

Ala. Code 1975, § 13A-3-23

Self-Defense
(Deadly Physical Force)

One of the issues in this case is self-defense.

A person may use deadly physical force and is legally presumed to be justified in using deadly physical force in self-defense or in the defense of another person pursuant to section (5), if the person reasonably believes that another person is: **[Read appropriate part]**

- (1) Using or about to use unlawful deadly physical force;
- (2) Using or about to use physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling;
- (3) Committing or about to commit: **[Read appropriate part]**
 - (a) Kidnapping in any degree;
 - (b) Assault in the first or second degree;
 - (c) Burglary in any degree;
 - (d) Robbery in any degree;
 - (e) Forcible rape; **(OR)**
 - (f) Forcible sodomy;
- (4) Using or about to use physical force against an owner, employee, or other person authorized to be on business property when the business is closed to the public, while committing or attempting to commit a crime involving death, serious physical injury, robbery, kidnapping, rape, sodomy, or a crime of a sexual nature involving a child under the age of 12; **(OR)**
- (5) In the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered, a dwelling, residence, business property, or occupied vehicle, or federally licensed nuclear power facility, or is in the process of sabotaging or attempting to sabotage a federally licensed nuclear power facility, or is attempting to remove, or has forcefully removed, a person against his/her will from any dwelling, residence, business property, or occupied vehicle when the person has a legal right to be there, and provided that the person using deadly physical force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring;

[If section (5) above is applicable, read following] The legal presumption that a person using deadly physical force is justified to do so does not apply if: **[Read appropriate part]:**

- a. The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person;
- b. The person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;
- c. The person who uses defensive force is engaged in an unlawful activity or using the dwelling, residence, or occupied vehicle to further an unlawful activity; **(OR)**
- d. The person against whom the defensive force is used is a law enforcement officer acting in the performance of his/her official duties.

[Read Stand Your Ground Instruction if appropriate] - The defendant does not have a duty to retreat and has the right to stand his/her ground so long as he/she is justified in using deadly physical force and is not engaged in an illegal activity and is in a place where he/she has a right to be located.

The defendant is not justified in using deadly physical force if: **[Read appropriate part]**

- (1) With intent to cause physical injury or death to another person, he/she provoked the use of unlawful physical force by such other person;
- (2) He/she was the initial aggressor, except that his/her use of physical force upon another person under the circumstances is justifiable if he/she withdraws from the encounter and effectively communicates to the other person his/her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force; **(OR)**
- (3) The physical force involved was the product of a combat by agreement not specifically authorized by law.

The defendant does not have the burden of proving that he/she acted in self-defense. To the contrary, once self-defense becomes an issue, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

Definitions

Deadly physical force is force that, under the circumstances in which it is used, is readily capable of causing death or serious physical injury. [13A-3-20(2)]

A *reasonable belief* is a belief formed in reliance upon reasonable appearances. It is a belief not formed recklessly or negligently. The test of reasonableness is not whether the defendant was correct in his/her belief but whether the belief was reasonable under the circumstances existing at the time. (Code Commentary)

A *dwelling* is a building which is usually occupied by a person lodging therein at night, or a building of any kind, including any attached balcony, whether the building is temporary or permanent, mobile or immobile, which has a roof over it, and is designed to be occupied by people lodging therein at night. [13A-3-20(3)]

A *building* is a structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and includes any vehicle, aircraft, or watercraft used for the lodging of persons or carrying on business therein. Each unit of a building consisting of two or more units separately occupied or secured is a separate building. [13A-3-20(1)]

Premises includes any building and any real property. [13A-3-20(5)]

A *residence* is a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest. [13A-3-20(6)]

A *vehicle* is a motorized conveyance which is designed to transport people or property. [13A-3-20(7)]

Use Notes

A court should not instruct on self-defense when there is no evidence to sustain the plea, or when the defendant's evidence showed that he did not act in self-defense. *Raines v. State*, 455 So. 2d 967 (Ala. Crim. App. 1984).

If there is any evidence, however slight, tending to support the allegation that the defendant acted in self-defense, then the issue should be submitted to the jury. *King v. State*, 478 So. 2d 318 (Ala. Crim. App. 1985).

The defendant bears no burden to prove self-defense. Once evidence of self-defense is present, the court should so instruct the jury where the defendant requests such an instruction. *Harper v. State*, 629 So. 2d 67 (Ala. Crim. App. 1993).

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