

The Statutory and Common Law of Self-Defense

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The Statutes

G.S. 14-51.2

- Defense in the home, workplace, and motor vehicle

G.S. 14-51.3

- Defense of person (self and others)

G.S. 14-51.4

- Disqualifications



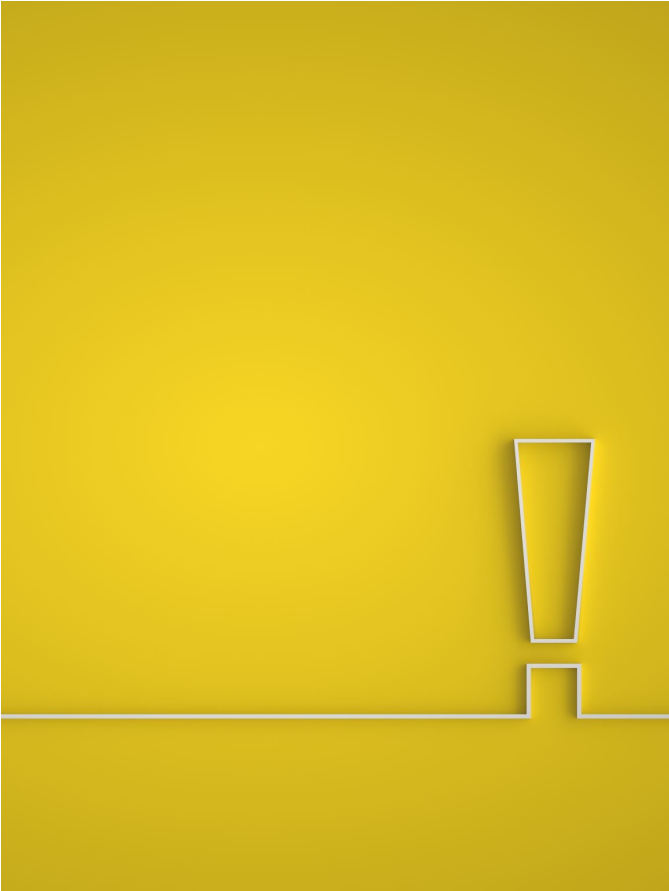
General Rules of Interpretation

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 rights



G.S. 14-51.3

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



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)

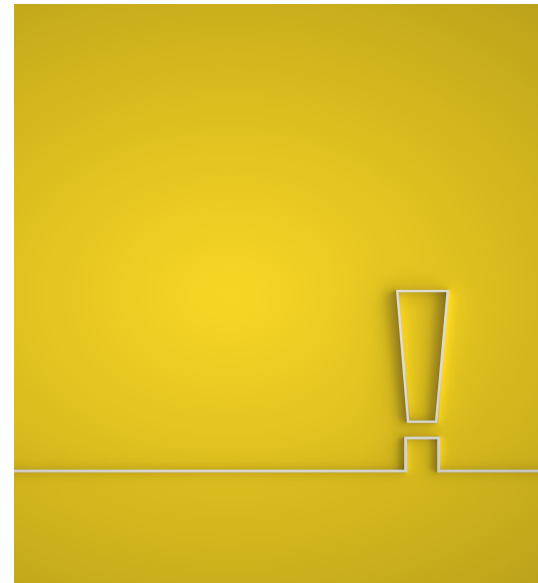
Pattern instructions

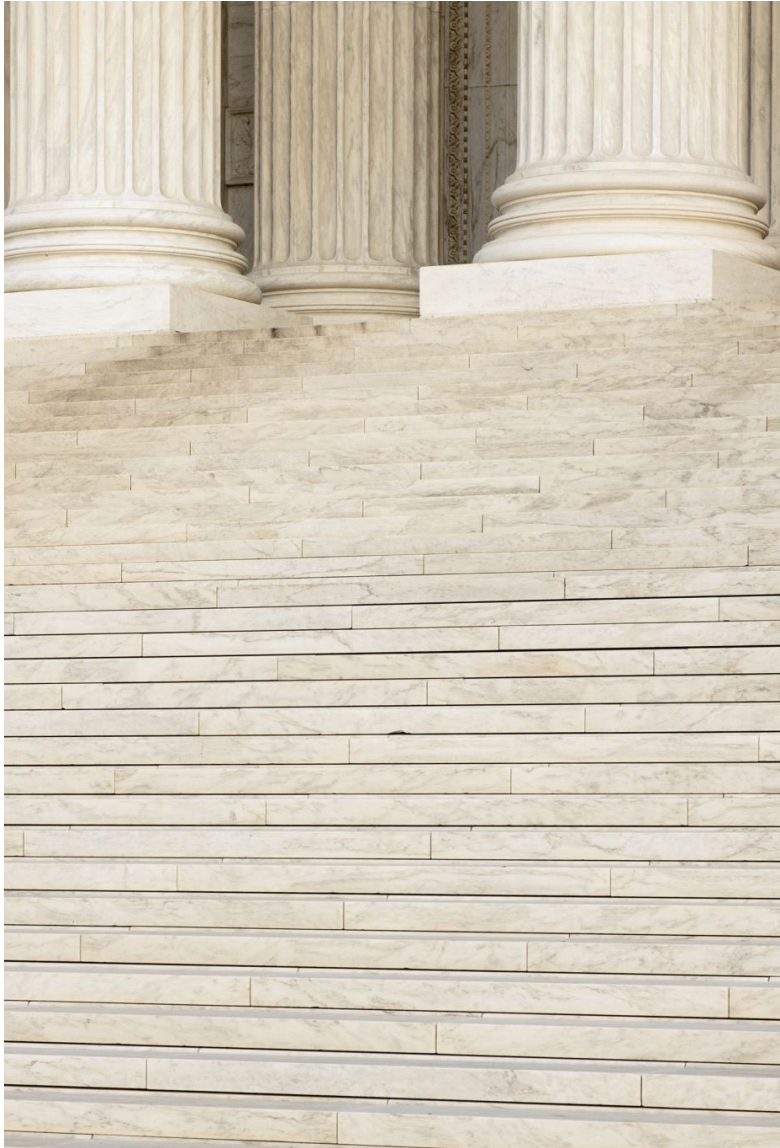
- 206.10 (homicide), 308.45 (deadly assault), 308.10 (no duty to retreat)

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]”





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

“[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.

Repercussions for Instructions

Pattern Jury Committee has adopted causal connection wording

- PJI 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)

Other Repercussions

Causal connection applies to other contexts

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

Felony disqualification instruction apparently may be given for uncharged felonies

- State v. Townsend, ___ N.C. App. ___, 917 S.E.2d 342 (2025) (trial judge instructed on uncharged offenses for felony disqualification; appellate court did not address issue)

Defendant may be convicted of alleged felony without causal nexus

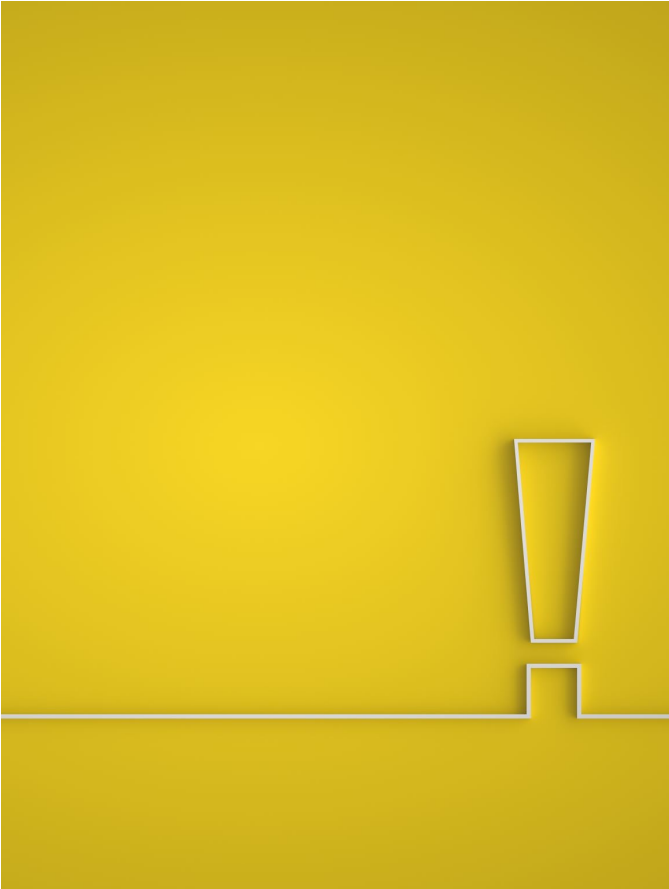
- State v. Swindell, 382 N.C. 602 (2022) (possession of a firearm by person previously convicted of felony)

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

- *McLymore* note 2; State v. Myers, 296 N.C. App. 524 (2024) (error not to instruct on imperfect)

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

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

- Notes 1 and 2 refer to curtilage
- Court of Appeals questions instruction for not defining curtilage for jury. *See State v. Copley*, 265 N.C. App. 254 (2019), *rev'd on other grounds*, 374 N.C. 224 (2020)

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 G.S. 14-51.2(b)(1))

State v. Benner, 380 N.C. 621 (2022)

- Deadly force is not permissible against a nondeadly assault by a guest (at least under the common law)



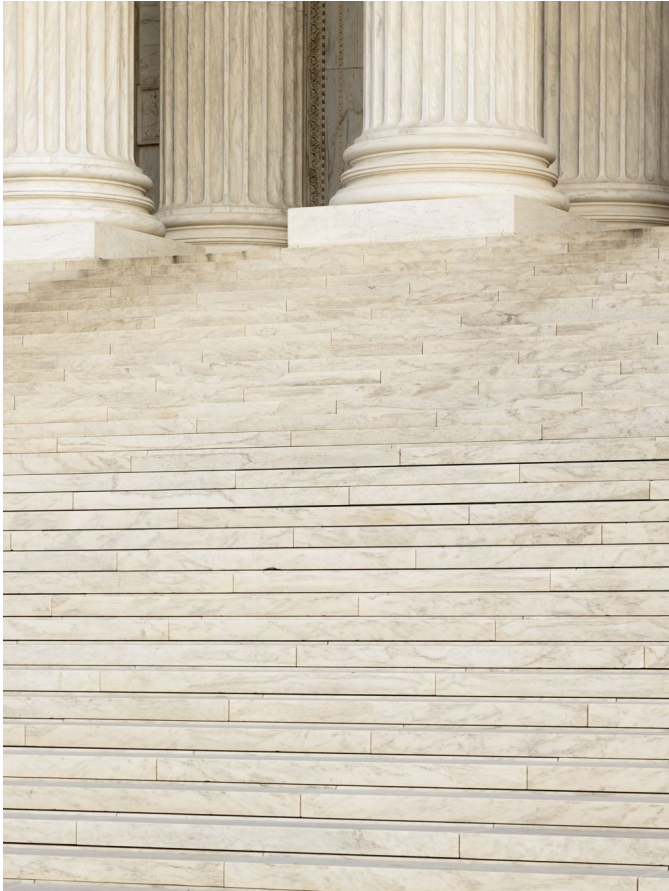
Rebuttal of Statutory Presumption

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”

Overruled sub silentio by State v. Phillips, 386 N.C. 513 (2024)

- Excessive force is not an issue in a case under G.S. 14-51.2 and does not rebut the presumption
- Only the statutorily-listed circumstances can rebut the presumption
- NCPJI 308.80 has not been revised; therefore, request that it be modified to reflect the holding in *Phillips*



Constitutional Grounds

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