


The Statutory and Common Law of Self-Defense

JOHN RUBIN
UNC SCHOOL OF GOVERNMENT
OCTOBER 2023

1



General Rules of Interpretation

Start with the statutes

- They are the primary source of the right to use defensive force

Know the common law

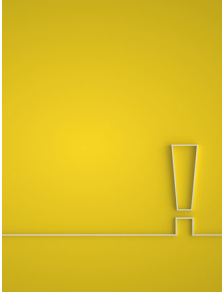
- It aids in interpreting the statutes
- It supplies complementary principles
- It provides an additional source of some rights

2

The Statutes

- G.S. 14-51.2
 - Defense of home, workplace, and motor vehicle
- G.S. 14-51.3
 - Defense of person (self and others)
- G.S. 14-51.4
 - Disqualifications

3



G.S. 14-51.3

A person is justified in using deadly force when they reasonably believe that such force is necessary to prevent imminent death or great bodily injury without retreating if in a place they have the lawful right to be if not disqualified under G.S. 14-51.4


4

John is sitting in his car in the parking lot of Harris Teeter with his girlfriend Jane. Jane's ex-boyfriend, Tom, comes running over to their car, yells that Jane is his girl, and points a gun at the couple. John fears for his and Jane's life.

- Does John have the right to use deadly force, without retreating, to defend himself and Jane?

Example # 1

5



Lawful Place

Common area of apartment complex

- State v. Bass, 371 N.C. 456 (2018)

Sidewalk

- State v. Lee, 370 N.C. 671 (2018)
- State v. Irabor, 262 N.C. App. 490 (2018)

While driving on a public road

- State v. Ayers, 261 N.C. App. 220 (2018)

Pattern instructions

- 206.10 (homicide), 308.45 (deadly assault), 308.10 (no duty to retreat)

6

Suppose that when John is sitting in his car with his girlfriend Jane, Jane's ex-boyfriend, Tom, comes running over to their car, yells that Jane is his girl, and challenges John to get out of the car and fight. Tom, wearing running shorts and a tank top, is unarmed.

- Does John have the right to use deadly force, without retreating, to defend himself and Jane?

Example # 2

7

Proportionality Limit

State v. Walker, 286 N.C. App. 438 (2022)

- “[T]he ‘stand your ground’ statute on which Defendant relies imposes the same requirement that any use of deadly force be proportional to that threatened against Defendant.”

8


If Not Disqualified Under G.S. 14-51.4

“The justification described in G.S. 14-51.2 and G.S. 14-51.3 is not available to a person who used defensive force and who:

1. Was attempting to commit, committing, or escaping after the commission of a felony.
2. Initially provokes the use of force against himself or herself [except as provided in the remainder of this subsection]”



9



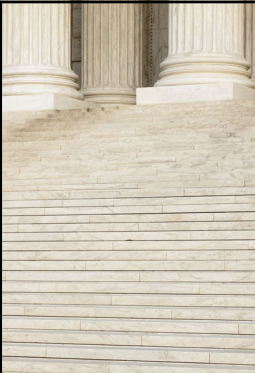
**State v. McLymore,
380 N.C. 185 (2022)**

Defendant argued that the felony disqualification applies to statutory self-defense only, not common law self-defense.

HOWEVER,

- “[T]he General Assembly meant to replace the existing common law right to perfect self-defense with a new statutory right.”
- Perfect self-defense is not available to a defendant in violation of the felony disqualification.

10



McLymore

The State argued that the statutory felony disqualification language should be construed literally.

HOWEVER,

- “[S]tatutes which alter common law rules should be interpreted against the backdrop of the common law principles being displaced.”
- The felony disqualification requires a causal nexus between the felony and the confrontation during which the defendant used force.

11

Repercussions for Instructions

Pattern Jury Committee has adopted causal connection wording

- NCPJI 308.90

Judge may be able to give peremptory instruction when evidence establishes causal connection

- *McLymore*

Judge may need to omit felony disqualification language when evidence does not show causal nexus

- See generally *State v. Corbett & Martens*, 269 N.C. App. 509 (2020) (exclusion of aggressor language), *aff'd on other grounds*, 376 N.C. 799 (2021)

12

Other Repercussions

Causal connection applies to other contexts

- State v. Williams, 283 N.C. App 538 (2022) (defense of others)

Defendant may be convicted of felony regardless of causal nexus

- State v. Swindell, 382 N.C. 602 (2022) (possession of a firearm after having been previously convicted of a felony)

Imperfect self-defense may remain available to reduce murder to manslaughter

- “[T]o the extent the relevant statutory provisions do not address an aspect of the common law of self-defense, the common law remains intact.” *McLymore* note 2.

13

G.S. 14-51.2

A lawful occupant

of a home, workplace, or motor vehicle

- including the curtilage of a building

is presumed to have held a reasonable fear of imminent death or serious bodily injury

when using deadly force during or after an actual unlawful, forcible entry

subject to

- rebuttal, including circumstances in G.S. 14-51.2(c), and
- disqualifications under G.S. 14-51.4

14

Tom goes over to John and Jane’s home, knocks on the door, and when Jane will not open the door, forces his way in. Seeing John grab his gun, Tom drops to the floor, locks his hands behind his head, and says please let me go, don’t shoot me. Tom is still wearing running shorts and a tank top and is unarmed.

- If John shoots Tom and is charged with a felony assault, does the statutory presumption give John the right to use deadly force?

Example # 3

15

Rebuttal of Statutory Presumption

State v. Austin, 279 N.C. App. 377 (2021)

- Presumption can be rebutted other than by one of the five statutory exceptions in G.S. 14-51.2(c)
- NCPJI 308.80 on defense of habitation refers to both the statutory exceptions and potentially "evidence to the contrary"

16

Impact of Traditional Requirements?

State v. Hicks, ___ N.C. ___, 891 S.E.2d 235 (Sept. 1, 2023)

- Three justices: proper for judge to instruct jury on aggressor doctrine because jury could find that homeowner was aggressor after unlawful and forcible entry into her home
- Two concurring justices: decision leaves open meaning of aggressor under G.S. 14-51.2 and G.S. 14-51.4
- Two separately dissenting justices: evidence did not show that homeowner was aggressor

State v. Phillips, ___ N.C. App. ___ (Oct. 3, 2023)

- In 2-1 decision, court holds that excessive force is impossible unless State rebuts statutory presumption

17

Curtilage



State v. Kuhns, 260 N.C. App. 281 (2018)

- Curtilage includes area around home
- Curtilage need not be enclosed
- Threat of violence may constitute forcible entry

PJI 308.80

- New Note 1 refers to curtilage
- State v. Copley, 265 N.C. App. 254 (2019), *rev'd on other grounds*, 374 N.C. 224 (2020) (questioning note 1 of previous instruction, which is now note 2, because it did not define home to include the curtilage)

18

Forcible and Unlawful Entry

- State v. Dilworth, 274 N.C. App. 57 (2020)
 - For statutory right to apply, unlawful and forcible entry must actually occur (citing 14-51.2(b)(1))
- State v. Benner, 380 N.C. 621 (2022)
 - Deadly force is not permissible, at least under common law, against a nondeadly assault by a guest



19

Common Law Defense of Habitation?

- G.S. 14-51.2(g)
 - Statute does not repeal common law defenses, including potentially common law defense of habitation
 - NCPJ 308.80 appears to combine defense of habitation under G.S. 14-51.2, repealed G.S. 14-51.1, and common law

20

Constitutional Issues



- Right to bear arms
 - Second Amendment of US Constitution
 - Section 30 of NC Constitution
- Right not to be deprived of life or liberty without due process
 - Due Process Clause of Fourteenth Amendment of US Constitution
 - Law of Land clause of Section 19 of NC Constitution
- Right to life itself
 - Declaration of Independence
 - Section 1 of NC Constitution

21

Questions?



I remain available to consult about:
Self-defense
Capacity and other mental health issues
Collateral consequences and record clearance
Right to counsel



The best way to reach me is at
rubin@sog.unc.edu
