

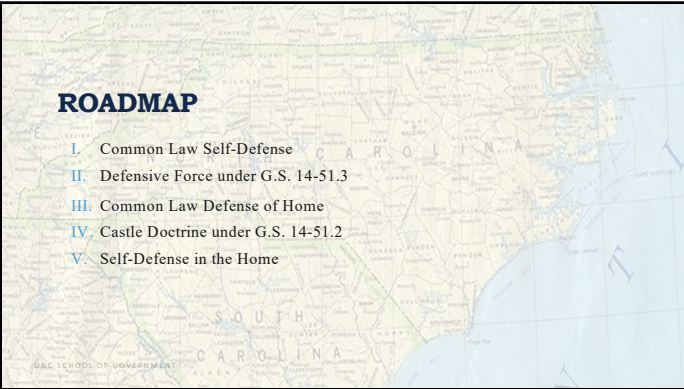


SELF-DEFENSE / CASTLE DOCTRINE

NAVIGATING THE COMMON LAW, STATUTE, AND CASELAW

Joseph L. Hyde
Superior Court Judges Fall Conference, Oct. 21, 2025

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ROADMAP

- I. Common Law Self-Defense
- II. Defensive Force under G.S. 14-51.3
- III. Common Law Defense of Home
- IV. Castle Doctrine under G.S. 14-51.2
- V. Self-Defense in the Home

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POINTS OF CONTACT

SELF-DEFENSE/CASTLE DOCTRINE

Pretrial notice

Admissibility of evidence

Motion to dismiss

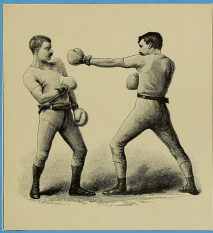
Jury Instructions

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I. COMMON LAW SELF-DEFENSE

REASONABLE BELIEF, DUTY TO RETREAT, DISQUALIFICATIONS

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A. THE NORRIS TEST

COMMON LAW SELF-DEFENSE

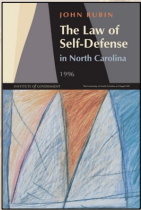
The law of perfect self-defense excuses a killing altogether if, at the time of the killing, these four elements existed:

- (1) The defendant believed it necessary to kill the deceased in order to save himself from death or great bodily harm;
- (2) The defendant's belief was reasonable;
- (3) The defendant was not the aggressor in bringing on the affray; and
- (4) The defendant did not use excessive force.

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B. A REASONABLE BELIEF

COMMON LAW SELF-DEFENSE



Burden is on the defendant to produce some evidence that he/she believed it was necessary to use deadly force to save him/herself.

- Under "warning shot" cases, a defendant who testifies he did not intend to shoot his attacker is not entitled to a self-defense instruction.

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C. NO DUTY TO RETREAT

COMMON LAW SELF-DEFENSE

A person attacked with deadly force:

- has no duty to retreat,
- but may stand his ground and kill his adversary if adversary, if need be.

A person attacked with non-deadly force:

- may not stand his ground and kill his adversary if there is any avenue of escape open to him,
- although he is permitted to repel force by force and give blow for blow.

***These retreat rules have no application when a person is attacked in his own home.**

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D. DISQUALIFICATIONS

COMMON LAW SELF-DEFENSE

Aggressor Status

- A person is considered an aggressor if he aggressively and willingly **enters** a fight without legal excuse or provocation.
- Someone who did not instigate a fight may be an aggressor if he **pursues** a fight that the other person is trying to leave.

Excessive Force

- In general, deadly force is not privileged against non-deadly force.
- The use of deadly force to prevent harm other than death or great bodily harm is excessive as a matter of law.

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E. RECLAIMING THE RIGHT

COMMON LAW SELF-DEFENSE

The right of self-defense is not available to an aggressor without murderous intent unless:

- (1) he first abandons the fight and withdraws from it, and
- (2) he gives notice to his adversary that he has done so,

An aggressor with murderous intent cannot regain the right to use defensive force in the same altercation.

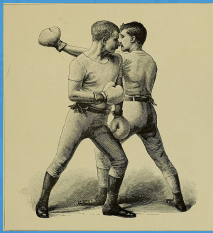
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II. DEFENSIVE FORCE UNDER G.S. 14-51.3

REASONABLE BELIEF, DUTY TO RETREAT, DISQUALIFICATIONS

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A. THE STATUTORY TEST

DEFENSIVE FORCE UNDER G.S. 14-51.3

A person is justified in the use of deadly force if:

(1) He or she **reasonably believes** such force is necessary to prevent imminent death or great bodily harm

G.S. 14-51.3(a).

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“Section 14-51.3 supplants the common law on all aspects of the law of self-defense addressed by its provisions.”

State v. McLymore, 380 N.C. 185, 191 (2022).

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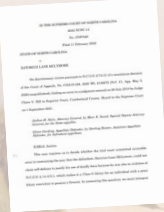
B. REASONABLE BELIEF

DEFENSIVE FORCE UNDER G.S. 14-51.3

Burden is still on the defendant to produce some evidence that he/she believed it was necessary to use deadly force to save him/herself.

- “Section 14-51.3 closely tracks [the] earlier common law definition of the right to self-defense in providing that an individual may use force” when the person **reasonably believes** such force is necessary. *State v. McLymore*, 380 N.C. 185, 191 (2022).

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D. NO DUTY TO RETREAT

DEFENSIVE FORCE UNDER G.S. 14-51.3

A person is justified in using nondeadly force:

- When and to the extent the person reasonably believes that the conduct is necessary to defend him/herself.

G.S. 14-51.3(a).

A person is justified in using deadly force:

- And does not have a **duty to retreat** in any place he has the lawful right to be,
- When he reasonably believes such force is necessary to prevent imminent death or great bodily harm.

G.S. 14-51.3(a).

When a defendant presents competent evidence of self-defense, the trial court must instruct the jury on a defendant's right to stand his ground. *State v. Lee*, 370 N.C. 671, 675 (2018).

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C. DISQUALIFICATIONS

DEFENSIVE FORCE UNDER G.S. 14-51.3

The justification described in G.S. 14-51.3 is not available to a person who:

Felony Disqualifier

Was committing a felony. G.S. 14-51.4(1).

- The State must prove the existence of an immediate **causal nexus** between the disqualifying conduct and the use of force.

State v. McElmore, 380 N.C. 185, 197 (2022).

Provocateur Disqualifier

Initially provokes the use of force against himself or herself. G.S. 14-51.4(2).

- Aggressor instruction is appropriate when there is some evidence from which jury could infer defendant was the aggressor.

State v. Hicks, 385 N.C. 52, 60 (2023).

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E. RECLAIMING THE RIGHT

DEFENSIVE FORCE UNDER G.S. 14-51.3

The provisions of G.S. 14-51.4(2)(a) **do not apply** in situations in which the aggressor initially uses deadly force against the person provoked.

State v. Holloman, 369 N.C. 615, 628 (2017).

The person who initially provoked the use of force against himself is justified in using defensive force if:

- (1) He is confronted with deadly force, he has no reasonable means to retreat, and the use of deadly force is the only way to escape the danger, or
- (2) He withdraws in good faith from physical contact and indicates clearly that he desired to withdraw and terminate the use of force.

G.S. 14-51.4(2).

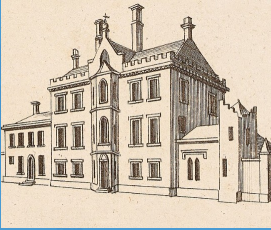
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III. COMMON LAW DEFENSE OF HOME

REASONABLE BELIEF, PREVENTION, EXCESSIVE FORCE

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A. REASONABLE BELIEF

COMMON LAW DEFENSE OF HOME

The lawful occupant of a dwelling may use deadly force to prevent an unlawful and forcible entry when he **reasonably believes** that the intruder intends:

- (1) to commit a felony, or
- (2) to inflict serious personal injury upon the inhabitants.

A person has no **duty to retreat**, regardless of the nature of the assault upon him, when he is in his own home and acting in defense of himself, his family and his habitation.

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B. TO PREVENT ENTRY

COMMON LAW DEFENSE OF HOME

The use of deadly force in defense of habitation is justified only **to prevent** a forcible entry into the habitation.

- Once the assailant has gained entry, the usual rules of self-defense apply.

In enacting G.S.14-51.1 (1993-2011), the General Assembly broadened the defense of habitation to make the use of deadly force justifiable whether to **prevent** unlawful entry into the home or to **terminate** an unlawful entry by an intruder.

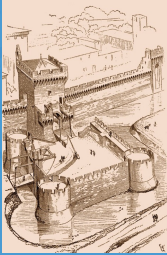
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IV. CASTLE DOCTRINE UNDER G.S. 14-51.2

REASONABLE BELIEF, STATUTORY PRESUMPTIONS, DUTY TO RETREAT

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A. THE STATUTORY TEST

CASTLE DOCTRINE UNDER G.S. 14-51.2

A person is justified in the use of deadly force if:

(1) He or she reasonably believes such force is necessary to prevent imminent death or great bodily harm

OR

(1) Under the circumstances permitted pursuant to G.S. 14-51.2.

G.S. 14-51.3(a).

The General Assembly has abrogated the common law restriction on **excessive force** for the lawful occupants of homes, business, and automobiles.

State v. Phillips, 386 N.C. 513, 526 (2024).

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B. REASONABLE BELIEF

CASTLE DOCTRINE UNDER G.S. 14-51.2

Presumption of Reasonable Fear

The lawful occupant of a home, motor vehicle, or workplace, when using deadly force, is presumed to have held a **reasonable fear** of imminent death or serious bodily harm if:

(1) An intruder was unlawfully and forcefully entering, and

(2) The occupant knew or had reason to believe unlawful and forcible entry was occurring.

G.S. 14-51.2(b).

Presumption of Felonious Intent

A person who unlawfully and by force enters or attempts to enter a home, motor vehicle, or workplace is presumed to be doing so with the **intent to commit an unlawful act** involving force or violence.

G.S. 14-51.2(d).

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C. LAWFUL OCCUPANT / UNLAWFUL ENTRY

CASTLE DOCTRINE UNDER G.S. 14-51.2

Lawful Occupant

- A defendant may be entitled to instruction on presumptions though he was not within the premises when he used deadly force.
- A defendant who was trespassing may not be entitled to instruction on presumptions.

Unlawful Entry

- The defendant is entitled to a castle-doctrine instruction when the evidence shows the victim entered the defendant's home and attacked the defendant.

The presumption of reasonable fear applies only when the defendant satisfies the specific statutory requirements. *State v. Phillips*, 386 N.C. 513, 525 (2024).

D. NO DUTY TO RETREAT

CASTLE DOCTRINE UNDER G.S. 14-51.2

Whenever a person is lawfully located – whether it is his home, workplace, motor vehicle, or any other place where he has a lawful right to be – the person may stand his ground and defend himself from attack.

State v. Bass, 371 N.C. 535, 541 (2018).

A person does not have a **duty to retreat** in any place he or she has the lawful right to be under the circumstances permitted pursuant to G.S. 14-51.2.

G.S. 14-51.3(a)(2).

A lawful occupant within his or her home, motor vehicle, or workplace does not have a **duty to retreat** from an intruder in the circumstances described in this section.

G.S. 14-51.2(f).

E. REBUTTING THE PRESUMPTIONS

CASTLE DOCTRINE UNDER G.S. 14-51.2

The presumption of reasonable fear is **rebuttable** and does not apply in any of the following circumstances:

- The intruder has a right to be in the premises,
- The person sought to be removed is the intruder's child or grandchild or otherwise in lawful custody,
- The occupant is engaged in violent crime,
- The intruder is a law enforcement officer,
- The intruder has exited the premises and discontinued all efforts to enter.

The statutory presumption of reasonable fear may be **rebutted** only by the circumstances set forth in G.S. 14-51.2(c).

State v. Phillips, 386 N.C. 513, 524 (2024).

G.S. 14-51.2(c).

V. SELF-DEFENSE IN THE HOME

REASONABLE BELIEF, DUTY TO RETREAT, EXCESSIVE FORCE

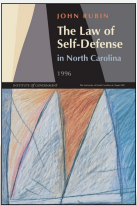
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A. REASONABLE BELIEF

SELF-DEFENSE IN THE HOME



Under the common law, once assailant gained entry, the usual rules of self-defense replaced rules governing defense of home, hence:

- A person is privileged to use deadly force only if he reasonably believes such force is necessary to defend himself from death, etc.

Under G.S. 14-51.2, it is **presumptively reasonable** for a lawful occupant to respond to an intruder with deadly force, including:

- When an intruder had unlawfully and forcible entered or if the intruder was attempting to remove another person against his will.

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B. NO DUTY TO RETREAT

SELF-DEFENSE IN THE HOME

Under the common law, a person attacked within the home has no **duty to retreat** regardless of the nature of the assault upon him.

Under G.S. 14-51.2, a lawful occupant does not have a **duty to retreat** from an intruder in the circumstances described. G.S. 14-51.2(f).

That language [i.e., regardless of the nature of the assault] was intended to make it clear that there was no distinction between a simple and a felonious assault in determining whether a defendant had a duty to retreat before exercising the right of self-defense in his own home. *State v. Benner*, 380 N.C. 621, 635 (2022).

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C. EXCESSIVE FORCE

SELF-DEFENSE IN THE HOME

For purposes of common law self-defense:

“[T]he proportionality rule inherent in the requirement that the defendant not use **excessive force** continues to exist even in instances in which a defendant is entitled to stand his or her ground.”
State v. Benner, 380 N.C. 621, 636 (2022).

For purposes of the Castle Doctrine:

Under the Castle Doctrine, **excessive force** is impossible unless the State rebuts the presumption of reasonable fear.
State v. Phillips, 386 N.C. 513, 527 (2024).

RECAPITULATION

- I. Common Law Self-Defense
- II. Defensive Force under G.S. 14-51.3
- III. Common Law Defense of Home
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- V. Self-Defense in the Home

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