

Tea Time & the 9mm Glock

By: Brett A. Purtzer; Oct 2003

On February 10, 2003, Kitsap County charged David Bell with First Degree Assault for the apparent intentional shooting of a person who accosted Mr. Bell at a convenience store in Silverdale.

Mr. Bell, a disabled paper carrier, was readying his papers for delivery at 2:00 a.m. when he was confronted by his drunk assailant. The drunk, who was verbally berating Mr. Bell, removed Mr. Bell's cup of hot tea, which was cooling on the roof of his car, and began splashing it on Mr. Bell. Mr. Bell, who was seated in his car at the time, withdrew his 9mm Glock, and exited his car to try to gain control of the situation.

As Mr. Bell attempted to reason with the drunk, he was again splashed with hot tea. In defending himself, Mr. Bell backhanded his assailant on the side of the head with his gun. Unfortunately, Mr. Bell's gun accidentally discharged, but the force of the blow knocked Mr. Bell's assailant to the ground.

Mr. Bell's claim of self-defense was rejected by the Kitsap County Prosecutor, particularly since they had an eyewitness, a Kitsap County Sheriff's Sergeant, who reported that Mr. Bell raised his gun and fired at the assailant. Additionally, physical evidence suggested that the shot from Mr. Bell's gun clipped the assailant's right ear.

When Mr. Bell rejected the State's offer to plead guilty as charged, the State amended the charge to, in the alternative, attempted first degree murder, attempted second degree murder, and first degree assault, all with a deadly weapon enhancement. Mr. Bell's defense of self-defense never wavered.

Fortunately for Mr. Bell, defense witnesses were called to combat the Kitsap County Sheriff's eyewitness testimony. In particular, the emergency room physician testified that the injuries suffered by the assailant were caused by blunt trauma, as opposed to a gunshot, and that there was no gunpowder residue on or around the attacker's ear. The emergency room physician's testimony bolstered Mr. Bell's multiple statements to police detectives that he struck his assailant with his gun, but didn't shoot at him. Mr. Bell's statements were admitted after a CrR 3.5 hearing, and Mr. Bell did not testify at trial.

Additionally, Mr. Bell, during his case-in-chief, called forensic pathologist, Dan Selove, as well as memory expert, Dr. Geoffrey Loftus from the University of Washington. Dr. Selove's testimony solidified that of the emergency room physician's, and Dr. Loftus was able to provide information to the jury as to why the Sergeant's eyewitness account could be faulty even though the Sergeant believed that he was testifying truthfully. In fact, the Sergeant's testimony appeared truthful as he acknowledged on the stand that he heard the report of the gunshot before he saw the gun being pointed by Mr. Bell. Mr. Bell's assailant testified at trial, but he acknowledged being so drunk that he couldn't remember any of the particulars of that event.

At the close of the State's case, the Honorable Russell Hartman dismissed the most serious charge, attempted first degree murder, but left to the jury the remaining counts. On June 11, 2003, after three hours of deliberation, the jury acquitted Mr. Bell on both remaining charges, as the combination of the emergency room physician, the forensic pathologist and Dr. Loftus were sufficient to overcome the Sergeant's testimony.

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