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When is Deadly Force Self-Defense a Legal Defense to Homicide?

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There are various legal defenses a defendant may claim for a homicide to be considered justified in the United States judicial system. While potential legal defenses are numerous, self-defense is most commonly claimed. This brief will identify and discuss the nuances of the requisite components in claiming self-defense when a homicide has occurred, as well as identify various current state laws and issues relevant to homicide research.

Historically, the right to self-defense was first established by statute in the early to mid-1500s in England.¹ Since then, self-defense has generally been recognized by western judicial systems as an appropriate justification to what would otherwise be a crime.² The right to self-preservation has been likened to that of basic human nature and the fight or flight response to danger.³ However, in recent years the law surrounding authorization of deadly force in self-defense actions has been at the center of both a moral and legal inquiry.⁴

When deadly force is used in self-defense there must be evidence that the party being attacked acted in a proportional manner.⁵ The action of employing deadly force in self-defense must be necessitated by the original offending act and be an appropriate response under the given circumstances.⁶ All states require the necessity component in a deadly force self-defense claim; this is often reflected in the state's statutory language.⁷

Additionally, the defender must reasonably believe that her actions were required in her use of deadly force.⁸ Reasonable belief incorporates both subjective and objective elements.⁹ The subjective element attempts to view the actor's actions from her personal perspective, while the objective element attempts to view the actor's actions through the lens of what a "reasonable person" might have done.¹⁰ Pleading a self-defense claim is a multifaceted issue, and the circumstances are heavily scrutinized in court. The nuances of self-defense claims are discussed in the following sections.

I. Aggravator Status

In order to successfully assert a self-defense claim, the actor must not have provoked the conflict.¹¹ The specific judicial interpretation of provocation is on a spectrum, varying by jurisdiction. Some jurisdictions go as far as to conclude that any deliberate intervention by an actor, believing that conflict may result is deemed an aggressor.¹² Other jurisdictions deem an actor an aggressor only if their intervention was deliberately calculated to lead to further conflict.¹³ The definition of provocation can be quite narrow as well, with some jurisdictions requiring provocation to include an element of intent.¹⁴ Pennsylvania requires the prosecution to prove that the defendant provoked the situation with the "conscious object to cause death or serious bodily injury."¹⁵ This however, is not the majority approach, with only five states applying this narrow definition.¹⁶ Generally, an actor is deemed to not

be an aggressor when the provocation involved lawful conduct, or when the provocation only involved words with no accompanying physical action.¹⁷

II. Duty to Retreat

Under traditional English common law, self-defense claims were reduced by requiring an actor to retreat before acting in self-defense.¹⁸ Earlier lawmakers were concerned about citizens mistaking the right of self-defense as a right to kill.¹⁹ A minority number of state jurisdictions and the Model Penal Code (MPC) still require the actor, when faced with a decision to use self-defense, to retreat to a place of safety before employing self-defense.²⁰ Proponents of the duty to retreat argue that a higher priority should be placed upon the lives of all citizens and self-defense should be limited to but only the direst of situations.²¹ Opponents to duty to retreat posture that fleeing from an aggressor in today's world is more difficult than in yesteryear, where modern firearms were not commonplace.²²

III. Stand Your Ground and The Castile Doctrine

A majority of states now recognize stand your ground laws, where the duty to retreat has been replaced with no duty to retreat.²³ This trend was perhaps one of the most significant shifts in the American legal system; newly enacted stand your ground laws were directly related to westward expansion in the 1800s.²⁴ Stand your ground laws eliminate the requirement to retreat before employing self-defense.²⁵ Under this majority approach, an actor may legally assert a self-defense claim as long as they are physically located in a place where they are legally entitled to be at the time of the conflict.²⁶ The castle doctrine, similar to stand your ground laws, specifically applies to self-defense in an actor's home and workplace.²⁷ The castle doctrine originated in early English common law and was still recognized by states that had not eliminated duty to retreat laws.²⁸ Here, the castle doctrine was viewed as the one exception to duty to retreat laws and entitled a homeowner the right to choose not to retreat from an aggressor when in their home.²⁹ Today, the castle doctrine, in short, states that an actor has no duty to retreat from their home or their workplace when acting in self-defense if they are not at fault in the conflict.³⁰ This legal principle, reflected in traditional and modern laws, stems from the idea that the home or workplace is an actor's last place of retreat and safety.³¹ Stand your ground and castle doctrine laws enable the defender to choose whether to flee the scene to safety or stay and fight, based on their assessment of the situation.³²

IV. Legislative Implications

In recent years, Minnesota courts have heard a number of prolific self-defense cases; perhaps most notably with *State v. Smith*. Here, defendant Smith was charged and convicted of two counts of first-degree murder after shooting and wounding two home intruders and executing the intruders thereafter.³³ Smith's primary defense was that he had used reasonable force in defending himself and his home.³⁴ The court ruled that his actions were not reasonable or proportional.³⁵ The state of Minnesota recognizes no duty to retreat when the actor reasonably believes it necessary in defending oneself or preventing a felony from occurring in their residence³⁶

In *State v. Devens*, defendant Devens, a Minnesota citizen, was charged and found guilty of assault in the third degree, after unsuccessfully claiming self-defense when he struck the victim.³⁷ Here, Minnesota's duty to retreat law applied, after the court determined that because defendant was not defending his apartment, he was unable to claim a castle doctrine defense.³⁸ The court determined that because defendant was in the hallway of an apartment complex, he still had the opportunity to retreat to his habitation, or rather, his specific apartment.³⁹

In 2011, a robbery was reported in south Minneapolis, which left one of the assailants deceased as a result of gunshot wounds inflicted by a bystander acting in self-defense.⁴⁰ The actor

confronted the decedent and the decedent threatened the actor with lethal force while holding a firearm.⁴¹ The decedent proceeded to approach the actor, who had never left his vehicle.⁴² The actor fired his legally concealed carry firearm, killing the decedent.⁴³ It remains unclear for what reasons the unnamed actor, who shot and killed the decedent, was never prosecuted or charged with criminal conduct.

V. Implications for Researchers

When working with homicide cases, it is important for researchers to understand the circumstances under which deadly force in self-defense is justified under state law. Further, because of varying state law and case precedent, researchers should be aware that what legally constitutes justifiable deadly self-defense in one state, may not qualify in another. These varied legal implications should be considered when researching self-defense related homicide cases.

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¹John F. Wagner Jr., *Standard for Determination of Reasonableness of Criminal Defendant's Belief, for Purposes of Self-Defense Claim, That Physical Force is Necessary -- Modern Cases*, 73 A.L.R.4th 993, 995 (1989).

² *Id.*

³ Pamela Cole Bell, *Stand Your Ground Laws: Mischaracterized, Misconstrued, and Misunderstood*, 46 U. Mem. L. Rev. 383, 384 (2015).

⁴ *Id.*

⁵ John F. Wagner Jr., *Standard for Determination of Reasonableness of Criminal Defendant's Belief, for Purposes of Self-Defense Claim, That Physical Force is Necessary -- Modern Cases*, 73 A.L.R.4th 993, 995 (1989).

⁶ Pamela Cole Bell, *Stand Your Ground Laws: Mischaracterized, Misconstrued, and Misunderstood*, 46 U. Mem. L. Rev. 383, 393 (2015).

⁷ *Id.* at 394.

⁸ *Id.* at 394.

⁹ *Id.* at 394-95.

¹⁰ John F. Wagner Jr., *Standard for Determination of Reasonableness of Criminal Defendant's Belief, for Purposes of Self-Defense Claim, That Physical Force is Necessary -- Modern Cases*, 73 A.L.R.4th 993, 995 (1989).

¹¹ John D. Moore, *Reasonable Provocation: Distinguishing the Vigilant from the Vigilante in Self-Defense Law*, 78 Brooklyn L. Rev. 1659, 1662 (2013).

¹² *Id.* at 1663.

¹³ *Id.* at 1667.

¹⁴ *Id.* at 1668.

¹⁵ *Id.* at 1669.

¹⁶ *Id.* at 1669.

¹⁷ Kevin Jon Heller, *Beyond the Reasonable Man? A Sympathetic but Critical Assessment of the Use of Subjective Standards of Reasonableness in Self-Defense and Provocation Cases*, 26 Am. J. Crim. L. 1, 20 (1998).

¹⁸ Jason W. Bobo, *Following the Trend: Alabama Abandons the Duty to Retreat and Encourages Citizens to Stand Their Ground*, 38 Cumb. L. Rev. 339, 341 (2007-2008).

¹⁹ *Id.*

²⁰ *Id.* at 346.

²¹ *Id.* at 346.

²² *Id.* at 347.

²³ *Id.* at 343.

²⁴ *Id.* at 344.

²⁵ P. Luevonda Ross, *The Transmogrification of Self-Defense by National Rifle Association-Inspired Statutes: From the Doctrine of Retreat to the Right to Stand Your Ground*, 35 S.U. L. Rev. 1, 2-3 (2007).

²⁶ *Id.* at 2.

²⁷ Benjamin Levin, *A Defensible Defense?: Reexamining Castle Doctrine Statutes*, 47 Harv. J. on Legis. 523, 525

²⁸ *Id.* at 531.

²⁹ *Id.* at 531.

³⁰ Madison Fair, *Dare Defend: Standing for Stand Your Ground*, 38 Law & Psychol. Rev. 153, 159 (2013-2014)

³¹ *Id.*

³² *Id.* at 162.

³³ *State v. Smith*, 876 N.W.2d 310, 336 (Minn. Sup. 2016)

³⁴ *Id.* at 321.

³⁵ *Id.* at 321.

³⁶ Minn. Stat. § 609.065 (2014).

³⁷ *State v. Devens*, 852 N.W.2d 255, 257 (Minn. Sup. 2014)

³⁸ *Id.* at 259.

³⁹ *Id.* at 259.

⁴⁰ Criminal Complaint, MNCIS #: 27-CR-11-33929, CCN: 11-309521

⁴¹ Investigative Supplement, Sgt. F. McDonald #4556, CCN: 11-309521, 10-27-2011, 0829 hrs

⁴² *Id.*

⁴³ *Id.*