Manufacturers pay this tax before the guns, bullets and shotshells hit the market. They've been doing this since 1937 and so far, they've paid \$12.1 billion dollars. With more access to ranges, NSSF believes more people will be able to participate, which means more ammunition, and maybe a few more guns, are sold to new recreational shooters, or existing shooters who discover new aspects of the sport in which to participate.

Here's what it means for conservation.

Pittman-Robertson funds much more than help the construction of new ranges. These are the funds that drive wildlife restoration and conservation programs. They fund field studies of ducks, deer and bear and everything in between. These funds aid in acquiring more land set aside for conservation and habitat restoration. So far, the track record is pretty good. Wildlife was at critical-lows when the funds were created by Congress in 1937. Today, wildlife is abundant for hunters and nonhunters alike, because of money paid by firearms and ammunition makers.

It's been a long, strange and winding trail to get here. The firearms industry is incredibly thankful to the Congressmen and women and the Senators who fought year-after-year to make this reality. Mostly, we're excited to see states start breaking ground and cutting ribbons on new public ranges coming to a place near you.

<https://www.nssf.org/range-victory/>

Family Home Defense

<https://www.nrafamily.org/articles/2019/5/18/family-home-defense/>

by Sheriff Jim Wilson
Saturday, May 18, 2019

Very few would argue that having a home-defense plan is not an important thing. Unfortunately, most folks limit the scope of their thinking unnecessarily when considering home defense. Home defense is not just about using a firearm to defend against a violent criminal attack. It is also about defending the home and family against fire, tornadoes, hurricanes, floods and any other situation, man-made or not, that places the family in danger.

Another major mistake is for the man of the house to think that he alone should devise a plan that will protect everyone. In a criminal attack, the man of the house may be the first one to fall. If that happens, what exactly is the rest of the family supposed to do? Who knows what tools to use and how to use them? Who knows who to call for help? Home-defense has to be the task of the entire family. And the entire family should be involved in the planning.

As painful as it may sound, it really wouldn't hurt to turn the TV off for an hour or so and have an old-fashioned family meeting. This family discussion should begin by listing the various dangers that are possible in your area. If you live in Oklahoma, it is probably a waste of time to talk about hurricanes, but tornadoes are a different situation altogether.



Once the list begins to take shape, subsequent family meetings should work on developing a plan to deal with each situation. Lists of equipment and supplies that will be needed should be made, as well as deciding who is going to be responsible for taking care of those supplies and operating the equipment.

I think it is extremely important that the children in a family should also be a part of these planning sessions. During our frontier days, the entire family was involved in defending against the threat of attacks. Those who weren't shooting were busy reloading the guns for those who were. Children who were too young to do any shooting were involved in molding bullets and carrying food and water to the defenders. In short, the frontier family faced the threat as a unified family unit with each having an important task to contribute. That is the same sort of attitude that will protect today's families who have to deal with serious problems that threaten their existence.

Parents must be the judge of their children's maturity and ability to handle assignments. They just shouldn't short-change their kids when it comes to evaluating their skills and abilities. Kids are often far more observant and capable than we sometimes think. As a police officer, I quickly found that neighborhood kids were a great source of information and accurate descriptions. If we needed to know what kind of car the bad guy was driving, I often looked around for any boys between the ages of 12 and 16 to get a complete description.

In assigning tasks to the children of the family, it is often fairly easy to come up with assignments that are important but do not place the child in danger. For example, when you wake up to the smell of smoke in the house, your five-year-old's job may be simply to escape through the bedroom window and run to the neighbor's house for help. (This is assuming, of course, that one knows the neighbors and has made prior arrangements with them.)

When firearms are a part of your home-defense plan, the entire family should be part of a firearms program that begins with gun safety. Nothing works for little kids like the NRA's Eddie Eagle program. If your schools don't have the program, help them get it started. If your schools don't want the program, find other ways to sponsor it in your community or neighborhood. In many parts of the country, 4-H has classes on gun safety and basic marksmanship. It would also be a great idea for all of the family gunhandlers to

Watch this space ...for more interesting firearm snippets

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attend NRA shooting classes. And it is an excellent idea for the entire family to attend the same class so that you are all on the same page and speak the same language.

Some years ago, I had a group of my hunting buddies over to the house. They were all out in the den and I was in the kitchen arranging refreshments when I heard my 5-year-old son say, "Don't touch that gun without my dad's permission!"

It turned out that one of the guys had opened my gun case to show a new rifle to the rest of the group. When I stepped out to admonish my son, the friend spoke up, "Don't say a word to that boy. He is exactly right and I should have asked permission." Kids can and do learn.

While it might be wrong to call these family defense sessions fun, it is amazing to find how they will become interesting and pull the family together. Each member begins to take pride in having a part, however small, in the welfare of the family unit. Having a plan helps keep their natural fear under control. Family members learn not only what their duties will be, but what the rest are tasked with, too.

In time, these family meetings may become a weekly affair, discussing the issues that you are faced with and how to best deal with them. Home defense is really family defense and the whole family should be involved. Besides, it will give the TV a much-needed rest.