

TRANSCRIPT: REAL LAWYER | The Roger Fortson Shooting: Awful? Lawful? Both?

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Welcome everybody. Welcome to today's sure to be controversial law of self defense show. I am, of course, Attorney Andrew Branca for the law of self defense. It's been an exciting weekend listening and interacting with all the uh with all the hysteria, the poorly informed hysteria all over the internet.

The the tragedy, the genuine tragedy, that is the Roger Fortson shooting down in Okaloosa County Florida by a sheriff's deputy, the the the law free emotion filled analysis all over the internet fomented, of course, by the usual lies from attorney Benjamin Crump who's very good at this kind of racial grievance propaganda because of course, here the victim Roger Fortson was a young black male and the deputy presumptively is white. And the fact that many people poorly informed about the real world of the law of self defense would prefer the world was different than how it actually is. They have an emotional desire for reality to be different than what reality is and that leads them to come to emotional emotional conclusions, law free fact, twisting, emotion filled, sometimes hysterical conclusions about whether or not this shooting of Roger Fortson is likely lawful or not.

Now, I'll be the first person to say that uh we'll never know with absolute certainty whether the shooting of Roger Fortson was lawful or not because there is no absolute certainty in legal analysis. All we can do is look at the law, look at the actual evidence, not the, not the lies of Benjamin Crump, not the imagined evidence, not the mind reading that so many people like to engage in the actual evidence make reasonable inferences from that evidence. And by the way,

it's worth noting that this deputy in terms of a criminal analysis, criminal liability, was this a crime? Was this the murder of Roger Fortson as is a wash all over social media. So that presumes that analysis that the officer would face some criminal charge and then have to defend himself against that criminal charge.

The criminal charge presumable presumably would be murder or manslaughter and he would raise presumably the legal defense of self defense like any person in America charged with a crime. This deputy is presumed to be innocent until proven guilty beyond a reasonable doubt. So every view of the evidence, every inference made from the evidence is presumed to be in the deputy's favor. And it's the burden of the state to overcome that presumption of innocence beyond a reasonable doubt. So any rational legal analysis of this event starts from that point that the deputy like all of us charged with the crime is presumed to be innocent of that crime. And 100% of the burden is on the state to prove that person guilty beyond any reasonable doubt, which in a self-defense context means the state has the burden of disproving self-defense beyond any reasonable doubt.

It's not enough that you may think this probably wasn't self-defense. It's not enough that you think, you know, there's a, there's a really clear and convincing evidence. This was not self defense. I'm convinced by 75% of the evidence, this was not self defense. That's still an acquittal.

That's still a justified shooting until self-defense has been disproven. Beyond any reasonable doubt. There's no possible rationale by which this was a lawful shooting. This is a justified shooting. Now, I know what a lot of people are struggling with. Let me come back to that in a moment.

I should go ahead and start do the formal start of today show right before, before everything gets super heated. Uh, by the way, if you're a law, self defense member, you're watching this on the, uh, the live stream, you may need to refresh your page to get the, the copy on the page. Correct? I, I only updated it on the, at the last moment. So, uh, but the stream should be coming through just fine. All right. So with that, let's go ahead and do the former launch of today's show and I almost forgot I should mention today's sponsor so much going on There we go.

So the sponsor of today's content is none other than CCW Safe, a provider of legal service. Uh self-defense member services, what many people mistakenly call self-defense insurance? What CCW Safe promises its members among other things is to cover their legal expenses if they're involved in the use of force event, if they're compelled to defend themselves, their family, their property and find themselves facing criminal liability or civil liability afterwards. Very expensive legal defenses. CCW Safe covers those expenses for their members and they do a lot else

besides, there are a number of companies that have similar offerings out in the marketplace. Some of them are ok. Some of them are, are worth considering.

Some of them are utter garbage. Uh And all of them are, you know, not cheap. So make sure you're not spending your money on something that's utter garbage. If you have one of these programs, make sure you're getting something that's a good fit for you.

I found the best fit for me is CCW Safe. I'm personally a member of CCW Safe. My wife Emily is personally a member of CCW Safe. I think the world of, of those folks. I do a lot of partnering with them.

You could learn why I choose them as the best fit for me by going to [law of self defense.com/trust](http://lawofselfdefense.com/trust). Why I trust CCW Safe. I have a short video there that explains exactly why they are the best fit for me and perhaps the best fit for you as well.

And if you go to that URL, you'll also get a 10% discount code for your own CCW safe membership. Again, that's at [law of self defense.com/trust](http://lawofselfdefense.com/trust). And that URL will be uh below my name here on the screen as well for the duration of today's show. Now, it's always fascinating to me to see the kind of emotional responses we get from both the, the left and the right from both the cop haters and the Second Amendment champions often am amazing amount of overlap there. Um Because we, we all, we all go through life kind of presuming that we're, we're rational people, we're critical thinkers um in my experience, that's not true for most people, that's a facade. Uh Most people respond to the world in, in emotional way uh based on their preferences and desires and how they, they wish things would be.

Uh And of course, consistent with any um ingrained biases or hardwired worldviews they've adopted. Uh for example, someone, someone who just has concluded that cop suck is always gonna take the anti cop view. The facts don't really matter to that person. Uh And of course, we'd all like, I think to believe that we live in a world where if we're actually doing nothing wrong, nothing unlawful that it's impossible that we could be lawfully shot dead by a cop or by anybody else. But that's just not the Real World. We'd all like to believe that we can't be lawfully shot dead unless we're doing something wrong that nobody can be lawfully shot dead unless they're doing something wrong.

That's not reality. That's an imaginary fantasy world in the real world. It's quite possible for someone to be shot dead lawfully and not only be doing nothing wrong but doing everything right.

It happens with regularity. So I see a lot of, uh very broken mis mistaken premises, um, and lies, of course, in the context of this uh Roger Fortson uh shooting, which is a general uh genuine tragedy. He seems by all accounts to be, have been a remarkably uh capable, uh giving serving young man. I've heard nothing negative about him at all.

An airman in the service prepared to make the ultimate sacrifice for his community and his nation, a a AAA good guy and by all accounts doing nothing wrong in this incident, doing nothing unlawful at all. And yet I'm here to tell you that his shooting, his killing could still have been completely lawful as the law actually exists. Perhaps not as the law, you'd like it to be perhaps not as lawful if uh our Florida's public policy choices around use of force law were different. Perhaps not if police always had perfect information and were making perfect decisions under perfect circumstances. None of which of course is realistic in the slightest police are not only imperfect humans like the rest of us. But their job requires that they deal with chaos all the time.

So I'm not here to talk about Fantasy Law or what you'd prefer things to be you speaking generally, of course, to the whole audience, I'm here to talk about what the law actually is. So, uh if you care about that, this will be the show for you. If you just want to be angry and are beyond reason, this is not the show for you because this is a show based on reason, law and actual facts. Now we will be watching the body worn camera footage of the shooting.

So fair warning and we're also going to be hearing the Okaloosa sheriff's office narrative of their view of what happened, which presumably will be the defense view if this deputy were to face criminal charges and raise the defense of self defense. And again, the deputy is presumed to be innocent. So this narrative favorable to him by the sheriff's office is presumed to be true until it is disproven beyond a reasonable doubt by a hypothetical prosecution. And a lot of people of course, struggle with this notion that how, how can someone who's doing nothing wrong, be lawfully killed folks? It's not required that the person who's killed actually be doing anything wrong. All that's required for the shooting to be lawful is that the person who used the deadly force against them had a reasonable perception that they were doing something wrong, something wrong to a degree that would justify the use of deadly force. And we're going to look at the, the Florida jury instruction on the use of deadly defensive force. What makes it lawful? In other words, the exact instructions that a jury would be given in this case, if this deputy were charged with the killing crime brought to trial and raised the legal defense of self defense, the actual law of Florida, I'm also going to address this uh kind of uh ridiculous uh federal civil litigation decision.

Uh That's uh making the rounds as a uh as a comment, Nibs V Mom Far. Um This, this was added as a comment to much of the coverage of this event, um as, as supposed absolute law

that this deputy could not have been acting in lawful self-defense. Um And, and, and it's so, it's so nonsensical that it made me lol uh but we're gonna dive into uh Nibs and Mom Far and show why, uh not only does it not say what the folks advocating it say, it says because it doesn't, in fact, it says quite the opposite.

It's quite favorable to this deputy. In this case, it wouldn't be applicable to this case legally applicable. It's legally irrelevant, even, even if its finding was 100% against this deputy, it would still be completely legally irrelevant.

That's what happens. Uh when people who are ignorant of how the law actually works. Get a little bit of law, a little bit of knowledge is a dangerous thing. But if it's what they want to believe they are all in 100%. All right.

So how should we start? Let's start with Twitter. Let's start with Twitter. So here's just some, uh, some tweets I captured, I mean, there's thousands of these, of course, uh, 11 is a headline.

Florida deputies fatally shoot us airmen in wrong apartment, wrong apartment. This is, this is the big line that Benjamin Crump is going with. Uh He also had initially reported that the police kicked in Roger Fort's door that they breached his residence. That was the first headline said Benjamin Crump released for those who don't know.

Uh Attorney Benjamin Crump is a leader in the uh um racial grievance, industrial complex. He makes his money off of uh police shootings of black suspects. Uh He's involved in all the big ones. He was involved with George Zimmerman.

Uh He was even though George Zimmerman wasn't a policeman. Um, he was involved, of course in George Floyd, all the whole high profile cases. And uh the reason he is is because it's easy money because of a police officer uh uses force against the suspect and, and there's a bad outcome, the suspect dies. Um and you can make a prime official argument no matter how much BS it is that it was racially motivated.

Uh that it was a violation of the suspect's constitutional rights. You can go right to federal court in what's called the section 1983 case. Um, and, and, and because politicians, and that 1983 case is a civil case, it's not a criminal prosecution. Um, you're suing uh, the officer and the department and the city, uh, for money for this purported violation of the suspect's constitutional rights, uh, which you can do under 1983 specifically because it was done under color of law.

It was a police officer who uh committed the purported violation of constitutional rights. And what's really happening here, of course, is, it's not really the cop being sued because cops don't have any money to take it. It's the city in the department. It's politicians that are being sued and politicians are always happy to spend other people's money, taxpayer money to make their own problems, their own political problems go away. And so Benjamin Crump has found the gold mine here. He, he comes across one of these shootings. Now, of course, they bring the cases to him.

He files a 1983 action. He starts uh a propaganda campaigns full of lies in the media. Um Like that this deputy went to the wrong apartment like that the uh Roger Fortun's door was kicked in, uh who knows what lies Benjamin is gonna come, come up with. In this case. He, he, he, it's always lies all the time. Um But that's, it doesn't have to be, truth, propaganda is done because it works, it's effective.

And what he's actually trying to do is raise the heat on these politicians who are going to make the decision about whether to settle without having to go to Federal Court and how much to settle for. And Benjamin Crump knows that the, the, the hotter you make it for politicians, the more willing they are to spend other people's money to make their own problems go away and that other people's money goes into Benjamin Crump's pocket. To my knowledge, he's never had to litigate a case at trial. He just compels these settlements.

It's a good gig if you can get it and Benjamin Crump's got it. So if Benjamin Crump's involved, the first thing you have to presume is that everything coming out of his mouth about the case is a lie and that's certainly been proven so far in this case. Uh Roger Fortun's door was not kicked in this notion that he was at the wro wrong apartment.

Um I I is, is only true in an irrelevant way. Now, it turns out Roger Fortson was not involved in a domestic violence event and the cop was responding to a purported domestic violence event. So in that sense, you could say that the deputy went to the wrong apartment, but all that matters for criminal analysis is, did the deputy make a mistake in going to Roger Fort's apartment or did the deputy go exactly where he was told to go? And the answer is the latter. Now, is it possible that where the deputy was told to go was the wrong address? Sure.

Is that the deputy's liability in criminal court? The deputy is judged by what he knew and reasonably believed to be the case at the time, if he's given an address and he's got no reason to doubt it. And he goes to that address, he's not at the wrong apartment for purposes of his criminal liability. It's a, it's a charade to make this argument. But this is the kind of nonsense that we have on Twitter. Uh, this guy was great. I had a lengthy exchange with him, uh, on Twitter this weekend.

He was doing all the wrong reasoning. Uh, first of all, he's making this about, uh, the shooting about gun laws. It's got nothing to do with gun laws. Roger Fortson was legally privileged to have a gun in his apartment. He's legally privileged to have it in his hand.

That's got nothing to do with whether or not his shooting was lawful. Uh, he was well within his rights to be armed and the weapon as we can clearly see on video wasn't pointed at the officer. Well, that's not a gun law question. That's a use of force law question. And, and it doesn't matter. Uh, we'll get to that.

Uh, and then of course, the racial lingo I wonder what you would say if he had been white. You racist. Andrew Brea. Another one from the same guy Pinkerton, a man shot for holding a gun in his own home.

Has nothing to do with gun laws. Are you high? No, I'm not high. I'm just right. And then the stand your ground laws down here in Florida, 100% applied to this man. This is had nothing to do with stand your ground law. The shooting, the Lord of Chaos.

The facts are that the shooting shooting someone because they lawfully possessed a gun in their home is not and never has been justified. Self defense. I I would suggest that's not the reason the deputy is gonna give why he shot. He's not randomly knocking on doors and seeing if the homeowner comes to the door with a gun in hand so he can shoot him. If the deputy just wanted to shoot people holding a gun, he could go to any gun store in Florida. Walk up to the counter where everyone's holding a gun in their hand and they shoot him.

Does anybody believe that's what happened here? The deputy was just looking for a completely nonthreatening person to be holding a gun so he could shoot him dead. That's a childlike view of this event. More pinker than a man answers the door armed on suspicion of the police not being who they say they are something you recently made a video about in defense of and is shot for. But you're saying his rights by law in the state of Florida weren't violated, you're full of it. Uh Well, as we'll see, uh, Pinkerton here is speaking to Roger Fortson and his state of mind and going to the door with a gun, right? That he may have suspected whoever was knocking, claiming the police was not actually police fair enough and totally irrelevant. Roger Fortson, state of mind is totally irrelevant to whether his shooting by the deputy was lawful in terms of evaluating whether the deputy's use of force was lawful.

The only state of mind that matters is the deputy state of mind. My response here, the legal reality you appear incapable of grasping Roger Fortson could have. Is it Roger or Roger? Am I getting the name wrong there? That would be awkward. Let's see. Let me double check that

right now. Not that it matters for purposes of legal and Roger Roger Fortson, not that it matters for purposes of, uh, legal analysis, but there you go.

Let's see. Someone will tell me that the first name matters. It makes a difference. I'll save that there. BB. You know why? Because I was thinking of the Roger Dean prosecution, that's the, uh, police officer who went to the apparent burglary in progress.

Shot the, uh, the, the woman homeowner inside her house, shot her through, uh, he was outside with a flashlight, shot through the window killed her, um, and was prosecuted and convicted very similar legal dynamics there. And that was, uh just a miscarriage of justice, that particular case. I guess that's where Roger came from. But any case, Roger Roger Fortson, uh the legal reality, you appear incapable of grasping Roger Fortson could have done everything right and done nothing wrong and his shooting by law enforcement could still be 100% justified. I understand you don't like this reality, but reality does not care about your feelings more Pinkerton. So in defending the cops, you posted a subsection that granted Fortson the right to defend himself with deadly force. Fortson the right to defend himself.

What I had posted was, um, the Florida self defense statute 776012. Uh as he had asked for, won't show me a law that would justify this shooting by this deputy. Ok. Self defense. And that's the self-defense statute. And he seizes on the notion that, well, you know, Roger Fortson could have claimed that self defense statute would have justified him shooting the cop.

Sure, sure. If Roger Fortson had been quicker than the deputy and shot the deputy dead, I expect Roger Fortson would have claimed self defense under Florida statute 776012. That doesn't mean the deputy shooting of him was unlawful. Both parties can be in the rights. They could both have fired simultaneously and shot each other simultaneously and both bullets could be perfectly lawful.

Uh No wonder you're selling people self-defense seminars for \$200. You're too shitty a lawyer to ever win a case. Uh Just say you hate black gun owners, be honest. Ok. Who are we talking about another Twitter account? Fortson knew someone claiming to be law enforcement was at the door, which is a tactic used by thugs. Fortson was complying.

Never raised. The gun. Cops are supposed to be held to a higher standard because of their training, not just see a gun and start firing. And of course, I respond literally doesn't matter what Fortson knew or was thinking completely irrelevant to a legal analysis of the criminal liability of the deputy for this shooting.

Another one completely misunderstanding what the legal standard is. What the legal question is. All these people are arriving at the wrong legal conclusion because they don't even know the correct legal question. And we're, we're gonna get to that because the correct legal question is stated in the Florida jury instruction on deadly use of force in self-defense.

Ben Madison. What law did Fortson break? I'll wait literally irrelevant, not required for Fortson to have actually broken any law in order for his shooting death by the deputy to be perfectly lawful, perfectly justified fluster clucking. You assume he knew, I guess he means that Fortson knew it was a cop outside. He could have had headphones on talking with his girlfriend and only heard the banging and not the announcement that the deputy was a law enforcement officer. The gun is pointed at the floor. This was a twitchy cop shooting a lawfully armed homeowner. Get bent.

Ok. You assume he knew literally does not matter what Fortson knew or didn't know Fortson state of mind is irrelevant to the criminal liability. If any of the deputy, the fact that the gun is pointed at the floor doesn't mean the deputy shooting was unlawful. The deputy is not required to wait until an armed suspect points the muzzle at him before he can defend himself.

The deputy is allowed to make an evaluation of the threat against him based on the totality of the circumstances. And there are more facts here. Then Roger Fortson standing there with a gun pointed down.

This was a twitchy cop shooting a lawfully armed homeowner. Well, twitchy is just a subjective characterization. Um And, and the deputy can lawfully shoot a lawfully armed homeowner that's allowed under the appropriate conditions, as we'll see in the Florida jury instruction. Then Alex said this was another great one. a great account for this weekend since other certain pro cop guys refused to answer. Maybe you will.

What laws did Roger Roger Fortson break again, it doesn't matter whether or not Fortson broke a law or not, that's not required for the shooting to be lawful as I responded. Utterly irrelevant. It's not necessary that the victim of the use of force event have done anything wrong in order for that use of force to be lawful Helvidius Priscus, who I, uh, I, I'm familiar with on Twitter and normally has pretty good takes. I like that account, right? This shooting was brought to you by the exact same sheriff's office that mag dumped because an acorn fell.

Are you beginning to see a pattern here? Well, this is why we have rules of evidence, folks, because emotionally people make these kinds of connections and try to extrapolate from one to the other. You may remember I covered the case of the deputy who discharged his gun uh when he was walking by his patrol car and an acorn hit the top of his patrol car and made a, I don't

know, loud noise, I guess. Um What is that uh deputy's conduct have to do with whether or not this shooting was lawful legally. Nothing, nothing but peop human beings are pattern recognition machines. We love our patterns, we love to see trends. We love to uh extrapolate from one event to another event.

Uh But courts have rules of evidence because this is not reasoning. This acorn event is literally legally irrelevant to whether or not this shooting by this deputy of Roger Forin was lawful nothing. One event has literally nothing to do with the other in the context of the criminal liability of this deputy. Now, might there be some broader civil suit against the department and might there be a pattern of poor training, inadequate training by this department that makes them more liable in monetary damages for the acorn event and for this.

Sure. But I don't do civil law folks and I'm not seeking to argue why this department should not be held civilly liable. I don't care if they're held civilly liable. I do criminal law. The question here is whether or not this deputy ought to be criminally liable for his use of force against Roger Fortson. Uh, Mr LEDs another Twitter account that I really like has great content but a bad take here many cops are ready to shoot you for doing something totally legal and nonthreatening. Really? Is that what we really believe that cops are many cops are walking around looking for people who are doing something the cop recognizes as totally legal and totally nonthreatening.

The cop looks at that and says, well, that's legal and that's nonthreatening and I'm gonna shoot you for that. Does anybody believe that's what's happening? Really? He writes, you should never open the door for cops. You should also dry fire and shoot, regulate the range to get fast and accurate. Ok. I mean, sure if, if you're gonna be handling guns for serious purposes, you ought to be proficient with your guns. Uh, you should never open the door for cops. Ok.

I mean, you know, do what you like. Um, you know, again, it's not necessary that Roger Fortin had done anything wrong. So, whatever his conduct, uh, in terms of its lawfulness or prudence is irrelevant to the deputy's decision making here, whether it's lawful, whether the deputy's decision making was lawful. Um, I would suggest that it's probably imprudent to answer the door with a handgun in plain sight.

II, I don't know why you would do that. Uh, I generally have a gun on my person all the time. So I generally have a gun on my person when I answer the door. Sometimes I might even have a gun in hand when I answer the door. But it's not in plain sight, especially if I don't know who's on the other side of that door.

Scare the crap out of my neighbors. Come on. Uh, Ex Republic. Boomer. Oh, this is another one, people, people last night started talking about rules of engagement for the military. When I was

in the military. My rules for engagement would never have allowed me to shoot Roger, uh, Roger Fortson.

Ok. I don't know. Thank you for your service. By the way, I don't know anything about your rules of engagement in the military. What I do know is that your rules of engagement in the military have nothing to do with this shooting. There's nothing about military rules of engagement in combat that would make this shooting of Roger Fortune, either more or less legal because this is not a military context.

The relevant rules of engagement for this deputy is Florida Law, as we'll see in the Florida jury instruction. So you can talk about military rules of engagement. All you like if it makes you, I don't know, emotionally satisfied, but you're not engaged in a reasoned understanding of this shooting. You're just talking about stuff that doesn't matter. All right.

So all of that Twitter, Twitter, Twitter, there, there's thousands of those things I could have pointed out. Those are just a handful that I, uh, I screen captured in real time. So I'd have to share it with all of you today.

All right. So what are the actually relevant rules of engagement? So I'm gonna go through this first, uh, before we look at the body worn camera video and before we, um, listen to the OKA LSA Sheriff's Department's presentation of their view of this event, the view that's favorable, of course to their deputy and the view that's presumed to be true until proven otherwise, beyond a reasonable doubt by a prosecution in court. Uh, and I guess I would say, unless you could, you know, point to an, a patent lie, right. Patent lies are, are possible.

Uh, they could say, for example, that this, uh, this deputy never fired a shot. It must have been somebody behind him who shot Roger Fortson. I mean, that would obviously be a patent lie. Um, but absent that, um, if this is, uh simply something, a presentation of the event that's subject to interpretation of the law requires that interpretation presumptively to be in favor of the deputy who's presumed innocent until proven guilty beyond a reasonable doubt. So, let's take a look at what Florida law actually requires and, and, and things in particular, I want you to keep your eyes open for it is at what point do the Florida jury instructions on the use of deadly force in self defense? Talk about the state of mind of the victim of that use of force.

At what point do the Florida jury instructions require that for the use of deadly defensive force to be lawful, the person against whom the force is used has to have been doing something wrong, actually doing something wrong, actually engaged in some criminal conduct actually be threatening anybody. Because if you're watching for those, as we step through the jury instruction, I think you'll have difficulty finding those conditions for the use of deadly force in

self defense under Florida law because they do not exist. So these are the actual jury instructions that would be given to a Florida jury in this case. Now, I should mention jury instructions uh when they're in their um um primary form. So if you look it up on the internet, there's kind of a fill in the blanks aspect to them. So for example, it'll include, it'll say things like a person is privileged to use deadly force and self defense.

If he she and you would pick the correct pro pronoun for a particular case. Um, if the defendant, it, it'll say in brackets and you're supposed to replace the bracketed the defendant with the name of the defendant. So I've done that here. I filled in the blanks. Uh, nothing I've done is substantively changed the jury instruction. You'll have to trust me on that or just go look it up for yourself.

I'll give you the jury instruction. It's Florida standard jury instructions and criminal cases. 3.6 f justifiable use of deadly force. You can just Google that and you'll, you'll get the, the version of it. That's not, doesn't yet have the brackets filled in, but I filled them in here for pur otherwise it gets kind of clunky reading through it for purposes of the facts of this case. So it is a defense and that means a legal defense, a perfect defense. That means it's not a crime.

The conduct is actually lawful. It is a defense to the crime of murder or manslaughter, which presumably would be the charge here. If a charge was brought. If the actions of the deputy constituted the justifiable use of deadly force.

First paragraph of the jury instruction. So seems obvious. Right. If the deputy's use of force was justifiable use of force, then his conducts not a crime, he's not guilty of an unlawful killing of a murder or manslaughter.

Of course, that begs the question. Right. Well, did it constitute justifiable use of deadly force because if it didn't, then this likely is murder or manslaughter. Fortunately, the jury instruction guides us, guides the jury on how it should go about determining whether or not this use of deadly force was justifiable. The deputy would be justified in using deadly force if he reasonably believed that such force was necessary to prevent imminent death or great bodily harm to himself.

Does it say folks, the deputies justified if he was facing imminent death or great bodily harm? Does it say he's justified if it was necessary to prevent imminent death or great bodily harm? No, no, that's not what it says. That's not what the jury instruction requires for this use of force to be lawful. What the jury instruction requires is that the deputy have a reasonable belief that the use of deadly defensive force was necessary to prevent imminent death or great bodily harm to himself.

Note that it doesn't say anything about Roger Fortson, state of mind yet and never will. It doesn't require that Roger Fortson be doing anything unlawful yet. And it never will. It requires here that the deputy had a reasonable belief that his use of deadly defensive force was necessary to prevent his death. Does that belief have to be correct? Does it have to be accurate? No, if the deputy was mistaken about the need to use force, deadly force in self defense, could that still be lawful? Yes. A lot of people make a big deal out of the fact that Roger Fortson didn't raise the muzzle of his gun up to the deputy before the deputy shot him, the muzzle was pointed down, let's pretend the muzzle was pointed at the deputy before the deputy shot him.

And then afterwards, it turned out the gun was Roger Fortson's gun was not a real gun. It was an inert plastic toy. It was a blue gun incapable of firing an actual bullet and therefore, was not actually presenting a threat of eminent death or great bodily harm to the deputy.

The deputy literally made a mistake. He thought he was facing a real gun, but he wasn't, would that invalidate the deputy's shooting of fortune under those conditions? No, as long as the deputy had a reasonable belief, even if mistaken that his use of deadly force was necessary to prevent his own imminent death or great bodily harm. Continuing.

Now with the Florida jury instruction, the next paragraph, uh, if the deputy was not otherwise engaged in criminal activity and wasn't a place, he had a right to be, then he had no duty to retreat and had the right to stand his ground. This is Florida's, of course, stand your ground language is stand your ground relevant here on the facts of this case at the moment that deputy made the decision to use deadly defensive force was stand your ground relevant. Stand your ground would only apply all, stand your ground does is relieve you of an otherwise existing legal duty to retreat.

So, if the deputy would have had a legal duty to retreat, stand your ground, release him of that obligation. But that duty to retreat would only ever apply if retreat was possible with complete safety. Are you ever able to retreat with complete safety from another person who has a gun in hand? A couple feet away? No, you're not.

Hold on a second. Folks. I thought I heard somebody in my office. Ok. And they're not supposed to be here.

So stand your ground is completely irrelevant here. It's got nothing to do with the facts of this case. If this were a duty to retreat, state, it wouldn't make any difference. The deputy would not be obliged to attempt to retreat from a gun a couple feet away. So if retreat would never have

been a duty under any circumstances, even in the duty to retreat state, then stand your ground has no role in relieving the deputy of a duty that would never have applied.

I include that language only for purposes of completeness. Stand your ground is irrelevant on the facts of this case. Next paragraph of the jury instruction in deciding whether the deputy was justified in the use of deadly force.

You must consider the circumstances by which he was surrounded at the time the force was used all the circumstances. Now, I know many people feel that the phrase totality of the circumstances, which is the relevant legal terminology here, that's what the jury is told to consider all the circumstances as they reasonably appeared and were known to the deputy. A lot of people perceive totality of the circumstances as some kind of hand waving blanket. Get out of jail free card for the police. They always point to the totality of the circumstances.

Well, folks that is the legal standard now it doesn't mean that there's no obligation to look at what the actual circumstances are. You can't just say totality of the circumstances magic and you have no criminal liability, but it does mean you're obligated to look at the totality of the circumstances, all the circumstances. And as we see, as we saw in those Twitter accounts, people keep repeating that this deputy shot Roger Fortson simply because he was holding a gun pointed down to the ground.

That was the only reason that was the only factor that could have driven that deputy's decision to deadly defensive force. But that's not true. Those are people who are being willfully ignorant of the other facts they know to exist. For example, that this officer was responding to an apparent domestic violence event. That was the call. That is a circumstance known to the deputy and domestic violence events have certain characteristics.

It's in the name violence violence. Now was there a domestic violence event taking place in Roger Fort's apartment apparently not. Does that matter in terms of the legal analysis of this deputy's decision to use deadly defensive force? No, it doesn't matter what was actually happening. What matters is the deputy's reasonable belief of the circumstances. So the jury is told you have to consider the circumstances by which the deputy was surrounded at the time, the use of force was used all the circumstances. This is not a case where this deputy was knocking door to door just to see if a homeowner would answer with a gun in hand so the deputy could shoot him dead.

The deputy was at the store for a reason. He was called there mistakenly or not on the premise that someone was being subject to sufficient degrees of domestic violence, that neighbors couldn't take it anymore. And called 911 for a police response.

That's the circumstances the deputy was in was surrounded by continuing with the jury instruction. And of course, I've touched on this before, but the jury instruction considered this important enough that it provides this level of emphasis to this issue that the danger need not have been actual. Is it necessary that Roger Fortson was actually presenting as a deadly force threat to this deputy in order for the deputies shooting of Fortson to be lawful? No, it's not. The danger need not have been actual however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances, would have believed that the danger could be avoided only through the use of that force. So the danger does not have to be actual, but it does have to be reasonably perceived. It can have been speculative, it can have been imaginary, it can have been a bare fear. Now, what is reasonably perceived mean? It means there's evidence that you're observing from which a reasonable person could infer a threat.

Now, you may say, well, Roger Fortson was just standing there with a gun in hand pointing at the ground and I don't think that's enough to create a reasonable appearance of danger and you're entitled to that opinion. I think most reasonable people would say that someone standing with a hand and gun in the context of a domestic violence call could readily be reasonably perceived by a deputy as presenting a deadly force threat. And in any case, that characterization of the circumstances would need to be disproved by a prosecutor beyond any reasonable doubt. Yeah, someone is in my office, but it's an authorized person. Ok. So the danger need not have been actual. So is it relevant that Roger Fortson was not actually presenting as a deadly force threat to the officer had no intent of harming the officer if given the opportunity would have dropped the gun? No, that's not what's required for this use of deadly defensive force based upon appearances, not based on reality, based upon appearances, the deputy must have actually believed that the danger was real.

So this goes to the deputy's subjective state of mind. Did he actually believe the danger was real? We don't have mind reading machines. So all we can do is ask the deputy and what do you think the deputy is going to say continuing with the jury instruction? If in your consideration of the issue of self defense, you have a reasonable doubt on the question of whether the deputy was justified in the use of deadly force. You should find him not guilty.

Again, this is the burden on the state to disprove self defense beyond any reasonable doubt. It's not enough that the jury believes it's 51% likely it was not self defense. That would be enough for a civil suit, not enough for a criminal prosecution. It's not enough that the jury believes it's 60% 70% 80% likely that this was not a lawful shooting. That's not enough. That's still an acquittal. This use of force results in an acquittal unless the state can prove to the satisfaction of

unanimous jury on the totality of the circumstances, beyond any reasonable doubt that this was not lawful self defense.

So we can't know anything with absolute certainty because absolute certainty is not a thing in the real world. Can we make an evaluation of this use of force event to a reasonable degree of legal certainty, the prospect that in the totality of the circumstances, not just the facts that the portion of the facts that favor a particular person's emotional take of this, but all the facts as they would be presented by the deputy's defense to a jury in a trial, that the state has a reasonable prospect of disproving self defense beyond any reasonable doubt. That's the legal question. All right. Where in those jury instructions that to talk about the state of mind of Roger Fortson, what he believed to be true or not true, whether he was actually engaged in unlawful activity or violating a gun law or doing anything wrong by having a gun in his hand or opening his door. The jury instructions speak to none of that because none of that is relevant to this deputy's criminal liability for the shooting of Roger Fortson, none of it.

So anytime you see people discussing this shooting and arguing in the context of a legal analysis of this deputy's criminal liability, arguing about what Roger Fortson was thinking or doing or exercising his second amendment rights or in his home or answering the door or knowing this or not knowing that they obviously don't know what they're talking about in terms of a legal analysis of this deputy's criminal liability because all of that is blatantly irrelevant to that legal analysis. All right. Now, let's listen to what should we do first? Let's listen to the Sheriff's department, their perspective, their narrative of this use of force event.

And again, this is the narrative that's presumed to be true. This deputy is presumed to have acted lawfully until he's proven guilty beyond a reasonable doubt in a court of law. And this will be about uh it looks like about 10 minutes or so. But this, this, this is the side, by the way, when I searched for this on the internet, this was hard to find, uh, there was lots of Benjamin Crump propaganda when, when you search for Roger Fortson. Um, and you get all the news coverage. Um, there's lots of, there's lots of Benjamin Crump propaganda about the door being kicked in nonsense about the deputy being at the wrong address. Not true in any legally relevant way.

The deputy was exactly where he was told to go. So in terms of his criminal liability, he was, he was in the right place. Uh, but this was actually tricky to, uh, to find this the sheriff statement to the media. So here we go with that. Okaloosa County Florida sheriff.

Good afternoon. I'm Eric Aden. I'm the sheriff of Okaloosa County with the Okaloosa County Sheriff's office a few moments ago, I personally met with Mrs Fortson and the Fortson family extended my deepest condolences to them. And this result is one we never hope to encounter. And I'm also thinking about our team here and the deputy involved in the tragic event, I'm here

this afternoon to further assure MS Fortun's family, our dedicated team and community we serve and the broader public that we are doing what we can to ensure the facts of this case are fully understood. To that end, I've asked the Florida Department of Law Enforcement to handle the criminal investigation that is required under these circumstances.

It is important to note that while this is a criminal investigation, no determination has been made as to whether the deputy's actions were justified or not. Here in Okaloosa County, we pride ourselves in our commitment to transparency and accountability. These investigations take time by the way, folks, I should mention I've not watched this statement before.

So I actually don't know what the sheriff's going to say. I, I, I'm hoping he's gonna share, share some relevant facts with us. If not, I apologize and, and I will speed it up a little bit to get through it a bit quicker. He talks a little slow as they, as they do in Florida. Florida, Floridians speak slower. Um, from the perspective of a native New Yorker like myself.

Huh? But I want to assure you that we are not hiding covering up or taking action that would result in a rush to judgment of Mr Fortson or our deputy. Well, it might be difficult to see. There are many questions the investigation must answer before we can determine whether the officer's actions were justified. Again, we are committed to the transparency and look forward to Fdle and the State Attorney's report.

We are aware of a press release and other comments that falsely state our deputy entered the wrong apartment and imply that they burst through the door into Mr Fortune's residence. Those statements are inaccurate as shown on the video that we are about to see what we do know at this time is that the deputy did announce himself not once but twice. Mr Fort's comments indicate that he did acknowledge it was law enforcement at the door and he arrived at the door with a firearm in his hand.

The deputy knocked on the correct door. He did not cover the peephole or otherwise obscure its view in any way. Again, I don't share this information to pass judgment.

We simply want to assure the community of what is known at this time for the safety and for the for the safety and for the safety of our deputies and for the community. I told Mr Fortun's family this afternoon that they have my word. If this shooting is found to be unjustified, their son's name will be fully vindicated and justice will be served. Now, before we play this video, all of us understand what we're about to see. And for those of you that are live streaming and don't want to watch this event because it's tragic.

Then I suggest you just look away for about 4.5 minutes. That's about how long it's gonna take once we roll the video, those of you that are live streaming, it's gonna be on here. And after this, we will share a link to the video. But out of respect for you, whoever doesn't want to see it again, it will take about 4.5 minutes. You will see the things that I just mentioned on the video that corroborate what I just said. Go ahead.

OK, let me try that again. Sorry folks. Uh I had muted it while I was eating my orange. Uh So now the press conference is obviously gonna play the body worn camera video. I want you to see that in the best quality possible. So I have it in a separate tab here um rather than watching it.

However, the the press conference would show it. It's the same 4.5 minutes um that the sheriff was just talking about. So let's go ahead and it is someone is shot here, right? Roger Fortson is shot. So, um if that makes you uncomfortable, this may not be the video for you. Um youtube. Thank you for demonetizing the stream ahead of time.

I appreciate it. And uh let's go ahead with the video. Now, this is the body worn camera video of the deputy um arriving at the apartment complex. Um and how things unfold from there.

Now he's arriving to a domestic violence call. That's why he was sent. How sir, what's going on one.

I, I'm not sure. Uh I just was told to let her know if you guys come by. Uh, so I'm gonna give her a quick call and let you guys know. I let her know.

So there was a fight going on or something. Uh That's, I was not present for that. Ok? Yes, sir. This is the cop's information. This is what he's aware of these, a part of his circumstances that there's a fight going on.

Now, the first witness he encounters doesn't know anything about that. That doesn't change that. That's the information the cop has when he arrives. That information doesn't turn to vapor because this dude in the lobby doesn't happen to know about that.

It's still information provided to the deputy. It's so funny the, the limited cognitive bandwidth of some of the commenters. The fact that this guy in the lobby doesn't know about the fight doesn't mean there's not a fight. It just means he doesn't know someone else believed there was a fight. That's why they called the deputy, the sheriff's office and asked the deputy to come to the scene.

So there is information that there's a fight, that information doesn't become negated because this dude in the lobby doesn't happen to be a person who's aware of that information. There's a red car in this scene. If you ask the guy in the lobby, is there a red car in the parking lot? And he says Well, I don't know anything about that. Does that mean there's no red car? I mean, I think people use your heads. Oh, are they fighting or something? You saying that it happens frequently? But this time it sounded like it was getting out of hand. What's getting out of hand? Are they making pizza? Is that what's happening? The pizza making is getting out of hand? Are, are, are, are they having romantic relations? That's what's getting out of hand. They called the sheriff's office because the headboard was banging against the wall too hard.

What's getting out of hand? We know it's getting out of hand. An apparent domestic violence event is getting out of hand. That's why the sheriff's office was called. Ok. Which store? So I'm not sure. Two weeks ago I was walking by, like by their apartment basically on this side and I was hearing someone yell like sh like stupid V word and all I like is a slap domestic violence after it, but I wasn't sure where it came from and I couldn't call it.

I didn't want to call the police. Which room is it? 1401? Which room is it? The deputy asks the witness on the scene, what did she tell him? 1401. Where does the deputy go? Does he go to 1402 or 1501? No folks. He goes exactly where he's directed to go. Apartment 1401. So much for the deputy being at the wrong place.

Channel one. Ok. Or a small one.

But the girl sounded scared. The one I called, she apparent domestic violence situation getting out of hand slapping and the person who made the call for help is scared. Are those part of the circumstances in addition to Roger Fortson opening the door with a gun in plain sight in his hand? So she was like, it's getting out of it. Sounds like it's getting really out of hand.

So it hit number four. Yeah. Ok. You, we sent out there and direct the deputy that's coming to this area. It's, you're gonna go to the, it's gonna be on this.

I heard someone argue on Twitter. A guy I like he wrote a great book. Um What's the title of the book? A Theft of Fire? It's a science fiction book.

I really like it. Uh Devin, oh, I'm blanking on his last name. But if you go to Amazon and you Google uh Theft of Fire, uh I'm sure his book will pop up and uh it's really good. I really enjoyed it. Uh And he's doing Sequels and I'm gonna buy those and read those too. Um But as, as what many otherwise intelligent people and this guy I believe is um some kind of software engineer, very smart guy, very, um very keen insight into a lot of social dynamics.

So, AAA worthy follow on, on Twitter. Um Generally speaking, I've got nothing but great things to say about this guy. But hi, his analysis of police tactics here was ridiculous.

I mean, he obviously has zero training or experience or, or really understanding of how police operate in the real world under normal circumstances. One of his conclusions was, well, this officer must have known that the situation was harmless or he would not have used an elevator to go up to, uh, to go up to the scene. Um I guess he, he should have called in a swat team or something at this point. It's funny because people do this analysis with the benefit of the hindsight of knowing that a it was a bad outcome event, right? That an undesirable death occurred and they forget that the deputy is making his decisions here not knowing any of that.

This is a normal day for him. Ok. 312, 111, 3, 12 and 111. I see someone in the comments saying it does sound like there was no arguing fighting once he arrived. So is it, is the domestic violence? Is it, is it not a crime if when the police get there the beatings over or is it still a crime that police need to investigate? Does it matter from the officers? The responding officers perspective that the last punch has been thrown, they say, oh, well, we got here too late.

She already got her beating, we'll just go home. Nothing for us to do here or they, do they still investigate a domestic violence event has? Yeah. Oh, look at that. Where's the deputy? What apartment is this? 1401.

Where is the deputy told by the unseen witness to go? 1401. Did the deputy go where he was told to go? Yes. Is it possible some other person made an error in communicating this information to the deputy, I suppose. Is that relevant to the deputy's criminal liability or did he go where he was told to go, by the way? I love all the, uh, all the boot liquor, the kiwi, the kiwi shoe polish ones are really good. Do you like the taste of that shoe polish? Uh, you people are you? Yeah. Ok.

You also, I see a lot being made out of the fact that the officer is not standing in front of the door. Uh, folks, domestic violence calls are inherently, it's in the name violent, they're dangerous calls. They're not the only dangerous calls the cops respond to. Of course, but they're, they're dangerous calls, they're inherently dangerous and cops get shot through doors. So when police respond to a scene of reported violence, they never stand right in front of the door, they always stand to the side or they always back away.

In any case, this standing off to the side would only be relevant to Roger Fortson state of mind. But Roger Fortson state of mind is irrelevant to whether or not. This shooting is lawful or not for reasons we've already discussed at length.

Ok. Another one of the Crump lies, of course, was that the officer covered up the people, not only did the officer kick in the door and go to the wrong apartment, he covered up the people. Lie, lie, lie. How do you know Benjamin Crump is lying. His mouth is moving.

I know loud birds. Right. Sheriff's office, open the door, sheriff's office, open the door. Would the deputy be visible from a peephole here? Yeah, it's about my drop the gun, drop the gun, drop the gun. 312 shots fired. Suspect there do not move. 312 K, you miss my location? All right.

So other, that's the whole video I have. That's, uh, obviously now the shootings happened some more, some more apparent lies being taught. Told by Benjamin Crump.

Is that, uh, the police never called for Ems. Obviously, we just heard the deputy call for Ems. Um, in any case that wouldn't matter, right? Whether or not Ems showed up after the fact would have nothing to do with whether or not the shooting which has already occurred was lawful or not.

So, let's go back to the, um, the sheriff's interview. Let me fast forward past the, uh, their version. Yeah. So their version of the video was just, um, it's projected on the screen. So it looks like soup. It looks, I'm glad I had my own version, by the way, if you're a law self defense member, I will embed the, this original version of the body worn camera and this press conference into the, um, the replay version of today's live show on the, on the law self defense block gonna go past there and there's the shooting.

Let's see. Ok. And the sheriff is now back forward to FD LES Findings and the final third party review done by the State Attorney's Office. We know you have many questions as do we, but we are confident in our state's agencies' abilities to investigate the facts no matter where they may lead.

And we are prepared to take action that is required to best serve our residents, the military community and our visitors, transparency and accountability have been our top priorities from day one. We will also be distributing the link for your reporting needs. And if you and when we have more information, we will share it until then I must respectfully ask that you direct all questions to the investigative agency, the Florida Department of Law Enforcement. Personally, I want to add that. It's been my life's honor to be your sheriff.

That service extends to all of our citizens, military visitors and the deputies that I lead. You are all important value to me as your sheriff. I know we will come to a resolution in this matter. And I thank you from the bottom of my heart for your patience and understanding as we go through

this, please remember the for and family and please remember our family in your thoughts and prayers just includes. All right. So another big talking point I see is that fortune never pointed the gun at the deputy.

The gun was pointed at the ground. Ok, so, so, so what what if Fortson had just murdered his domestic partner? So we would know in hindsight that he was a murderer, a killer, would the deputy be required to wait until Fortson pointed his muzzle at the deputy before the deputy could defend himself? Of course not. And at the moment now, of course, we know that Roger Fortson was not a murderer, but we know that now in hindsight, the deputy didn't know that the deputy had reason to believe that there was a substantial domestic violence event occurring loud enough for the neighbors to say it's out of control and calling the sheriff's department for deputy to respond. And it's happened more than once. That's what the deputy knows when he's showing up there. He, he doesn't know that there's no domestic violence actually occurring. Let's see, what else, what else? What else before I get to uh questions and comments, pop, pop, pop, pop.

Just a list of things. I remember seeing from uh from Twitter people arguing as if they were relevant to uh a legal analysis of this deputy's criminal liability but are not. Roger Fortson was not actually engaged in any unlawful conduct. He was not violating any law. Ok. Completely irrelevant to this deputy's criminal liability.

Roger Fortson had a second amendment right to be armed in his home. Ok. Completely irrelevant to this deputy's legal liability. As we know, as we just step through the jury instruction, the instructions given to the jury to decide whether or not someone in this deputy's position has criminal liability. Roger Fortson did not actually intend the officer any harm.

Ok. Completely irrelevant to this legal analysis of this deputy's criminal liability. Roger Fortson was an honorable serviceman by all accounts.

That's true. Great guy. Tragically, that a bad outcome, awful outcome. Completely irrelevant to the legal analysis of this deputy's criminal liability.

Roger Fortson may have suspected it was a criminal outside his door. Maybe he did, I don't know, but it doesn't matter. Roger Fortson state of mind has nothing to do what Roger Fortson may have believed or not believed or suspected or thought or imagined has nothing to do.

It's completely irrelevant to the legal analysis of this deputy's criminal liability. Roger Fortson may not have heard the deputy announce himself. So we heard the deputy bang and announce, but maybe Roger Fortson had headphones on or who knows, maybe maybe he didn't hear the

announcement so he didn't know it was a deputy outside. Doesn't matter. Roger Fortson state of mind is irrelevant to the legal analysis for this deputy's criminal liability.

Let's see, we talked about the wrong address nonsense. We talked about boot liquor, shyster, boot Polish flavored ice cream. Uh Lots, by the way, lots of appeals to authority.

So what often happens is, uh, people get emotionally charged with these things and the, the popular consensus becomes, uh, this, this was uh obviously murder. This was obviously murder is the popular consensus and everybody jumps on the bandwagon, even other lawyers. So I get a lot of, I get a lot of tweets from other, I'm a lawyer too and this was obviously murder. They, they never give any legal reasons and that they don't step through the Florida jury instruction and show me how that would lead beyond any reasonable doubt to a finding of no justification in murder.

They just, it's just an appeal to authority. I have a law degree too. I practice law too. I'm admitted in a lot of jurisdictions to practice law. Ok.

I don't care. I don't care if you're a lawyer or not, you could be a plumber. And if you make a sound legal argument, if you can show me in the context of the actual Florida law, the Florida jury instructions how this amounts to murder beyond a reasonable doubt, self-defense disproven beyond any reasonable doubt. Wait, but you have to make a legal argument. You're not right.

Just because you're a lawyer on an anonymous Twitter account. I'm an anonymous Twitter lawyer. Ok. Fine. Now, I should mention there's a lot of there's a lot of, um, it's normal, it's normal for people to be upset when we have this kind of tragic, ultimately unnecessary killing of a, of a very nice young man.

No one's happy about this. This is an awful shooting. It doesn't mean it's not lawful, awful, but lawful shootings happen all the time. And because it's awful because we see it as a bad outcome case appropriately.

See this as a bad outcome case. We wish it had been different. We wish this had not happened, that we wish that the law were different than it is. This ought to be unlawful. We say because it's a, it's a emotionally unpleasant and, and it's possible that it ought to be unlawful. I I'm not making any claims about what the law ought to be.

All use of force law is the result of fundamentally public policy decisions, the jurisdiction that's making up its self defense law makes choices about what are going to be the conditions that

allow for the use of deadly defensive force and which are not. And these are choices that reasonable people can differ on. So for example, in, in 49 states, it is unlawful period to use deadly defensive force in defense of mere personal property.

If you do that, it's murder. If you kill someone over mere personal property in the absence of a threat to persons, there's one state, Texas that says we differ in Texas public policy we're going to allow the people in Texas to use deadly defensive force to kill indef defenses of mere personal property. Would other states be privileged to adopt the Texas position to adopt the Texas public policy that you can take human life over mere personal property? Sure they can. Texas can do it.

Supreme Court says that's fine. Any snake can do that but different states make different public policy choices in terms of the use of force law. So you end up with different laws, can reasonable. People disagree on whether or not you ought to be able to kill over personal property. Sure.

And they do. And right now the balance is 49 states. So you can't and Texas says you can, but that could change over time. Similarly with stand your ground, right? There are 11 states that say before you can use deadly force in self defense. If you have a safe avenue of retreat, you're required to take it. And if you fail to take that safe avenue of retreat, your use of deadly defensive force cannot be justified and that killing is murder. Those are the duty to retreat.

States. But but there's 11 of those 39 states adopt a different public policy. 39 states say, you know, we don't really care if there's a safe avenue of retreat. If you're otherwise engaged in lawful self defense, you're the innocent party, you're facing an imminent threat.

You're using proportional force you're otherwise making reasonable decisions. Uh We're not gonna strip you of self defense because you failed to retreat. Those are the stand your ground.

States duty to retreat. On the one hand, stand your ground. On the other hand, it, it's a public policy choice. Lots of states in the last, in my legal career, 33 year legal career, lots of states have moved from duty to retreat to stand your ground.

No state's gone the other way. But those are changes in public policy decisions and that's fine. So you, you might want to argue uh I don't know, you could argue for a framework in which a reasonable perception of threat is not enough for a cop. Maybe it's enough for a normal law abiding citizen. But you may say, I think the public policy should be that cops have to make perfect decisions if they go to the wrong address or they shoot someone who's actually turns out to be holding a toy or, or they make any kind of misjudgment.

We don't care if the misjudgment is reasonable or not. We don't care if the mistake is a reasonable mistake or not, unless their decision making is perfect. That's murder. And we're gonna put that cop in a cage for the rest of his life.

You, you could argue for that public policy if you believe that you should argue for that public policy. If that's your moral position, I think you're gonna have difficulty hiring police. And I think if you do hire police, you're gonna have difficulty getting them to respond to calls for service. But those are, you know, public policy choices have benefits and detriments, positives and negatives. And that's why they are public policy questions because those things have to be balanced out. But what I cover folks is not future law that may or may not ever exist, not speculative law, not unicorn law, not imaginary law, not the law of some perfect society is you may envision it.

I cover the law as it actually is in this context, Florida Law for this event. All right. So now I'm gonna turn to um Q and A Q and A.

So if you're a law, self defense member, put your question or comment in the chat and I'll answer it there. If you're watching on youtube, I'll take questions and comments on youtube today also, but they need to be a \$10 minimum Super Chat. So if you're watching this on youtube and you'd like to pose a question or comment for me to address, you need to make it a \$10 minimum Super Chat and I'll address it or be a law self defense member and I'll address it for free, which is what I would encourage you to do because law self-defense membership is really inexpensive. You can be a law self-defense member for as little as 99 cents for a two week trial membership, 99 cents, unlimited member, access to all our content, get all your questions answered for free.

And after the two weeks, it's still dirt cheap. It's only about 30 cents a day, less than \$10 a month. And I would suggest to all of you if you found what you heard here today on this show to be more reasoned, more law based and more compelling than all the nonsense that's been spewed on social media over this event the last few days. Maybe it behooves you to become a law self defense member and learn the actual law of self defense instead of all the estrogenic hysteria a wash on the social media platforms, but at least try it out for two weeks. Law, self defense.com/trial for that two week trial.

All right. So let's see. Where are my, here we go.

Law of self defense members, pop, pop, pop. Uh oops, let me go up to the top here. All right.

Oh, and I'll mention one more time too. Um, our sponsor of today's show is CCW Safe, a provider of legal service memberships. What many people mistakenly call self defense insurance, uh in effect, primarily what CCW Safe Promises its members is to cover their legal defense expense, criminal and civil uh, if they're compelled to use force in defense of themselves, their family, their property and face criminal liability as a result, they do a lot more than just cover your legal expenses, but that's their core mission for their members. There are other companies out there that offer similar purport to offer similar services. Some of them are great. Some of them are worth considering.

I speak highly of those uh when they come up in conversations or shows uh some of them are garbage. So there are competitors out there that are just garbage that I could not recommend under any circumstances and none of these things are cheap. So make sure you're not buying garbage, make sure you're making an informed decision about any of these plans. Whichever one you choose, whichever one you feel is the best fit for you. Personally. CCW safe is the best fit for me. I'm a member of CCW Safe.

My wife Emily is a member of CCW Safe. If you'd like to learn why I trust CCW Safe to protect myself. My wife, my family in this way, go to Law of Self defense.com/trust trust and I have a little video there where I explain exactly why CCW Safe is the best fit for me and maybe they're the best fit for you only.

You can make that decision. Also at that link law of self defense.com/trust, there's a discount code you can use for 10% off your own CCW safe membership. When you become a member, that's our sponsor Law of Self defense.com/trust to learn more about CCW safe. All right.

The questions from the law of self defense members uh, will says, uh, potential domestic violence here. But what the officer was told was also very wish washy, very limited investigation before going to the apartment. But this is, this is how investigations happen. This deputy was actually engaged in investigation. He's trying to acquire more evidence, investigate what's going on.

That's why he's knocking on the door. Will says, and clearly nothing was going on when the officer got to the door, nothing could be heard. But that doesn't mean it's still not a domestic violence event.

Le let's imagine nothing's being heard. Does that mean the victim is the beating has been inflicted? Does that mean the victim is dead? Does that mean the victim is bleeding out on the floor? The fact that nothing can be heard does not mean that time is not of the essence that this is not suddenly no longer a domestic violence call. Uh, Kyle says, um, I believe that Roger

Dean's situation went bad on bad info and inexperienced, but he saw the weapon pointed and responded for the sake of devil's advocacy. The deputy didn't see the weapon tells Fortson to step back and then the weapon comes into view. Well, I'm not sure what Kyle means or Kyle's a law enforcement officer or, or past, I forget now. Um, I don't believe the deputy shot until he saw the gun.

So that would be why would he shoot if he hadn't seen the gun? Uh, let's see, she says, with all the women and feminized men, even in the Second amendment community were an emotional nation. Yeah, we have to keep in mind that emotion is the normal human state, right? Reason, rational, critical thinking. Those are attributes that we we create artificially to, to uh blunt the raw effects of our normal emotional state.

Souza says, so what I gather so far the cops had info of a violent situation. They showed up, saw the gun and started firing. I, I think that's a pretty good summary. Yeah, Jeffery said that would make a big change in the show if someone walked into Branca's office and shooting the curtain. Yeah, let's heaven forbid.

Uh will says I'm waiting for Andrew's analysis here as I'm stuck at the office. Uh I'm stuck at the officers shot within the same second. He saw the presence of the weapon and yelled to drop the gun afterwards when the only threat of the gun was that it existed. No, I don't think that's true. I, I think the totality of the circumstances is more than just the gun if this cop had been knocking on doors to, um I don't know, ask people to donate to the Police benevolent Association and the door opened and someone had been standing there holding a gun. We, we don't know that this deputy would have shot that person in the absence of the context of a domestic violence call here.

We have that context of a domestic violence call. It's in the name, violence, the deputy has every reason to believe he's responding to a violent event. Uh Let's see, Kyle says, yeah, when the dude's writhing on the ground empty handed, it's a bit late to yell.

Drop it. Well, if you know, if you know he's empty handed, right? I mean, they blur the image so I can't really tell if, if the dude drops to the ground and still has the gun, it would be appropriate to yell, drop the gun. Right? Also, of course, you know, under stress, people resort to, they default to their automatic training, right? So um that doesn't make anything unlawful, will says yelling to drop the gun when you can see his empty hands as nuts. Yeah, but you know, again, people, people fall back on their program training. Let's see. Yeah, we don't know that the cops saw the gun bounce away.

I can tell you having run a lot of people through shooting simulators where we have things like the gun bouncing away. Um People, you run through those simulators, they often don't see that kind of stuff. Jeffrey says, since this was an leo shooting that the law note that the objective reasonableness is what is reasonable to another leo in the same situation. Well, it's, it's always part of the circumstances.

The totality of the circumstances would be the training and experience of the person involved, the defender involved. Uh So that would generally encapsulate the leo aspects. Um People get stuck on things like uh Supreme Court, Graham V Connor, for example, uh Tennessee versus Garner where they talk about things like uh a cop's conduct has to be evaluated from the perspective of a cop in a similar situation. Keep in mind, those are all civil suits, those are not criminal suits.

And in any case, that kind of dynamic is would be captured anyway, under general principles of self defense law, uh will says, but when he got there, it was clear that domestic violence was not happening, was not still happening. Maybe that doesn't mean it hasn't happened. That doesn't mean it's not a domestic violence call if I'm in an apartment with eight other people and I shoot all eight of them dead in a murderous rage and then I'm done shooting by the time the cops show up, there's no more gunshots happening. Does that mean that it's not a murder scene? Of course not. Uh Hidalgo says, are the jury instructions given prior to the trial, end of the trial or is it available during the entire trial? Um, at the they're given by the judge at the end of the trial, um, they should be given at the beginning. Uh Typically the lawyers are allowed to refer to the jury instructions during voir dire during jury selection. I would strongly encourage defense attorneys to do that because otherwise I would argue that the the jury doesn't really know what to listen for in the course of the jury.

You know, so it all becomes kind of an amorphous body of, uh, you know, testimony and evidence. I would want them to know these are the specific things that you should be looking for in the evidence and testimony. Kyle says in what a shoulda coulda he had sketchy information on which apartment by a third party, not the caller. Well, what other information is he gonna have? Someone's gonna give him the apartment number, right? Why would it be different for? Why would the caller know more the caller was, was not the victim of domestic violence? The caller was a neighbor hearing it through walls and ceilings and floors.

Why, why would the caller have a better idea? Let's see. Zusa says really showcases how important it is for dispatch to give clear instructions. Sure, but just like the deputy is a human being with all the failings imperfections of any human being. So is the dispatcher? So is the person making the 911 call? Right? There's lots of points at which misinformation can get

injected into the police response. That's there's no way to solve that problem when we have humans involved. Humans are imperfect.

That's why we don't require perfect decision making in self defense. Yeah, sorry about the muting earlier. Will says she said the slap was two weeks ago. Ok.

And now it's happening again. She's not, she's not calling deputies today because of a two week old slap. She's calling deputies today because of reports of violence happening today. And she's contextualizing it as an ongoing pattern of domestic violence by citing the slap two weeks ago.

Yeah, Paul says maybe it's no longer allowed on the scene because he killed her. Yeah, maybe she's bleeding out. Jeffrey says, I'm surprised they only sent one person to a domestic violence call. Now there was another cop coming, there was another deputy coming.

He just wasn't there yet. But this deputy wanted to begin. You know, it's, it's a scene of apparent violence. So he wants to interrupt that if he can.

Let's see, Jeffrey says, with Benjamin Crump making false statements to the press public, can he be sanctioned for attempting to influence a potential jury pool? No, he'll just say that's what he was told. That was his information. Sorry, I I'm mistaken and he does by the way. So I think like with the door being kicked in thing, he, he kind of half apologizes.

He says, well, you know, that's what the family member told me. So it's turned out that wasn't the case, but the family member still sticks by her emotional response to the reports. But no, there'll be no sanctions. Let's see. BBBB Zuza Wonders is the cop supposed to wait till the gun is pointed at him? No. Oh, I did want to cover. I, I wanted to cover that case that everyone's citing.

Uh let me get through these questions first and that's the case of uh where is it? Nibs V mom? Far, I'm gonna, I'll circle back to that after I get through these questions, will says you mentioned he doesn't know if the domestic partner was just murdered, but at the same time, there's no readily apparent blood or no report of gunshots. Yeah. Well, people can get killed without guns, right? People, people are stabbed to death. People are strangled to death.

People are beaten to death. In any case, the cop's not presuming that's the case or he would be kicking the door in. He just wants to get a response from the door.

So if that is occurring, he's maybe he's interrupting that going on. Let's see. So Kyle says, I bet the deputy is kicking his own ass at this point, arguing the same thing of outside stepped, waited half a second longer.

Right? But now we know that Roger Fortson was not a bad actor, right? Was there reason to believe Roger forcing could have been a bad actor at the moment. The cop sees that gun in his hand and listen. It's, it's not necessary for Roger Fortune to have done anything wrong. And arguably he wasn't doing anything wrong when he answered his door with a gun in hand.

But would any of you say it's prudent to do that to answer a door with a gun? In hand in plain sight. I mean, what are the scenarios? Right. Either you believe it's a bad guy on the other side of the door or you don't? Right. If it's not a bad guy, why are you displaying a gun to them? You're just frightening. Someone who's not a bad guy in the best case scenario. Like, if it's a neighbor coming over to ask to borrow some milk, you're gonna open a door with a gun in hand. If that's what you believe to be the case.

Oh, it's, it's a neighbor. No, of course not. If you know it's a cop on the other side, is it prudent to open the door with a gun in hand? If you know it's a cop on the other hand, on the other side of the door, I would suggest not. Is it unlawful? No.

Does it have to be unlawful for it to be imprudent? A poor life choice creating risks that do not need to be created? And if you know it's a bad guy on the other side of the door, why are you opening the door? And if you are opening the door with a gun in hand, why is the gun pointed down? So it's difficult for me to imagine any scenario in which this is a prudent decision by Roger Fortson doesn't mean it's unlawful, but it means he's incurring life and death risks. He need not incur. I can't imagine a scenario under which that would be my decision. Now, have I answered a door with a gun in hand? I sure have. But it's hidden from view. It's behind my body or it's in my holster, it's all my person.

I mean, normally I'm carrying a gun. So normally when I answer a door, I'm carrying a gun. Let's see, Jerry says that the person who directed the deputy to the wrong apartment bear any responsibility. I mean, no criminal responsibility.

I'm, I'm assuming it wasn't done. You know, the misdirection was not intentional. I mean, if the woman who gave the apartment number say she was, uh, you know, Roger for and had just broken up with her and she's essentially swatting him. Uh, yeah, of course, that could be grounds for criminal liability. But I, I don't think we have any reason to believe that's the case.

Four Science Institute says d has videos of the research demonstrating how quickly a bad guy can present and fire a handgun from several positions. Listen, someone who's skilled can present a gun from a holster and get a center mass hit in 6/10 of a second. A competent competitive shooter ought to be able to do that in a second, maybe a little less. Uh, and that's

with the gun in a holster. So you gotta reach for the gun, get it out of the holster, redirect it, shoot a gun in hand from pointed down to pointed horizontal. 1/10 of a second.

I can't believe that it takes 4/10 of a second. Barrett Kendrick. Um, um, great guy trainer down in. Is it, is it Louisiana Barrett? Um, uh, I would not need 4/10 of a second to go from muscle down to muscle. Horizontal.

Let's see. All right. Yeah, Barrett's in Louisiana. Um, all right. Let me get back to this Nibs V Mom. Far.

Nibs V Mom Far. Let's see. Oh, I had a hold on a second. Let me do this first. So this is a good example of how a little bit of law can get people into a lot of trouble by trouble. I mean, leading them astray on a legal analysis because someone added this case as a uh as a Twitter comment.

So in, in Twitter, if you don't know, it's possible for people to add a like a comment uh providing criticism or context to someone's tweet, especially if they believe that the original tweet has been uh is misinformation or disinformation or mistaken. Um And that's what someone did here. They added a comment to um some, some of the arguments that this shooting by the deputy was lawful and they're citing this case, Nibs V Momart 2022. And they say as found in Nibs V Mom Far, simply holding a weapon is not justification for an officer to use lethal force. And then they have a quote here.

There is sufficient evidence dot dot dot That Nibs the victim of police use of force never pointed his weapon at deputy Monfort dot dot dot thereby rendering unjustified the deadly force used. Now, first of all, any time you see that dot dot dot The ellipsis, those are words cut out. You gotta wonder what words have been cut out, right? How does that change the context of the statement? Because Nibs V Momart says a lot more than just this, uh in any case, Nibs V Mom Far, even if it said exactly this would still be irrelevant to this decision for, for legal reasons.

Um In any case, note, the first sentence here as found in Nibs V mo Mom Far simply holding a weapon. It's not justification for an officer to use lethal force. And like I said earlier, lots of people are saying, well, he was pointing the gun down that settles that that's the only relevant fact here in the deputy's decision making. But is it really, is the domestic violence call not a relevant factor? Does that not make this not simply holding a weapon? Fortson was not at a gun store counter holding a gun. When this deputy shot him, this deputy was not a neighbor who just knocked on the door to borrow some sugar. When Fortune answered the door with a gun in hand and the deputy shot him, the deputy is responding to an apparent scene of violence. That's more than simply holding a gun So just on the facts, Nibs is distinguishable, but there's other ways in which Nibs Vard is irrelevant, distinguishable.

And to know that you have to actually read Nibs V Momart. So when a lot of people do this, they'll, they'll cite a case, they'll state some summary finding of the case and they'll say, well, that settles that I found, I found case law that proves I'm right and you're wrong. And Andrew Branka always says, well, that's interesting. Let's go take a look at this case and see how applicable it is. On the one hand or how distinguishable it is from the facts and law of this case.

On the other hand, and I would suggest that Nibs V Momart is easily distinguishable on facts and law from the fort and use of force event. First of all, Nibs involves a civil case, not a criminal case and the burden of proof is vastly lower for a civil plaintiff than for a prosecutor. So if the OKA LSA Sheriff's Department is sued for this use of force by the Benjamin Crump and the Fortson family. As I fully expect to be the case they lose.

If there's a 51% chance that it was not a lawful shooting, 51% is enough for the sheriff's office to lose in civil trial in criminal trial, the deputy would have to be shown to have acted not in self defense beyond any reasonable doubt. 51% beyond any reasonable doubt. So, Nibs is not speaking to a criminal prosecution.

So any conclusions Nibs would come to are irrelevant in the criminal context. Nibs establishing a rule at the civil level of liability. 51% doesn't mean that rule applies in a criminal context or even close. So, Nibs is a civil case just like Tennessee versus Garner just like Graham v Connor, civil cases, not criminal cases. Second, Nibbs was a federal case under section 1983 suing a police department for use of force. It's a federal case. 1983 is a federal cause of action.

The states are a different jurisdiction than the Feds. So the federal decision would not be binding on a state criminal prosecution for use of force. Third Nibs is in any case, a federal case out of the Fourth circuit, Florida is not in the federal fourth circuit, Florida is in the federal 11th circuit, fourth circuit decisions in, in, in the federal appellate level are not binding on Florida. They're not relevant to Florida. So Nibs is completely irrelevant, legally speaking to any use of force event in Florida.

Fourth Nibbs did not in fact find that the facts of the case in Nibbs did not justify that deputy's use of force as a matter of law. The question in Nibbs was Deputy Momart had been granted summary judgment, so he'd been sued and his department had been sued and the trial court had said Well, I'm going to find under qualified immunity, they can't be sued and I'm dismissing the case. And the plaintiff said, well, we think that's wrong. We're gonna appeal to the appellate court and the appellate court said, you know what? It should not be summary judgment, it should not have been dismissed.

We're not saying the plaintiffs are right importantly, Nibs V Mom Far, it's not saying the deputy was wrong. All Nipsey Mom fart is saying is that there is a factual dispute that should have gone to a jury. It should not have been dismissed before a jury got it. That's all Nipsey Momart is not making a final determination that this deputy made the wrong call in his use of force event. Finally, in Nibs Deputy Mom Far was not responding to a call of violence.

He was responding to a criminal nuisance. Somebody was putting things in the roadway and somebody called to complain about it. There was no threat of violence in the deputy mom Far call, which of course is key in the domestic violence call of fortune. And if you read Nibs, so remember, remember what the claim was in the Twitter comment. Oh, sorry. What's the claim? Mm Nibs V Monard simply holding a weapon is not justification for an officer to use lethal force.

Well, we've already said that's not all that was happening here, right? What else did Nibs Free Maford say in the context of whether a weapon has to be pointed before police could respond. Nibbs Vi Montfort says, quote, this court has consistently held that an officer does not have to wait until a gun is pointed at the officer before the officer is entitled to action. Does that seem different than this? What else? NV Momar, quote, to be sure our decisions have noted that an officer might be objectively justified under particular circumstances in fearing for his life upon observing an individual holding a firearm after making his presence as an officer known, did this deputy make his presence as a deputy known? Did he observe an individual holding a firearm? Nip says, well that that can be a lawful shooting. Nibs V Momart, quote, officers who have identified themselves might have been safe in the assumption that a man who greets law enforcement with a firearm is likely to pose a deadly threat. Likely that's Nibs V Momart saying this does that seem different than this claim, this mischaracterization of Nibs don't trust anybody else's interpretation of what a case means folks because they will lie to you read the case also, Nibs re Momart, we do not mean to say that an officer must wait until a gun is pointed at him before he's entitled to use deadly force when other factors, for example, like furtive movement or maybe the context of being on a domestic violence call indicate an imminent threat to life.

Now, the courts here isn't making any absolute statements of when deadly force is justified. But they're certainly making clear that the officer doesn't have to wait until the muzzle pointed at him, depending on the totality of the circumstances. All right. This is how I lie to you folks.

Now, I, I tried to add my own counter comment and, uh, uh, and so I'm a member of the commenting community, but I, you have to, you have to spend a certain amount of time reading other people's comments before you're allowed to write your own. So they wouldn't let me, they wouldn't let me write a counter comment to this. But I did write. This one is largely misinformation.

It's not what I wanted to do. That's what I wanted to do. All right. Uh More comments from the law of self defense members. Remember folks, you can be a member for just 99 cents at law of self-defense.com/trial. Let's see.

Paul says, always remember being right, doesn't make you any less dead. Yeah. And I, I'm not again, Roger Fortson when he answered his door with a gun in his hand was not doing anything unlawful. Nothing unlawful.

Does that mean he wasn't incurring an unnecessary risk of death? II, I think he was, I think, I think it was imprudent, not, not unlawful, not a crime and in terms of the deputy's liability, it, it doesn't matter what Fortson was thinking or not thinking. Let's see. All right. So let's see if there's any Super chats that need to be addressed? Super chats need to be 10 bucks folks. Ok. No, \$10 Super chats on youtube good.

Don't do that. Don't give youtube \$10. Become a law of self-defense member.

Less than \$10 a month to be a law of self-defense member. Get all your questions and comments addressed for free at law of self-defense.com/trial. All right folks.

Um I think that's all I have to say about this. I, I guess if things develop, I'll, I'll do more coverage on it. But really, I, I think I covered all the bases here. Hope you enjoyed the show for those of you who might be new. A few more, few more watchers today than on a normal show, which is always nice. And uh with that, I will just remind all of you that if you carry a gun if you carry a gun, so you're hard to kill.

So your family is hard to kill. That's why I carry a gun. That's why I carry a knife.

That's why I carry pepper spray. It's why I studied jiu jitsu. So I'm hard to kill. So my family is hard to kill if you do any or all of that. So you're hard to kill. So your family is hard to kill and, and please do it in a prudent way. Don't get yourself unnecessarily shot.

That's not good. That's a bad plan if you do any of that. So you're hard to kill. Your family is hard to kill. Then you also owe it to yourself and your family to make sure you know, the law. So you're hard to convict as well.

Until next time I remain attorney Andrew Branca for the law of self defense. Stay safe.