

Self Defense and Immunity

Justified!!



13A-2-23

A person themselves or a third person

Justified if:

- 1) Reasonable belief
- 2) Other person use or imminently use unlawful physical force
- 3) The responsive force musty be a degree of force that is reasonably necessary



Deadly Force?

- 1) Aggressor use or about deadly force
- 2) Aggressor use or about to use physical force against an occupant during a burglary of a dwelling
- 3) Aggressor committing or about to commit kidnapping, assault 1 or 2, burglary in any degree, robbery in any degree, forcible rape or sodomy
- 4) Physical force against an employee or owner when business is closed and doing a crime involving death, serious physical injury, robbery, kidnapping, rape, sodomy, or a crime of a sexual nature child under 12

Deadly Force?

5) During a burglary (of any kind), a person is not legally justified to use deadly physical force if:

- a. The aggressor has the right to be there (unless PFA)
- b. Aggressor has lawful custody of a child that is being removed
- c. Defender is engaging in unlawful activity or using dwelling to further unlawful activity'
- d. Aggressor is law enforcement in official duties

Stand Your Ground!!!

Justified if:

- 1) Subsection A
- 2) Not engaged in unlawful activity
- 3) And has a right to be, no duty to retreat and has the right to stand your ground

Other restrictions

- 1) You cannot provoke the aggressor
- 2) Must not be the initial aggressor, unless you withdraw and communicates said withdrawal and the other person continues force
- 3) No combat by agreement

Immunity

You are immune from prosecution if :

- 1) A person uses force including deadly force
- 2) Justified under this code section
- 3) The force is lawful

Procedure

When? Prior to the trial beginning

How? Upon motion by the defendant

What? A pretrial hearing

Issue? Was the force justified or unlawful

Burden? Def - preponderance of the evidence

Ruling?

- If the force is justified, the Court shall enter an order finding the Defendant immune and dismiss
- If the burden is not met, the Defendant may pursue self defense at trial and then it is the States burden beyond a reasonable doubt

Discussion

Self Defense

- 1) Typically client testifies
- 2) Only slight evidence
- 3) Make sure State can prove the crime itself

Issues for Immunity

- Don't ask for the pretrial immunity hearing 23 minutes before the trial begins

[Martin v. State, 230 So. 3d 406, 2017 Ala. Crim. App. LEXIS 6 \(Ala. Crim. App. 2017\).](#)

- appellate remedy is to file a mandamus after the denial of immunity – don't or go to trial if you want to petition for relief

[Gordon v. State, 322 So. 3d 549, 2020 Ala. Crim. App. LEXIS 71 \(Ala. Crim. App. 2020\).](#)

[Todd v. State, 2021 Ala. Crim. App. LEXIS 5 \(Ala. Crim. App. Feb. 5, 2021\).](#)

“A felon who is barred from possessing a [\[*1217\]](#) gun should be able to act in self-defense, but he or she should also have to retreat if possible”

[Kidd v. State, 105 So. 3d 1261 \(Ala. Crim. App. 2012\)](#)

[Fuller v. State, 231 So. 3d 1207, 2015 Ala. Crim. App. LEXIS 112 \(Ala. Crim. App. 2015\)](#), cert. quashed, [231 So. 3d 1222, 2017 Ala. LEXIS 19 \(Ala. 2017\)](#).

Discussion

Pros :

1) Immunity

2) Free preview

3) Educating State

Cons

- 1) Defendant's burden
- 2) Client probably testifies
- 3) There is a transcript
- 4) No surprise