

## Call 911?<sup>1</sup>

By Lisa J. Steele

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There's a new book making the rounds of the self-defense and gun-owner blogs arguing against the usual advice that, in the aftermath of a self-defense incident, you should call 911, call your lawyer, then shut up and invoke your *Miranda* ([The article is here](#)) rights. The author notes an implicit contradiction – talk to 911, but don't talk to anyone else.

So is it good advice? Why do trainers and attorneys tell you to call 911?

Let's leave aside the moral issue about leaving a wounded aggressor in the street and walking away without calling 911. Let's leave aside the tactical issues about whether it is unwise to approach an apparently unconscious aggressor to stop his bleeding while waiting for the ambulance to arrive. This essay is just about the legal issues.

### Do You have a Legal Obligation to call 911?

Any person at the scene of an emergency who knows that another person is exposed to, or has suffered, grave physical harm shall, to the extent that he or she can do so without danger or peril to himself or herself or to others, give reasonable assistance to the exposed person. Any person violating the provisions of this section shall be guilty of a petty misdemeanor and shall be subject to imprisonment for a term not exceeding six (6) months, or by a fine of not more than five hundred dollars (\$500), or both.

R.I. Gen. Laws § 11-1-5.1

In most states, there is no legal prohibition against being a “Bad Samaritan”. Minnesota, Rhode Island, Vermont and Wisconsin are exceptions.<sup>2</sup> In most states you can walk past a crime in progress or a person in obvious distress and do nothing, even if it would be safe for you intercede, without violating the criminal law.

There are some exceptions. Under federal law, for example, if you know of the “actual commission of a felony” and fail to report it, you may have violated 18 U.S.C. §

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This article is not legal advice and does not create an attorney-client relationship between the author and any reader. If you want specific legal advice, you need to hire an attorney.

<sup>2</sup> Minn. Stat. Ann. § 604A.01; R.I. Gen. Laws § 11-1-5.1; Vt. Stat. Ann. tit. 12, § 519; Wis. Stat. Ann. § 940.34.

4. Technically, this law is more about concealment of a felony. The failure to report a crime is not enough, see *United States v. Johnson*, 546 F.2d 1225, 227 (5th Cir. 1977), – but if you’ve shot someone in self-defense and just walk away, a prosecutor might look at the state counterpart to this law, particularly in the three states (Hawaii, Massachusetts, and Ohio) that have failure-to-report laws.<sup>3</sup>

But, you might say – I lawfully defended myself and thus I didn’t commit a felony, so this doesn’t apply. There is still a felony involved here – the person who attacked you was in the process of committing an assault, sexual assault, or an attempted homicide which may trigger a failure-to-report statute. You may be right that you acted properly, but this gets into complex and very specific discussions about what happened in your case which will be argued months or years after you made the decision on the spot.

Or, you might say – if I didn’t act in self-defense, then wouldn’t calling the police be violating my Fifth Amendment right to not implicate myself? Again, you may be right, but if your attorney explains your reasoning this way, it makes you look like you were uncertain of your actions, which can cause problems in your self-defense case. Again, in Minnesota, Rhode Island, Vermont, or Wisconsin, those states’ “Bad Samaritan” laws, which may apply to you if you can call for aid, or give aid without danger to yourself.

For most purposes and in most places, the answer may be – no, you are not committing a crime if you do not call 911, but it may still be a good idea.

## **What happens if you walk Away?**

So let’s assume you get into a self-defense situation. You stop the aggressor by injuring him or her with a lawfully-owned-and-carried weapon. You do not seem to be in any danger from the now-stopped aggressor. There are no confederates in sight.

And you just walk away and call your lawyer from the safety of your home an hour or so later. What’s wrong with doing this? Why is your attorney likely to tell you that you’ve been an idiot?

## **Letting Someone Else Tell the Story**

In *Commonwealth v. Pring-Wilson*, 448 Mass. 718, 863 NE 2d 936 (2005), the defendant became involved in a fight with two men on a Cambridge street. Pring-Wilson was talking on his cell phone when approached by his assailants. His assailants described him as intoxicated and stumbling. Both sides differ about how the fight started, but it ended with one assailant stabbed and bleeding to death. Pring-Wilson said that “thinking the men were ‘going for something big, like to take me down,’ [he] scrambled for his telephone, hoping the men would think he was dialing 911 and leave.” But he didn’t

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<sup>3</sup> Haw. Rev. Stat. § 663-1.6 (failure to report crime in progress is misdemeanor); Mass. Gen. Laws ch. 268, § 40 (fine for failure to report violent crime in progress); Ohio Rev. Code Ann. § 2921.22 (failure to report felony that has been or is being committed). See also Fla. Stat. Ann. § 794.027 (failure to report sexual battery is misdemeanor); Wash. Rev. Code Ann. § 9.69.100 (failure to report violent crime or sexual crime or assault against child is misdemeanor). These laws are seldom used, but they support the idea that, particularly in those states, indifference to another’s need for help is against public policy.

actually call 911 at that point. The first 911 call came from the aggressors and from a bystander. Of course, the aggressors put the blame for the incident on Pring-Wilson.

Some time later, Pring-Wilson dialed 911 and reported that he had "witnessed a young man getting stabbed." He told the 911 operator his location and, when asked whether the victim was with him, said, "No, sir. I just saw it happen. I'm, I'm just a fucking bystander, sir." When asked about the attacker, the defendant said, "Some guy came out of a car in a fucking black jacket, stabbed this other guy. So the guy, he just screamed, 'I've been stabbed,' and that was it." *Id.* at 726. The defendant talked to responding officers and gave a similar story. His explanation at trial – "the defendant testified that he had given officials at the scene incorrect accounts of the fight because he was concussed, he was not thinking clearly, he wanted to go home, and he did not want to press charges for fear that the assailants would come after him." *Id.* at 727. A few hours later, police brought Pring-Wilson from his apartment to the station where he waived his *Miranda* rights and gave a series of statements, eventually explaining that he stabbed the aggressor in self-defense.

Here, Pring-Wilson was not the first to call police, even though he had a cell phone in his hand and was pretending to use it. The aggressors and bystanders called and framed the incident in the minds of the investigating officers. When Pring-Wilson did call, he lied to police several times, which diminished his credibility when he eventually made his self-defense claim.

If you can do so, there are advantages to being the first to call 911. If you rely on bystanders to report the incident, you risk having the incident explained in a way that makes you look like the bad guy.

### **Looking like the Bad Guy**

*The wicked flee when no man pursueth: but the righteous are bold as a lion.*  
Proverbs 28:1

Sometimes, when an attorney writes or talks about self-defense, we start with the assumption that the defender has been arrested and charged with a serious felony and talk about how to act in ways that improve your defense, or at least don't make it worse. Attorneys are pessimists by nature – we don't normally see the cases where the police respond to the scene, look at the situation, decide the shooting was justified, and do not arrest the defender. As defense attorneys, we are also less likely to see the cases where there has been an arrest, but the prosecutor either decides not to pursue charges or the grand jury decides not to indict – the case never goes to a plea or to trial. Cases where the defendant wins on all counts never make it to the appellate courts and never make it into the law books.

We'll assume here that you have not just committed the perfect crime – that there were witnesses, or a security camera, or some other information that can lead police to your door. We'll start with how not calling the police can affect whether you are arrested and prosecuted for your act, which you felt was lawful self-defense.

Certainly, you shouldn't depend on the police recognizing you as "the good guy", not investigating the case as an assault or homicide, and not arresting you. But police and prosecutorial discretion is a real thing, and something to discuss with an attorney familiar

with your local prosecutors and your local police department when you think now about what you might want to do should you ever be forced to use a lawfully-owned-and-carried weapon in self-defense.

Once police start thinking of you as the bad guy and your self-defense shooting as a crime, a certain amount of tunnel vision and confirmation bias tends to creep in. This is normal – the detectives will tend to focus on things that support their case and discount or ignore conflicting evidence. Ambiguous things will tend to be seen in the worst light. And that can affect how the investigation proceeds.

From the perspective of police and prosecutors, good guys call the police. Bad guys flee. If you run away, you look more like a bad guy than like the good guy acting in self-defense. Does that mean your case is doomed? No, but it may be a bit harder. You may need to explain, likely with the help of your attorney, why you ran and did not report the aggressor's assault – whether you were afraid the aggressor had friends, or were shocked, or scared, or needed medical help yourself.

There is a balance between protecting yourself in case you are prosecuted and avoiding being prosecuted by not looking like the bad guy, and it will depend on what happened in your case. There is no right answer here – there will be your answer in the heat of the moment.

#### **Consciousness of Guilt<sup>4</sup>**

If you walk away, your actions after the crime might be admissible under a rule called “consciousness of guilt”.<sup>5</sup> The basic idea is that the State can offer evidence of your actions and the jury can decide whether they suggest you have a guilty conscience. One of the most common things to come in under consciousness of guilt is “flight” evidence – when you run away from a crime scene; making false statements about the crime; and concealing or destroying evidence. Like all evidence, the prosecution must show that the consciousness of guilt evidence is relevant; material or “of consequence”; and more probative than prejudicial. (See Lifestyle [[Link to that article](#)] for a more detailed discussion of these concepts.) Some of the questions a trial court might consider would be whether you were reasonably afraid that the aggressor or his/her associates might continue to harm you, whether you were aware of the extent of the aggressor's injuries, whether you could summon help in safety, whether there were others nearby that could help you or the aggressor or could call for help, and so on.

In Montana, you do not have a duty to help the aggressor in any manner that could conceivably create the risk of bodily injury to you or to other person. However, once you are safe, then legal duty be imposed on you to summon aid for the person you

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<sup>4</sup> Evidence suggesting innocence (prompt cooperation with police, etc.) may be admissible, but there's no “consciousness of innocence” instruction. See *State v. Holley*, 90 Conn. App. 350, 364-66 (2005); *State v. Otero*, 49 Conn. App. 459, 469-70 (1998); *Commonwealth v. Kozec*, 21 Mass. App. Ct. 355, 366, 487 N.E.2d 216, 223 (1985) (driving victim to hospital); *Commonwealth v. Coull*, 20 Mass. App. Ct. 955, 957-958, 480 N.E.2d 323, 326 (1985) (reporting related crime to police)

<sup>5</sup> The prosecutor is also allowed to introduce evidence of your silence between the time of the incident and when the *Miranda* warnings are given, but can't comment on your silence AFTER the *Miranda* warning. See *Doyle v. Ohio*, 426 U.S. 610, 96 S. Ct. 2240, 49 L. Ed. 2d 91 (1976)

placed in peril by your act of self-defense. Even then, you need to know that the person is in peril and you need to be able to summon help.<sup>6</sup>

Flight normally includes leaving the crime scene completely, but it can be an issue in self-defense cases when the defender says that he retreated (as required by state law), but that he didn't flee. The Connecticut Supreme Court cautions trial courts in this situation, but says that introducing flight evidence is not inherently unconstitutional. *State v. Luster*, 279 Conn. 414, 424 (2006).

### **Turning an Assault Case into a Homicide Case**

A bigger problem if you delay calling 911 or just walk away is that your action may lead to the aggressor's death from the wounds you inflicted. If you wound an aggressor, walk away, and he dies from a wound you inflicted, and there is no intervening cause (negligence by an EMT or ER doctor, for example), then this may be a homicide case, not an assault case. Homicide cases are much more serious, both in how they are investigated, whether the prosecution or police are willing to not charge you, and in the possible penalties if the jury decides your actions were not self defense.

A live assailant, who may have a long criminal record, is likely less sympathetic to jurors than a dead assailant's parents, siblings, and children in the audience at your trial. A live assailant showing his scars may be less sympathetic than autopsy photos and the cold, hard, deformed bullets pulled out of the body and entered as evidence. Yes, a live assailant may lie about what happened, but your call for help for someone who tried to hurt or kill you speaks well of your character. Homicide detectives and medical examiners may hear a less sympathetic story from a body left to bleed to death.

Often, under the law, if you put someone in peril, you have a duty to rescue them from that peril. But does that duty extend to imperiling someone by an act of self-defense? As one author asked "When self-defense is proven, the [defender] is justified in taking the attacker's life. How can the same [defender] be held criminally liable for failing to render aid to the attacker later, and for the injuries inflicted justifiably by the [defender] while defending herself?"<sup>7</sup> In Montana, at least, you would only be criminally liable for the aggressor's death if you injured someone in self-defense and your failure to summon aid was the cause in fact of the aggressor's death, not the justified use of force itself.<sup>8</sup>

In New York, actions after inflicting a fatal blow will not elevate a homicide to a "depraved indifference murder". *People v. Mancini*, 7 N.Y.3d 767, 819 N.Y.S.2d 855, 853 N.E.2d 224 (2006) (prostitute who left victim, who was seriously injured, in shower,

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<sup>6</sup> *State ex rel. Kuntz v. District Court*, 298 Mont. 146, 995 P.2d 951 (2000), following *State v. Bier*, 181 Mont. 27, 591 P.2d 1115 (1979). See also Merrot, *Rescuing Your Attacker: State of Montana Ex Rel. Kuntz V. Montana Thirteenth Judicial District Court*, 63 Mont. L. Rev. 229 (Winter 2002).

<sup>7</sup> Merrot, *Rescuing Your Attacker: State of Montana Ex Rel. Kuntz V. Montana Thirteenth Judicial District Court*, 63 MONT. L. REV. 229, 243 (Winter 2002).

<sup>8</sup> *State ex rel. Kuntz v. District Court*, 298 Mont. 146, 995 P.2d 951 (2000). But see *People v. Fowler*, 174 P. 892 (Cal. 1918) (no liability where defendant struck victim in self defense and left him lying exposed to danger in a public road, so long as the blow was struck in self-defense); *King v. Commonwealth*, 148 S.W.2d 1044 (Ky. 1941) (no liability where defendant shot victim in self-defense, overturned jury verdict for voluntary manslaughter where prosecution argued defendant hastened the victim's death by "willful neglect or willful failure to provide medical attention.").

unconscious and bleeding, after assaulting him was not guilty of depraved indifference murder; actions in striking victim merely reckless).

Even if the level of the homicide is not affected, jurors are very likely to react poorly to someone who asserts that they acted in self-defense but did not timely summon help if they could do so safely.

## **Calling 911**

A 911 call to report a crime, or immediately afterwards, is a statement, and generally admissible at trial.

### **Keep it short and to the Point**

There are no magic words and no script to memorize. Every situation is going to be different. You are going to be very emotional – somebody just tried to hurt or kill you after all. Try to keep things short and to the point. Key points may be where you are (so police and an ambulance can find you), that someone attacked you and you defended yourself, and that you need police and an ambulance at once (given the flight-or-fight hormones running through your system, you may be hurt and not know it). If the aggressor or any associates have run away, try to give a description with as much detail as you can recall. (You may make mistakes, people are often bad at guessing height, weight, age, etc., but do your best.) You may want to describe yourself so the dispatcher can tell responding officers that you are not the aggressor – especially if you are holding the aggressor at gun point.

Otherwise, try to say as little as you can. Don't get into details about the incident itself – your memory about distances, number of shots fired, and even the order of events may turn out to be wrong because stress has bad effects on perception and memory. If you are charged, the prosecutor may believe that your good faith mistakes are instead attempts to lie, and may make that argument to a jury.

### **Recordings MIGHT help you.**

In most places, the 911 call is recorded. (Your attorney may have to file a prompt request to have police preserve the recording – many departments recycle the recording tapes periodically.) This might help you because it preserves your exact words and tone and can help a prosecutor or juror emphasize with you as they consider the case months or years later from the safety of the prosecutor's office or the jury chamber.

Once the EMTs and officers arrive, refer to the *Miranda* [[The Miranda article is here](#)] article for advice.

## **Can I Record the Incident?**

There are systems like the Taser Cam that can be used to record a confrontation. Or you could use your cell phone or a digital recorder to try to make your own record of an encounter. Do not let making a recording distract you from the incident itself, or cause you to do something unsafe, like pointing the muzzle of a weapon at someone you do not intend to shoot because the camera lens is fixed and only records what the weapon is pointing at.

Massachusetts prohibits secretly recording a conversation without the consent of all parties to it. See Gen. Laws ch. 272 § 99. The key is that the recording cannot be secret. See *Commonwealth v. Hyde*, 434 Mass. 594, 750 N.E.2d 963 (2001). How obvious must you be? It is not clear.

In Connecticut, there is not a specific statute prohibiting recording events in a public place, but police have asked those recording their actions to stop, and arrested those who do not comply for interfering with the officers.

What if you are making a recording for another purpose? You are talking on phone or dictating a note to yourself using a hands-free system (so the microphone is not obvious) when accosted and happen to record the encounter. Again, the answer is not clear, but it is unlikely that you would be prosecuted because your intent was not to secretly record, the recording was happenstance.

If you do make a recording in violation of the statute, what then? You could be charged with violating the statute. Or your recording could be suppressed in a hearing or trial because it was illegally obtained.

If you are openly recording, and the police ask you to stop, do it. The officers will legitimately want to focus on making sure that the aggressor is no longer dangerous and that there are no other aggressors at large; investigating the incident; finding and questioning witnesses; and otherwise managing what may be a very busy and chaotic situation. Arguing with the officer is not going to help your situation, and it may lead to charges like disturbing the peace or interfering with a police officer that are expensive to resolve, even if the charges are ultimately dropped.

The aftermath of a self-defense situation is not a good time to get into a heated legal debate with the investigating officers.

In Massachusetts, custodial interrogations are normally recorded – ask to make sure this is being done if you decide to waive your *Miranda* rights and talk to police. (See *Miranda* [Link to that article] for a more detailed discussion of these concepts.) In Connecticut, interrogations are not required to be recorded – you can ask that this be done. Witness interviews are normally not recorded in either state.

## ***Common Concerns***

*What if I say the wrong thing?*

There are no magic words. Be brief. Be honest. And let your attorney do his or her job in explaining if you mis-speak out of fear, shock, and stress.

*What if the aggressor is still dangerous?*

Get to a safe distance first. And remember that being on a cell phone is bad for your situational awareness. If you do delay for any significant amount of time, be able to explain to your attorney why you felt you had to go that far, or wait that long, to safely call for help.

## ***Further Reading:***

MASSACHUSETTS:

Brodin & Avery, HANDBOOK OF MASSACHUSETTS EVIDENCE (2007) (supplemented annually)

[Model District Court Jury Instruction 3.580 \(Consciousness of Guilt\)](#)

Mass. Gen. Laws [ch. 268, § 40](#)

Mass. Gen. Laws ch. [272 § 99](#)

CONNECTICUT:

[Code of Evidence \(.pdf\)](#)

[Model Criminal Jury Instruction § 2.6-3 \(Consciousness of Guilt\)](#)

Tait and LaPlante, TAIT'S HANDBOOK OF CONNECTICUT EVIDENCE (4th Ed. 2007) (supplemented annually)

UNITED STATES

[Federal Rules of Evidence](#)

*Davis v. Washington*, 547 U.S. 813 (2006) (911 call seeking help is not “testimonial” and can be admitted as evidence even if the caller is not available to testify)

OTHER

[Fla. Stat. Ann. § 794.027](#)

[Haw. Rev. Stat. § 663-1.6](#)

[Minn. Stat. Ann. § 604A.01](#)

[Ohio Rev. Code Ann. § 2921.22](#)

[R.I. Gen. Laws § 11-1-5.1](#)

[Vt. Stat. Ann. tit. 12, § 519](#)

[Wis. Stat. Ann. § 940.34](#)

“GIST MEMORY” FOR CONVERSATIONS

[Duke, \*A Picture's Worth a Thousand Words: Conversational versus Eyewitness Testimony in Criminal Convictions\*, Am. Crim. L. Rev. \(2007\).](#)

INTERESTING CASES

*Comm. v. Cannon*, 449 Mass. 462, 869 N.E.2d 594 (2007) (robbery/felony murder, defendant “ failed to telephone 911 or render aid to the victim, whom he knew, when the victim lay bleeding on the floor from multiple bullet wounds.”

Defendant convicted of murder, reversed on appeal and remanded for new trial)

*State v. Perkins*, 271 Conn. 218, 856 A.2d 917 (2004) (manslaughter/drunk driving case, defendant called 911, but then called for a ride and, despite extensive injuries, did not wait for emergency personnel to arrive. Defendant convicted of manslaughter and other charges, judgment affirmed, one justice dissenting)

*Boyd v. Gonzalez* (Warden), 2010 U.S. Dist. Lexist 8559 (CD Cal. 2010) [Unpublished] (no error to admit evidence of post-arrest silence, defendant fled from scene, did not call 911, did not call the authorities to volunteer his version of events at any time between the shooting and the receipt of *Miranda* warnings)

*In re Eric F.*, 698 A.2d 1121 (Md. App. 1997) (defendant liable for depraved-heart murder after dragging unconscious, lightly clothed friend into the woods on a cold evening and leaving her exposed until she died from hypothermia)

*People v. Cruz*, 2006 Cal. App. LEXIS 7550 (Cal. App. 2006) [Unpublished] (jury could reasonably infer consciousness of guilt from defendant's behavior immediately after stabbing victim to death. "She did not call 911, she refused to allow her sister to call the police, despite stating that she thought Manuel was still alive, and she seemed "normal" on the telephone as she volunteered false information to them regarding his whereabouts.")

*State v. Aganon*, 2005 Haw. App. LEXIS 433 (Haw. App. 2005) [Unpublished] (child abuse case, defendant did not call 911 despite child's "obvious and severe" physical distress)

*State ex rel. Kuntz v. District Court*, 298 Mont. 146, 995 P.2d 951 (2000) (discussed in text)

*United States v. Hatatley*, 130 F. 3d 1399, 1406 (10th Cir. 1997) (defendant beat victim and left him injured and shirtless in the freezing desert)

*Yania v. Bigan*, 155 A.2d 343, 345-46 (Pa. 1959) (holding operator of coal stripmining operation not liable for victim's death after taunting victim to jump into deep trench full of water and letting him drown)