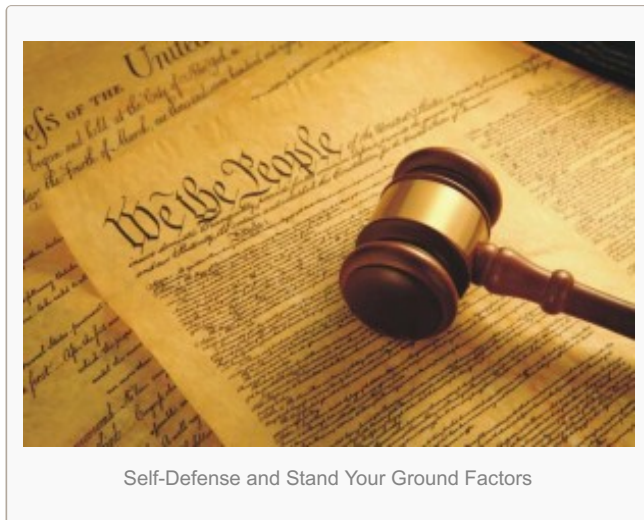


## Self-Defense and Stand Your Ground Factors

Col (Dr) Benjamin  
Findley

Avoidance and retreat are usually the best and initial strategy for handling any physical conflict self-defense situation, especially if you are carrying a concealed weapon. Think about this statement and whether or not you agree with it. Just because you avoid a confrontation does not mean that you are scared or weak or do not have the necessary skills or marksmanship to deal with it. It is just an intelligent, rational, and disciplined way of immediately dealing with someone who is threatening you, trying to shoot you, cut you with a knife, hit you with a baseball bat, run over you with a vehicle, or jab you with a broken beer bottle. IF you have a safe avenue of retreat, it makes sense to quickly exit or leave the area before you resort to using deadly force and, perhaps, escalate the confrontation. Anytime a gun enters the situation,

it will automatically escalate and usually get blown out of proportion. Why take even a small chance or risk harm to yourself and your loved ones? Some believe if nothing else, it will give you time to plan your counter-strategies, group resources, and/or seek reinforcements. Several do not accept this strategy and, of course, it is very situational and you must know the variables of each situation. Some believe it is a sign of weakness and/or your lack of power. It can become a macho thing. Maybe you have more to gain and less to risk by avoiding trouble, if at all possible. Of course, time is a major influencing variable and sadly we often do NOT have the luxury of time and have to act in seconds. It is an advantage to think ahead now about this before you are in an actual confrontation. I remember during the Gulf War of the 1990s studying "The Art of War" by Sun Tzu, the respected Chinese military strategist and author from the late sixth century BC. He strived to win the hearts and minds of enemies through peaceful and passive persuasion and knowing when to retreat and when to advance. He said "For to win one hundred victories in one hundred battles is not the acme of skill. To subdue the enemy without fighting is the highest level of skill." He said it is best to win without fighting. Matt Dillon and I understand this. Marshall Matt Dillon said to the good guys on the TV show "Gunsmoke" you best "Get out of Dodge," implying Dodge City, KS was dangerous and getting too rough at that moment. Sometimes he said this to bad guys also. Dillon knew he could easily handle the confrontation and gunfight, but only did so as a last resort after trying to avoid it.



### Factors That Support Legal Self-Defense

The point of discussing avoidance and retreat is to make you aware that it is just one possible consideration for you when in a self-defense situation. Research the applicable laws and know them for your jurisdiction. There are 32 Stand-Your-Ground (SYG) states in the U.S. that say you have NO duty to retreat and 18 states that DO impose the duty to retreat (non-SYG), in 2014 according to FindLaw. This changes regularly. Just some of the Non-SYG states in 2014 are: AR, CT, DE, HI, ME, MD, MA, NJ, NY, OH, RI. Just some of the SYG states in 2014 are: AL, AK, AZ, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, UT, and WV. The main, overall central focus of SYG is that you do NOT have the duty to retreat in self defense. It is evident, however, from the polarity among the states' SYG laws that there are different understandings and values of the principle when lethal force is involved. Certainly, SYG is an important part of self defense. The SYG law (in laymen terms) states that you have the right to use force in self defense without the

obligation to flee when certain conditions and factors are present.

The specific conditions and rules pertaining to self-defense vary from jurisdiction to jurisdiction. This article offers explanations and opinions of the broad concepts that make up self-defense law in the US from my non-lawyer layman's perspective, so you should check with a lawyer and the laws of your particular state and jurisdiction to understand the specific requirements for a claim of self-defense. My goal is to provide some general information and my opinions as just a starting point for you for further exploration of legal self-defense factors. While the exact rules differ between states, the considerations are largely the same. There are other required factors that must be considered and that are necessary to justify your legal claim of self defense, if you are involved in a self-defense shooting.

In addition to retreating and avoiding the use of deadly force, I believe, generally, there are at least four factors which usually must be met to support your claim of self-defense and your legal use of lethal force. In 18 duty-to-retreat states, they are NOT satisfied if you meet these 4 self-defense factors, because they also expect you to prove that there did NOT exist a safe avenue for retreat. So, it is NOT sufficient that one merely claims to have used force to defend himself or another, he will need to show that the factors for justification were satisfied and that conditions were met in order to be protected under law. By case law in some states (like my state Florida), to establish a claim of self-defense the defendant must prove by a "preponderance of evidence" to a judge at a preliminary hearing, rather than to a jury at trial, whether or not there is enough evidence to require a trial. It is my understanding that the judge only must find in the preliminary hearing that there is "Probable Cause" that a crime was committed, for the case to move forward to trial. Probable Cause is simply, to me a non-lawyer layman, whether or not a prudent person could reasonably believe that a crime was probably committed and that the defendant probably committed it. If and when the case moves forward to trial and the defendant presents evidence of self-defense, the State Prosecutor is required to prove beyond a reasonable doubt that the defendant did NOT act in self-defense.

Keep this information and ALL of these factors in mind WHEN YOU ARE DECIDING IF YOU NEED TO PRESS THE TRIGGER AND USE DEADLY FORCE in your encounter. Other than the retreat consideration, the **4 factors to consider** are (1) Reasonableness; (2) Imminent Danger; (3) Proportionate Force; and (4) Innocence. Here are some general ideas and opinions to think about from this non-lawyer layman:

**1. REASONABLENESS – What would a "reasonable person" have done under the same circumstances, knowing what you knew at the time?** Can you imagine the variety of definitions, interpretations, and disagreements for the term "reasonable person." This subjectivity is scary if your life is at stake. The "Reasonable Person Doctrine" is an accepted standard of behavior and a community's judgment as to how a typical citizen should behave in situations that might pose a threat of harm (through action or inaction). The standard holds that each person owes a duty to behave as a reasonable person would under the same or similar circumstances. Its definition supposes that a reasonable person will objectively and subjectively weigh accepted factors before acting, like the risk of harm to others his actions might create, the extent of risk so created, and the likelihood such risk will actually cause harm to others. The intent is to be a more objective standard that allows the law to behave in a uniform, foreseeable, and neutral manner when attempting to determine liability and if the use of force was correctly applied. Sounds acceptable, but good "luck" with that. Some examples are: Did you act reasonably when you drew your handgun? Was it reasonable to fire 4 shots? What is a sufficient level of force or violence when defending yourself? Would it have been reasonable for you to have taken another action, use non-lethal force (e.g. OC pepper spray), or leave before shooting? Remember, you have about 3 or 4 seconds to analyze your situational variables and make critical decisions. Recognize that SYG laws do not change the criteria for claiming legitimate self-defense or the use of lethal force. Many laymen, including myself, sometimes overlook this. It is not enough to say you thought you saw a gun or that you were in fear for your life. SYG does not allow you to kill or severely injure someone based on an irrational fear. The specifics of the situation have to be such that a "reasonable person" would feel and respond the same way you did. Several state statutes say a person is justified in the use of deadly force and does NOT have a duty to retreat if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony (definition varies by state, but

e.g. murder, manslaughter, sexual battery, robbery, burglary, arson, kidnapping, aggravated assault, any felony that involves the use or threat of physical force or violence.) Of course, this has been interpreted differently over the years. As a defendant in a shooting, your task is to show and communicate succinctly to the judge and/or jury that that you are a responsible armed citizen, given your experience, education and training, values, and background... and that your decision to use deadly force in self defense was reasonable. Your action to shoot and save your life was what any "reasonable person" would have done under the same circumstances and you had no other choice. Be careful!

## **2. IMMINENT DANGER – The threat of death or great bodily harm must be about to happen very soon...**

**IMMEDIATELY.** As a general rule, this non-lawyer layman understands that self-defense only justifies the use of force when it is used in response to the use of unlawful force by another in the present situation or an immediate threat. The person must reasonably believe that force is **immediately necessary for the purpose of protecting himself against the use of unlawful force by another.** I suppose the threat can be verbal, as long as it puts the intended victim in an immediate fear of physical harm. Generally, it is my non-lawyer understanding that USUALLY offensive WORDS ALONE (regardless of how threatening, abusive, derogatory, or insulting they may be) without an accompanying threat of immediate physical harm, do NOT justify the use of deadly force in self-defense.

Also, recognize that the use of force in self-defense generally loses justification once the threat has ended. So, if an aggressor assaults a victim but then ends the assault and indicates that there is no longer any threat of violence (like by turning his back on you and running away), then the threat of danger has ended. Any use of force by you the victim against the assailant at that point would be considered retaliatory and not self-defense. Be careful!

**3. PROPORTIONATE RESPONSE – The amount or degree of force used in self-defense must be no greater than necessary and match the level of the threat presented.** A person can only employ as much force as required in any particular situation, given its variables, to remove the threat. I am not aware of any standardized, universally-accepted rules that define or specify X amount of force present equates to Y amount of force to use. It varies. If the threat involves deadly force, to me the person defending themselves can use deadly force to counteract the deadly-force threat. If, however, the threat involves only minor force and the person claiming self-defense uses more force that could cause grievous bodily harm or death, the claim of self-defense will fail. There probably will be a claim of use of excessive force. I understand that someone cannot kill or inflict great bodily injury on another based on the speculative fear of their possible harm or something that might happen to them, so be aware of this when deciding on the use of deadly force in self defense. To this non-attorney, even when you are in your own home, premises or business, you cannot automatically use deadly force against an intruder. I understand that you can only use the appropriate level of deadly force when it is reasonably necessary to prevent an imminent threat of death or great bodily harm, and you were innocent and not the aggressor.

**4. INNOCENCE -** The defendant that uses deadly force in self defense **must NOT have been the aggressor or instigator who voluntarily provoked, entered, or continued the conflict leading to deadly force.** More simply, you must be innocent and not have initiated the attack. You must be without fault in starting the conflict. One of the hallmarks of our legal system is the presumption that you are innocent until proven guilty. The judge and/or jury must assume you are innocent and did not initiate the attack until they are shown otherwise. Who should bear the burden of proving or disproving self-defense in criminal cases and by what standards? In 48 of our 50 states (including Florida), it is my understanding that after the Defense introduces any evidence of possible self-defense, the entire burden is on the Prosecution who must disprove self-defense beyond a reasonable doubt. So, the prosecution must prove all the elements of the crime beyond a reasonable doubt, in an ordinary criminal prosecution. I think It is the prosecutor's job to prove a defendant was the aggressor and is guilty, not a defendant's job to prove that he or she is innocent. Check my layman's legal understanding of this for your jurisdiction. Some of the old English common law held that the Defense and the accused must prove self-defense by a preponderance of the evidence, and I believe Ohio and Louisiana still follow that rule. So, is it worse for one guilty killer to go free or for one person who killed in proper self-defense to go to prison for life? Who should really have the burden of proof and what is necessary? Can someone be acquitted for a self-defense claim without the Defense having the burden of proof to show and claim self-defense? Is it the preponderance of evidence, beyond a reasonable doubt, or clear and convincing evidence that is or should be

required? So many questions and challenges, so we must go to law school and even then there probably will be uncertainties and variations.

It is my non-lawyer understanding that the initial aggressor in a fight is not allowed to claim self defense. By beginning the fight, the defendant essentially forfeits his right to use that defense. However, I understand that there are exceptions and it depends if you are in a SYG state or not, etc. Again, seek legal counsel for a more definitive answer in your jurisdiction.

**NOTE: The Castle Doctrine** – Even in states that require a person to retreat from the threat of imminent harm before defending themselves, a person can often use deadly force against someone who unlawfully enters their home- and in some states cars or workplaces. The right to protect themselves, other people, and their property by force and sometimes by deadly force may exist. Like most of these laws, the exact result will vary according to the state, jurisdiction, and the specific facts of the case, so be sure and consult an attorney in your state or jurisdiction. The laws differ from state to state, and what may be considered self defense in one state, might be grounds for a murder or manslaughter indictment in another.

Considering the above factors then, if you are involved in a conflict situation using deadly force and are in a SYG state and claim self defense when you did not retreat, then you must still present evidence that your (1) behavior and actions were “reasonable”, (2) that you were facing an imminent threat of death or great bodily harm that was going to happen right then soon, (3) that you used no more force than was necessary, AND (4) that you are innocent and without fault in starting the conflict. It is my understanding, as a layman with a very limited legal background, that if you as a defendant fail to show any one of these factors, your claim of self defense will fail. Your self-defense claim does not replace the SYG legal protection and claim. If you are in a SYG state and you argue for self defense, you are arguing self defense, just as you would in a duty to retreat state. The only difference is you only have the 4 factors to deal with and not the duty to retreat.

Recognizing the necessity to consider the above 4 factors and situational variables, as well as the key consideration of the duty to retreat or not, I prefer to stand my ground and not retreat and exercise my inherent right to keep and bear arms for my self defense.

What are your thoughts about Stand Your Ground and self defense?

Continued success!

**Photo by author.**

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