



DEADLY FORCE DECISION MAKING

The 5 Required Elements For Legal Self-Defense





By Andrew Branca

American society recognizes that there are certain circumstances in which the use of force, even deadly force, against another person might be necessary and justified. When this is so, the use of that force is deemed not a crime, and even if the state can prove beyond a reasonable doubt each and every element of, say, murder, the fact that the act was done in lawful self-defense requires an acquittal.

This is, really, a remarkable degree of autonomous power held by the individual citizen. A person who reasonably believes that he or she is being threatened with imminent and otherwise unavoidable death or grave bodily harm might in that instant take the life of his or her attacker, with absolutely no requirement for prior permission from any governmental authority. In contrast, think about how long it usually takes the government to execute someone who has been proven guilty of a capital crime with all due process of law.

Where the government does enter the picture in a self-defense scenario, of course, is after the fact. Examining events in hindsight, they seek to determine whether the use of force did, in fact, adhere to all five legal principles of self-defense. If they can prove, beyond a reasonable doubt, that any single one of those principles has been violated, the defendant's right to claim self-defense disappears.

That said, let's briefly discuss each of the five principles of the law of self-defense: Innocence, Imminence, Proportionality, Avoidance and Reasonableness.

For the prosecution to win on the issue of self-defense, it must *disprove*, using the facts in evidence and beyond a reasonable doubt, that any one or more of these fundamental elements existed at the time of the incident.

In a Nutshell:

THE FIVE PRINCIPLES OF THE LAW OF SELF-DEFENSE





Lawful self-defense requires five fundamental elements: Innocence, Imminence, Proportionality, Avoidance and Reasonableness.

INNOCENCE: AGGRESSORS NEED NOT APPLY

The principle of Innocence refers to the notion that a person who initiates a conflict should not later be permitted to justify his or her use of force as self-defense. It is, however, possible for the initial aggressor of a conflict (or the genuine non-aggressor whom the prosecution is presenting to the jury as the aggressor) to regain his or her “innocence” under certain circumstances and thereby regain his or her right to justifiably use force in self-defense. The two methods through which innocence can be regained occur when (1) you effectively withdraw from the conflict and the other party pursues; and (2) your aggression is only of non-deadly force and the other party escalates to deadly force. (Note that not all jurisdictions recognize both methods!)

IMMINENCE: RIGHT NOW!

The principle of Imminence refers to the notion that you can defend yourself with force only against a threatened danger that is about to happen *right now*. You can’t use force to prevent a danger that might arise at some later time — the law expects you to seek an alternative resolution in the meantime, such as calling the police — nor can you use force in response to a danger that has already occurred or passed; doing so would be retaliation, not self-defense.

PROPORTIONALITY: THE ‘GOLDILOCKS’ PRINCIPLE (JUST RIGHT)

The principle of Proportionality refers to the notion that the degree of force you can use in self-defense must be proportional to the degree of force with which you are threatened. Briefly, a non-deadly threat can only be countered with a non-deadly defense. A threat capable of causing death or grave bodily harm (e.g., a broken bone, blinding or rape) can be met with deadly force.

Usually, the use of deadly force against an unarmed attacker is fatal to a claim of self-defense. If you nevertheless want to argue self-defense, you will have to convince the court that the unique circumstances warranted your use of deadly force — *despite* the fact that your attacker was unarmed.

In many states, the fact that the attack occurred in the defendant’s home often raises a legal presumption of a threat of death or grave bodily harm (e.g. so-called “Make My Day” laws). Such legal presumptions are rebuttable by a preponderance of the evidence.

AVOIDANCE: A DUTY TO RETREAT AS LONG AS SAFELY POSSIBLE

The principle of Avoidance refers to the notion that you should not use force in self-defense if you can avoid the need

to do so by making use of a safe avenue of retreat. Today, some states have a generalized “Duty to Retreat;” others are effectively “Stand Your Ground” states, even if they don’t have an explicit “Stand Your Ground” statute. Even the “Duty to Retreat” states always have an exception for one’s home — the “Castle Doctrine” — and many others have additional exceptions for temporary dwellings (e.g. hotel rooms, campers or tents), your place of business and even your occupied vehicle.

Also, it’s important to emphasize that you are *never* required to retreat if attempting to do so would increase your danger. Of course, whether the avenue of retreat was or was not safe is something that will be argued in court by lawyers (who weren’t at the scene and under attack) to a jury (that wasn’t at the scene and under attack).

Importantly, the issue of retreat can still arise even in a “Stand Your Ground” state. In many SYG states, you can’t be automatically stripped of your right to argue self-defense because of a failure to take advantage of a safe avenue of retreat (as would happen in a “Duty to Retreat” state), but the prosecution can still argue to the jury that the availability of a safe avenue of retreat means your use of defensive force was not really necessary.

Also, as mentioned above, if you were the aggressor — or can be made to appear as though you were the aggressor — then retreat might be your best means of “regaining” your innocence and your right to lawfully use defensive force.

REASONABLENESS: MEET THE ‘REASONABLE AND PRUDENT MAN’

The principle of Reasonableness is really an umbrella principle that applies to each of the previous four. The issue here is whether your perceptions and conduct in self-defense were those of a reasonable and prudent person under the same or similar circumstances who possesses the same specialized skills and knowledge (if any). If your actions were not



reasonable by this standard, any claim to self-defense fails.

So, if you believed the other person was an aggressor, but a reasonable person would not have believed this, you did not act in lawful self-defense. Similarly, if you believed that the threat was imminent, but a reasonable person would not have; or that the force you used was proportional to the threat, but a reasonable person would not have; or that you could not have avoided the threat, but a reasonable person would have, your claim to self-defense fails.


It is within the contours of the principle of Reasonableness that the attacker's prior acts and/or reputation might be made relevant at trial, even if they were unknown to you at the time. The reasonableness of your perception that the attacker's behavior was threatening would be strengthened if your attacker had a reputation in the community for behaving in a threatening manner. Similarly, the reasonableness of your perception that the attacker was acting in an irrational and frightening manner would be buttressed if your attacker habitually used intoxicants and was, in fact, intoxicated at the time of the attack.

WRAP-UP

So, those are the five principles of the law of self-defense in a nutshell. Obviously, a ton of detail has been left out, so take it for what it is: a concise overview. Hopefully, this can serve as a useful conceptual framework and context into which you can place the specifics of your state's self-defense laws.

If you'd like to learn how the five principles of the law of self-defense apply in your specific state, take a look at the 3rd edition of *The Law of Self Defense*, available for purchase at USCCA.com.

This content originally appeared on lawofselfdefense.com. Visit that site for more content from Andrew Branca and additional resources related to self-defense laws.



**“I said, please,
my kids are
here ... please
don't shoot!”**

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to Defend His Children...

David Jackson, USCCA Member

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