



Law of Self-Defense* 2025 Update

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* “The Lawful Use of Defensive Force”

Austin and Phillips

- ◇ N.C.G.S. § 14-51.2(e) provides that a person meeting the castle doctrine criteria "is immune from civil or criminal liability."
- ◇ Does this mean a person could get a pre-trial determination of immunity and get charges dismissed without going to trial?
- ◇ In *State v. Austin*, the Court of Appeals held "Nope."
- ◇ "it creates not merely an assurance that no judgment can be entered against the person, but a right not to be forced into court to defend oneself."
- ◇ *State v. Austin*, 279 N.C. App. 377, 381 (2021)

Austin and Phillips

- ◇ N.C.G.S. § 14-51.2 also provides that the presumptions given by the castle doctrine are rebuttable and do not apply in certain listed circumstances.
- ◇ Does this mean the presumptions are only rebuttable by those 5 listed circumstances?
- ◇ In *Austin*, the COA held “Nope again.”
- ◇ “[T]he castle doctrine's rebuttable presumption is not limited to the five scenarios listed in the statute.”
 - ◇ *State v. Austin*, 279 N.C. App. 377, 384 (2021).

Austin and Phillips

- ◇ *Austin* was wrong. On both counts.
- ◇ On rebutting presumptions:
 - ◇ “The plain language of subsection (c), and the legislature's clear intent to significantly broaden castle doctrine protections by repealing section 14-51.1 and enacting section 14-51.2, compels the conclusion that **the presumption of reasonable fear may be rebutted only by the circumstances set forth in subsection (c).**”
 - ◇ *State v. Phillips*, 386 N.C. 513, 524 (2024).
- ◇ And possibly, pretrial determination of immunity available
 - ◇ Thus, absent a pretrial determination of immunity, when a defendant asserts the castle doctrine defense at trial, the jury must first determine whether the defendant is entitled to the presumption as set forth in section 14-51.2(b).
 - ◇ *State v. Phillips*, 386 N.C. 513, 525 (2024)

Austin and Phillips

- ◇ “*But, Dan and Sterling, the Supreme Court didn’t say anything about overruling Austin in Philips,*” you may say...
- ◇ And you’d be right.
- ◇ But...
- ◇ You’d also sound like an attorney general.
- ◇ SCONC doesn’t have to be explicit to overrule COA cases.
- ◇ *State v. Allison*, 293 N.C. App. 182 (2024) – Court of Appeals followed *Austin*
- ◇ SCONC Granted Def.’s PDR
- ◇ In SCONC, State is asking court to overturn *Phillips*

Austin and Phillips

- ◇ <https://www.youtube.com/live/LG8jv3RfQ14?si=Wi--oGJhZj3Nz0zh&t=1452>

Phillips – Key Takeaway

- ◆ “If the jury finds that the State has rebutted the presumption, the jury must determine whether the defendant's use of force was proportional. However, if the jury finds that the State failed to rebut the presumption, the defendant *must* be acquitted in accordance with section 14-51.2(e).”
- ◆ *Phillips*, 386 N.C. at 525 (emphasis in original)

Austin and Phillips

Practice Tips:

- ◇ If you can show that the presumptions apply and are not rebutted, that is an automatic win under Phillips
- ◇ Remember that the State is very limited as to what it may use to rebut the presumptions under N.C.G.S. § 14-51.2
- ◇ Prepare custom instructions in every case, before the trial starts, that accurately explains the law based on what you expect the evidence to be.
 - ◇ Use names, describe what makes the entry forcible and unlawful, etc.
- ◇ Instructions should very clearly state: if the jury finds the presumptions are triggered and not rebutted, the jury must return a verdict of not guilty
- ◇ Request pretrial determinations of immunity

SPECIAL VERDICT

We, the jury, unanimously answer the specified questions and return a verdict as follows:

1. Did Ms. Phillips assault Ms. Dunlap?

(To answer this question yes, the State must have convinced the jury beyond a reasonable doubt that yes is the correct answer to this question).

_____ Yes

_____ No

[if the answer is Yes, proceed to question 2. If the answer is No, proceed to the verdict, question 7, and check not guilty]

2. Did Ms. Phillips use a deadly weapon?

(To answer this question yes, the State must have convinced the jury beyond a reasonable doubt that yes is the correct answer to this question).

_____ Yes

_____ No

[if the answer is Yes, proceed to question 3. If the answer is No, proceed to the verdict, question 7, and check not guilty]

3. Did Ms. Phillips inflict serious injury on Ms. Dunlap?

(To answer this question yes, the State must have convinced the jury beyond a reasonable doubt that yes is the correct answer to this question).

_____ Yes

_____ No

[if the answer is Yes, proceed to question 4. If the answer is No, proceed to the verdict, question 7, and check not guilty]

4. Did Ms. Dunlap unlawfully and forcibly enter Ms. Phillips' home, including the curtilage, or was she in the process of unlawfully and forcefully entering Ms. Phillips' home?

(To answer this question no, the State must have convinced the jury beyond a reasonable doubt that no is the correct answer to this question).

_____ Yes

_____ No

[If the answer is Yes, proceed to the verdict, question 7, and check not guilty. If the answer is No, proceed to question 5.]

5. Did Ms. Phillips reasonably fear imminent death or great bodily harm when she assaulted Ms. Dunlap?

(To answer this question no, the State must have convinced the jury beyond a reasonable doubt that no is the correct answer to this question).

_____ Yes

_____ No

[If the answer is Yes, proceed to question 6. If the answer is No, proceed to the verdict, question 7, and check guilty.]

6. Did Ms. Phillips use excessive force?

(To answer this question yes, the State must have convinced the jury beyond a reasonable doubt that yes is the correct answer to this question).

_____ Yes

_____ No

[if the answer is Yes, proceed to the verdict, question 7, and check guilty. If the answer is No, proceed to the verdict and check not guilty]

7 (Verdict). Based on the foregoing answers we the jury unanimously find the defendant, Ms. Phillips,

_____ Guilty

_____ Not Guilty

This the _____ day of _____, 2025.

Jury Foreperson

State v. Williams, 283 N.C. App. 538 (2022)

- ◆ **Hypothetical:**

- ◆ You and your violent cousin are driving around with your girlfriends. Your cousin's girlfriend, Ciara, is driving and your cousin suddenly starts beating her and saying he is going to kill her. He hits Ciara in the head with a beer bottle and punches her. You have been convicted of a felony but you have a gun. Ciara pulls over and you break up the fight. You get back in the car and the fight starts again, so Ciara pulls over again. After the fight spills out onto the street, you shoot him.

- ◆ **Are you entitled to use defensive force?**

State v. Williams, 283 N.C. App. 538 (2022)

- ◆ Yes!

- ◆ Followed *McLymore*

- ◆ “Moreover, in light of this evidence, there is a reasonable possibility that, had the jury been instructed on defense of others and the causal nexus requirement, the jury would have determined both that there was no causal nexus between Defendant's felonious possession of a firearm and Defendant's use of defensive force such that defense of others was available to justify Defendant's force, and that Defendant acted in defense of Ciara when he used force against Michael. Accordingly, the trial court erred by failing to instruct the jury on perfect defense-of-another and failing to instruct the jury that the State was required to prove an immediate causal nexus between his commission of possession of a firearm by a felon and the circumstances giving rise to his perceived need to use defensive force.”

- ◆ *State v. Williams*, 283 N.C. App. 538, 544 (2022)

- ◆ And – defense of another

- ◆ “Viewed in the light most favorable to the State, this was sufficient evidence from which a rational juror could conclude that Defendant did not act in defense of Ciara. Accordingly, the trial court did not err by denying Defendant's motion to dismiss the charges of first-degree and second-degree murder.”

- ◆ *State v. Williams*, 283 N.C. App. 538, 546 (2022)

State v. Williams, 911 S.E.2d 286 (2024) (temp stay
allowed 2025 N.C. LEXIS 32, Jan. 15 2025)

- ◆ **Hypothetical:**
- ◆ You're in your car, outside of your girlfriend's house, when her ex comes up to your passenger door, reaches in with a gun, and starts hitting you. You get the gun away from them and they walk around to your side of the car. You open the door, get out, and shoot them.
- ◆ **Are you entitled to the castle doctrine?**

State v. Williams, 911 S.E.2d 286 (2024) (temp stay allowed 2025 N.C. LEXIS 32, Jan. 15 2025)

♦ YES!

♦ **You are, because you are “an occupant” of the vehicle, defending against an unlawful and forcible entry, even though you stepped out of the car and the attacker was no longer reaching into it.**

♦ Upon our assessment of the statutory castle doctrine's language, object, and spirit, considering and interpreting as a whole the material provisions of N.C. Gen. § 14-51.2, we conclude the following interpretation of the statutory castle doctrine to be consistent with its legislative intent: the lawful occupant "of" a home, motor vehicle, or workplace is not bound to become a fugitive from these locations, and therefore is not required to flee or remain in his home, motor vehicle, or workplace until his assailant is upon him. . . . **Rather, the lawful occupant, under specific circumstances—including those where he is no longer within the home, motor vehicle, or workplace—may exercise deadly defensive force against his assailant.”**

♦ *State v. Williams*, 911 S.E.2d 286, 297-98 (N.C. Ct. App. 2024)

State v. Carwile, 909 S.E.2d 913 (N.C. Ct. App. 2024)

♦ **Hypothetical:**

♦ It's 5 in the morning. You're in your house, when a masked man breaks in and attacks you with a chainsaw and a sock filled with rocks. You, improbably, fight him off and he runs away. You, your wife, and a friend chase him 500 yards away to a used car dealership parking lot where the three of you beat him to death with a wrench you took from him, a trash can, and a sock filled with rocks (unclear if it is his or if you had your own).

♦ **Are you entitled to the castle doctrine?**

State v. Carwile, 909 S.E.2d 913 (N.C. Ct. App. 2024)

♦ NO!

♦ “The question, then, is whether Easter had “discontinued all efforts to unlawfully and forcefully enter the home[.]” N.C. Gen. Stat. § 14-51.2(c)(5) (2023). Viewing the evidence in the light most favorable to Defendant, we conclude that he had and, consequently, that the Castle Doctrine does not apply to the present case.”

♦ *State v. Carwile*, 909 S.E.2d 913, 920 (N.C. Ct. App. 2024)

State v. Copley, 386 N.C. 111 (2024)

- ◆ **Hypothetical:**

- ◆ You are in your home when you hear people outside. You holler out at them and tell them to keep it the fuck down. They tell you to shut the fuck up. You see guns in the crowd and see some of the group lifting up their shirts to flash weapons. You call the police and report hoodlums vandalizing the property, and then post up in the garage with a shotgun. One of the people then runs across your lawn and you shoot him.

- ◆ **Are you entitled to the castle doctrine, or did you commit murder by laying in wait?**

State v. Copley, 386 N.C. 111 (2024)

- ◆ **Castle Doctrine applies**

- ◆ “When a defendant lawfully defends his home in line with section 14-51.2 and the State does not rebut the statutory presumption of reasonableness, his force is a justified defensive measure immune from criminal culpability. For that reason, section 14-51.2 cannot coexist in the same case with the common-law crime of murder by lying in wait. If the statutory castle doctrine applies, it disclaims the elements of lying in wait and displaces that offense. When the legislature has withdrawn criminal culpability, the common law may not attach it.”

- ◆ *State v. Copley*, 386 N.C. 111, 124 (2024)

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

- ◇ There is still tension in the Courts about what all of this actually means
- ◇ *Hicks* seems to conflict with *Phillips* and *Copley*
 - ◇ “Majority” seems to ignore the initial unlawful and forcible entry by decedent
- ◇ Weird split –
 - ◇ “Majority” = Earls, Newby, Allen;
 - ◇ “Concur [(in result)]” = Dietz, Berger;
 - ◇ Dissent = Morgan, Barringer
- ◇ Dietz’s concurring opinion clearly says that the common law is dead, and yet...

State v. Myers, 909 S.E.2d 378 (N.C. Ct. App. 2024)

- ◆ **Hypothetical:**

- ◆ You and your friend go to a gas station and see two men you know. Your friend approaches one of the men and pistol whips him. The other man goes to their car and gets a gun. You follow and try to stop him from getting the gun and you hear shots. The man runs into the store, and you believe he will shoot you. You shoot him.

- ◆ **Are you entitled to act in self defense?**

State v. Myers, 909 S.E.2d 378 (N.C. Ct. App. 2024)

- ◆ Yes (sort of)!
- ◆ “Viewed in the light most *f*avorable to Defendant, the evidence is *sufficient* to support an instruction of at least imperfect self-defense, if not perfect self-defense. Presuming a conflict in the evidence *of* the identity *of* the initial aggressor exists, it is be resolved by the jury, *a*fter being fully and properly instructed.”
- ◆ *State v. Myers*, 909 S.E.2d 378, 383 (N.C. Ct. App. 2024)
- ◆ Notably, the court explicitly held you were at least entitled to imperfect self defense, clarifying the common law/statutory issue *f*rom earlier.

What is left of the Common Law?

- ◆ Somewhat unclear – McLymore suggests there is no more common law for “perfect self-defense”, but that common law remains for anything not otherwise addressed by statute.
- ◆ “We conclude that after the General Assembly's enactment of N.C.G.S. § 14-51.3, there is only one way a criminal defendant can claim perfect self-defense: by invoking the statutory right to perfect self-defense. Section 14-51.3 supplants the common law on all aspects of the law of self-defense addressed by its provisions.”
 - ◆ *McLymore*, 2022-NCSC-12, ¶ 12
- ◆ “However, to the extent the relevant statutory provisions do not address an aspect of the common law of self-defense, the common law remains intact.”
 - ◆ *McLymore*, 2022-NCSC-12, ¶ 12, n.2

What is left of the Common Law?

- ◇ But the Courts have applied this rule unpredictably:
- ◇ Dietz, concurring in *State v. Hicks*, 385 N.C. 52, 66 (2023), wrote
- ◇ “In other words, McLymore made clear that these statutes [(N.C.G.S. § 14-51.2 and 51.3)] ***entirely supplanted the common law***. When addressing self-defense under these statutes, there is no common law, there is only the language of the statute.”

What is left of the Common Law?

- ◆ Does excessive force still apply?
- ◆ Statutes make it seem like it wouldn't.
- ◆ But the Courts disagree -
- ◆ *See, State v. Benner*, 2022-NCSC-28 (2022), ¶ 29 (“[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. Walker*, 2022-NCCOA-745, ¶26 (2022) (*Benner* “makes clear that the use of deadly force cannot be excessive and must still be proportional even when the defendant has no duty to retreat and is entitled to stand his ground.”).
- ◆ And *State v. Myers*, 909 S.E.2d 378, 383 (N.C. Ct. App. 2024) (citing statutes but applying common law principles).

What is left of the Common Law?

- ◆ Does excessive force still apply?
- ◆ And most importantly:
- ◆ The common law prohibition against excessive force is a proportionality requirement under which a defendant must demonstrate their reasonable belief that the degree of force used was necessary to prevent the threatened harm. This common law principle is now codified in the general self-defense statute, which justifies "the use of deadly force" where the defendant "reasonably believe[d] that such force [wa]s necessary to prevent imminent death or great bodily harm to himself or herself or another." N.C.G.S. § 14-51.3(a)(1).
 - ◆ *State v. Phillips*, 386 N.C. 513, 526 (2024)

What is left of the Common Law?

- ◇ Does imperfect self-defense still exist?
 - ◇ For excessive force - Possibly?
 - ◇ If you are claiming imperfect self-defense based on excessive force, you could argue that the common law was not abrogated as described in *McLymore*.
 - ◇ You could claim that “excessive force” now applies in situations where a person’s belief that defensive force was reasonable, but their belief that *deadly force* was necessary was mistaken or unreasonable (and thus excessive or not proportional under *Phillips*
 - ◇ This would be an update from the common law understanding of “excessive force” but that’s probably a good thing as nobody really understood what “excessive force” meant under the common law.

What is left of the Common Law?

- ◇ Does imperfect self-defense still exist?
 - ◇ For “aggressor”?
 - ◇ Or the felony bar?
 - ◇ You can try...
 - ◇ Consider arguing that you were prohibited from claiming statutory perfect self defense by N.C.G.S. § 14-51.4, and thus your use of force was excessive, entitling you to an instruction on common law imperfect self defense.

Overall Takeaways

- ◊ If presumptions apply and are not rebutted, not guilty
- ◊ Rebutting presumptions is limited
- ◊ Custom instructions in every case
- ◊ Special Verdict Sheet
- ◊ Imperfect Self Defense
- ◊ Request pretrial determinations of immunity