

Self defense and stand your ground: rights and responsibilities research paper ex...

[Experience](#), [Belief](#)



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(School/University)

Castle Doctrine and Stand Your Ground

In self defense, the basic philosophy is that the amount of force to ward off the threat must be proportionate to the force that was being threatened to be used. In essence, lethal force is only permitted to be used in cases in stopping the infliction of grievous bodily harm that can result in possible death, the death of the person or loved ones, or rape or “ sexual assault” in Michigan. The person using deadly force legally must possess a reasonable belief that by using such force, one if not all three of these scenarios will be prevented, and that holding must be reasonable even if placed under extreme scrutiny. Simply put, the jury would have to acquiesce with the assumptions of the plaintiff that if they were placed in the same situation, these members would also believe that the situation can deteriorate into the same scenario, and these would also be under threat of sexual assault, grievous bodily harm or even death (Dulan, 2009, p. 1).

The tragic shooting of Trayvon Martin in Florida is a case that has triggered the nationwide debate on the instances of “ Stand your Ground” and “ Castle Doctrines”. In essence, when is it legal for homeowners, or for others, to use lethal force to defend themselves? In the case of Martin, what is being debated is Florida’s “ Stand Your Ground” law, and the spread of the law to more than half of the American states since the law was enacted in 2005 that allowed people to use deadly force to repel attackers (Egelko, 2012, p. 1).

Under the “ California Self Defense and Knife Law”, a person can claim self defense if there is “ reasonable belief” that grievous injury will be immediately inflicted on their person. If the person reasonably believes that there is an imminent threat of injury or even death, then the law allows the person to “ use all reasonable force necessary” to avoid the possibility of being injured or killed. One of the questions posed is whether the person needs to be actually in danger to claim self defense; there must only be a “ reasonable belief” that there is a threat to legally claim self defense (Weapons Edge, 2014, p. 1).

Castle Doctrine

The “ Castle Doctrine” canon offers immunity for the defense of oneself in cases of unlawful and potentially lethal attacks in the person’s home, automobile, or in the case of some jurisdictions, the workplace, ensuring freedom from prosecution under a number of circumstances. In addition, the law states the use of deadly force is allowed under the law if there is a fear of an imminent attack or fear of serious injury to oneself or in defense of

others. However, though the doctrine is often termed and comprehended as a law, the doctrine must not be seen as a concept that is incorporated into “concealed carry weapons” laws by various jurisdictions in the United States. In late 2005, Florida was the first state to use the Castle Doctrine in the construction of its self defense law. In the following years, an increasing number of states followed suit, enacting and adopting one or more of the components of the Florida law into their own laws. By this time, the National Rifle Association (NRA) has mounted an aggressive, multi-state lobby for their legislatures to adopt one form of the Florida policy into their respective law.

However, the new law has met with its fair share of criticism from opponents for advocating unwanted use of firearms. In the report of the Federal Bureau of Investigation, there were more than 240 “justifiable homicides” in 2006, less than the number prior to the enactment of the Castle Doctrine law.

In the context of an illegal home entry, the homeowner can use the Castle Doctrine even if it is not verified if the intruder is armed or not. The central premises in the application of the doctrine in the situation is that one, the person is acting in an illegal manner and that there is the threat of an imminent infliction of bodily harm or even death, the homeowner can use lethal force in ensuring the safety of oneself and the family members.

However, there must be some points to be remembered.

One, if there is no weapon being used in the crime, then it is important to use every possible effort to protect one’s family and oneself without the use of deadly force. Two, threats given verbally cannot support the use of deadly force against a supposed attacker. The use of force is only justified if that

even though the attacker does not have a weapon, they must clearly indicate that there is intent to carry out the threat of infliction of harm or death. Since the introduction of the “ Castle Doctrine”, the canon has been adopted in part or in whole by states as a shield for gun owners who are involved in cases of justifiable homicide. Examining the viability of the Castle Doctrine, the canon is widely accepted, though highly debated, as it allows homeowners and individuals the right to take the life of the intruder (Conceal and Carry, n. d., p. 1).

Under the Castle Doctrine, the person that uses lethal force need not verify if the intruder is carrying a weapon. The only qualifying factor in using lethal force justifiably is that there is a belief of an illegal and forced entry, or the illegal entry had been committed or was in the process of being accomplished. In this interpretation, it can still be considered as legal the use of lethal force against an intruder or attacker even if the threat has stopped. In the appreciation of the phrase “ had occurred” is deemed to define the action of the person in shooting at the suspects who are scurrying from the scene and have ceased to pose any threat (Jansen, Nugent-Borakove, n. d., p. 7).

However, there must be an establishment of the terms that are often used in the discussion of the terms. State self defense laws can overlap; however, these will traditionally fall into several categories. “ Stand Your Ground” laws infer that the person does not have a primary responsibility to first retreat prior to using lethal force, and is not limited by the factor of the crime being committed on one’s property.

“ Castle Doctrines”, on the other hand, is restricted to crimes committed on

the property of the victim, and the intended victim does not have a duty to retreat. Lastly, the “duty to retreat” mandates that the victim must first retreat from a scene where there is a threat, and if the person is seen as secure in the home, then the use of lethal force against an intruder will be considered as illegal (Case Law, 2014, p. 1).

The “Duty to Retreat” can be regarded as the opposite of both the “Stand” and “Castle” legal concepts. Under this concept, the person has a legal obligation to resort to the use of lethal force against a threat only as a last resort. In essence, the person must attempt to avoid any confrontations with the attackers and make all attempts to flee the contentious situation. It is only if these actions prove ineffective that the person is only allowed to use lethal force against their attackers (Conceal and Carry, n. d., p. 1).

Stand your Ground: California

As compared to many jurisdictions in the United States, not all states afford its citizens much latitude when it comes to cases where people use force in defending their property. California, for example, permits its citizens to use lethal force to protect their homeowners if there is a reasonable belief that there is a threat to them or to another person. However, the protection does not apply to burglary, and it is exclusive in application to the residents in a home, and does not apply to properties and places such as work and cars (South University, 2014, p. 1).

California’s version of the “Stand Your Ground” law has been in practice for some time in the state. For at least 100 years, California judges have consistently ruled that individuals who have a legitimate belief that there is

an imminent threat of serious harm or even death from an attacker has no duty to retreat- either inside or outside of the home- and is allowed to use lethal force required to eradicate the threat.

California lawmakers have not enacted any one of the proposals given by the NRA, began by Florida in 2005, which list the rights of the defendants in these types of scenarios and the steps that are mandated when these are called for in court. However, in the context of California, the rulings have much of the same impact. The rulings of the state Supreme Court are considered as binding upon the state courts and are displayed in the decisions rendered by the judges as well as the instructions of the judges to the juries in cases that address with self defense issues (Egelko, 2012, p. 1). The instructions given by judges to juries in these cases state that victims are given the right to “ pursue the assailant until such time that the danger of death, or great bodily injury, has passed. This is so even if safety is achieved by retreating”. Many states had similar canons as recent as 30 to 40 years ago, when a number of jurisdictions enacted laws that restricted claims of self defense outside the home of the person if there was an opportunity for the person to be able to flee safely.

The law in California, according to University of California-Berkeley law professor Andrea Roth, seeks to immortalize the law operating in the time of the American frontier, and is not a new idea of the NRA. However, the law in Florida differs from the California law in that the Florida law contains a significant component lacking in the California law. These are the conduct of a pretrial, a hearing without the need to convene a jury, and after thorough consideration of the evidence, the pretrial can move to act to dismiss the

complaint if it is proven that the person indeed acted in self defense (Egelko, 2012, p. 1).

Michigan: Self Defense

Before the enactment of the law in 2006, the law did not guarantee the immunity of a homeowner who would use lethal force in defending himself or his/her loved ones. In effect, even if the homeowner used deadly force in defense against an intruder in one's home or property, it would be possible for the individual to be taken to court by the intruder, or by the family of the intruder. This is owing to the presumption that the use of deadly force is never, and must never be an option, in defending property.

If the intruder only purposed to commit a crime against property, the use of deadly force against the criminal is a disproportionate response to the crime. However, the use of lethal force against an intruder on one's property would be justified if the criminal intends or conveys the action that he/she intends to use deadly force in committing the crime. For example, if the intruder shoots the homeowner, or violently drags the car owner from their car in order to steal the car, then there is an intention on the part of the criminal to use deadly force, and this factor can justify the use of deadly force by the victim (Dulan, 2009, p. 1).

The Trayvon Martin case has generated an opposite response in Michigan, where lawmakers are aggressively seeking to introduce legislation that will jettison laws that gunman George Zimmerman used in his defense in the case. Democrats in the Michigan legislature introduced a bill to repeal the state's " Stand Your Ground" law that at presents affords Michigan citizens

lethal force in self-defense. As the law is interpreted at present, if an individual has reasonable belief that there is a threat to his/her life, such as grievous bodily harm, lethal force, rape, and there is an imminent threat, then the person is allowed to use deadly force without having to retreat. As mentioned earlier, there are a good number of jurisdictions that integrates components of these laws into their own law records.

One of the sponsors of the bill, Rep. Rashida Tlaib (D-Detroit), emphasizes the devastating effects that Florida's "Stand Your Ground" on the state, and that there is a growing movement in Michigan to repeal the law, stating that there is immediacy to the need of removing the law. To Tlaib, though there is a legal acknowledgement of the right of people to defend themselves against a possible attack, it must also be strongly reiterated that the use of lethal force for defending oneself or loved ones must only be done if all avenues for non use fails.

The new legislative proposal, introduced by Rep. Tim Bledsoe (D-Gross Pointe), seeks to discard the prevailing self defense law, enacted into law in 2006 and signed by former Michigan governor Jennifer Granholm, who is now on the side of those seeking to repeal the law. Though justifiable homicides are not committed in Michigan in great numbers, the instances where these do occur can raise significant concerns on the impacts of the law and the manner that the law is interpreted (Lambertz, 2012, p. 1).

(For example, there are concerns from the law enforcement establishment on the expansion of the Castle Doctrine, especially in the cases of "no knock" warrants. In this situation, police officers can legally enter a home without announcing their presence; however, this is qualified only in

situations where the officers raise a concern that is listed in the warrant. In practice, “ no-knock” warrants are served in situations where there is a great possibility that the suspects, if these knew that police officers were outside, would delay the entry of the police while at the same time proceed to destroy vital pieces of evidence needed for the successful prosecution of the case.

In addition, these warrants would be needed if the police believe that the suspects being served have access to heavy weapons and high powered firearms. As the expanded Castle Doctrines assume that illegal entry is a justifiable element in the use of deadly force, and shooting or injuring a police officer is an exception unless the officer properly identifies him/herself, then police officers serving these types of legal notices can be placed at an extremely dangerous and threatening position.

However, it is not only the police officers serving these “ no knock” warrants that can be placed in extreme danger. Civilians that are within the jurisdiction of the warrant, though there are not the actual targets of the warrant, may take defensive measures against those whom they believe are intruders, and retaliate against the officers, who may also retaliate against the initial show of force by the homeowner, who was to their knowledge, only taking on defensive positions against “ illegal intruders” (Jansen-Nugent-Borakove, n. d., pp. 8-9).

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