



## Exercising The Right

### “God Bless America and the Second Amendment”

Fox10 reported on May 14 out of Scottsdale, Arizona, about a deadly encounter in a mansion that left the homeowner praising both God and the Second Amendment. The homeowner, a successful local urologist named Aaron LaTowsky, granted an on-camera interview to Fox10 in which he recounted the details of what transpired. Dr. LaTowsky said he was outside his house doing some work on an accessory structure when his dog’s barking alerted him that something was amiss. The doctor entered the house and saw that one of his side doors was open, and he heard the family dog barking at his daughter’s room.

Dr. LaTowsky grabbed a loaded shotgun and went to investigate the source of his dog’s barking, while the rest of his family remained fast asleep. LaTowsky entered his daughter’s room, and from out of the darkness a naked man wearing a mask over his face jumped out at him. He told Fox10 that the intruder “basically was lunging at me, so it was very quick.... He had his hands in the air. I could see something dark or black coming at me, and again it was very, very close, so I fired almost immediately.” The suspect was mortally wounded from two shotgun blasts, and his body was discovered at the scene by responding officers. Detectives are still investigating, but the incident appears to be a straightforward case of justifiable homicide. Dr. LaTowsky concluded the interview by telling Fox10 that he was extremely grateful that he was able to be armed to so that he could defend his loved ones: “God Bless America and the Second Amendment.... Glad I was able to protect my family.”

### Do Criminals Forfeit the Right to Self-defense?

The *South Bend Tribune* reported out of Indiana on May 17 about an interesting case that tests a unique exception to Indiana’s self-defense laws. The underlying details involved a 19-year-old by the name of Kyle Doroszko, who used a gun in self-defense against another teen who was robbing him. What makes Doroszko’s case something other than simply justified use of force is that Doroszko was allegedly selling marijuana to the deceased suspect at the time of the attempted burglary.

Detectives say that on the night of April 28, 2019, Doroszko and a friend met with Traychon Taylor and some of Taylor’s friends in the parking lot of a South Bend bar. Court documents show that the meeting was set up by Taylor under the guise of buying drugs from Doroszko, but shortly after his arrival, Taylor and his gang attempted to rob Doroszko.

Once Doroszko arrived, Taylor climbed into the back seat of Doroszko’s car and pulled a handgun on him. One of Taylor’s co-conspirators ran up alongside the vehicle and pointed a gun at the car. Doroszko immediately realized that it was a setup and tried fleeing the scene by speeding away, but Taylor was still in his back seat and a struggle ensued. Doroszko fired two shots into the backseat, which hit Taylor and mortally wounded him. Taylor fell from the vehicle as one of his associates, a man named Alantis Branch, fired at Doroszko’s car as it sped away. 911 was called, and responding officers found Taylor’s body at the scene, where he was later pronounced dead.

Prosecutors later charged Doroszko with murder because, they argue, under Indiana state law, a suspect does not have the right to use force for self-defense if that person is committing a crime, even if the crime is fairly low-level or even a nonviolent offense. The *South Bend Tribune* explained that this



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law has been the subject of many other state court decisions in the past and that the court has always struggled to define the line where criminals' actions make them forfeit their right to self-defense.

Joel Schumm, an appellate attorney and professor at the Indiana University McKinney School of Law, told the *South Bend Tribune* that the "problem is the self-defense statute has language that if you're committing a crime, you can't use self-defense.... If you take the statute literally, someone using marijuana or playing in an illegal card game cannot use self-defense no matter what someone does to them."

Doroszko's attorneys have pushed back against the application of the state law to the case, arguing that the state law is not like laws in other states, where comparable laws only apply to a person committing a "forcible felony." One of Doroszko's attorneys, John Kindley, e-mailed a statement to the newspaper saying it's "absurd to suppose that a person whose life is threatened while he or she is engaged in a non-violent activity that the government deems a crime — such as selling marijuana or prostitution — must just allow themselves to be killed, or be charged with murder if they successfully defend themselves."

The law in question originated in cases where a criminal might try to hide behind a self-defense statute for killing someone while committing a crime. The *South Bend Tribune* explained that the "idea is that, for example, if a gas station clerk draws a gun to stop a robbery, the robber cannot then shoot the clerk and claim self-defense." The law has been tested in the courts before, and judges have pointed out that, if applied liberally, you might have "absurd results — such as denying self-defense rights to a person whose handgun license expired one minute before a confrontation, or someone who hasn't paid their taxes."

Law Professor Schumm explained that the "prosecutor is going to charge someone with a crime, and self-defense is something a jury is going to sort out." Schumm was involved in a similar case involving the law, a case that is currently with the highest court in the state, and he's arguing for the Indiana Supreme Court to rule that jury instructions are critical to the law's successful application. Schumm wants the highest state court to rule that jury instructions should only invoke the "committing a crime" exception if jurors are also instructed that it only applies if the crime "caused" or "produced" violence.

The *South Bend Tribune* interviewed many attorneys on the subject, and most of them were critical of the law. Indianapolis defense lawyer David Hennessy e-mailed the newspaper and wrote, "Frankly, no advanced society would accept the death penalty for selling marijuana.... The prosecution there apparently thinks it's OK if done in a roundabout way or at the hands of a robber rather than the state."



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