

**THE SECOND AMENDMENT
WHO CARES?**

DEVELOPING A PERSONAL PROTECTION PLAN

- A. Proficient with Firearm
- B. Avoid violent encounters
- C. Acute awareness of surroundings
- D. Only guaranteed method of surviving a violent encounter is to avoid it in the first place
- E. "Reasonable Person Test"
- F. Is the situation worth going to jail for? Dying for?
- G. Use of force – last resort

SITUATIONAL AWARENESS

- A. Color codes
 - 1. White – unaware of anything around you
 - 2. Yellow – aware – alert – walk faster – avoid arguments
 - 3. Orange – heightened state of awareness – ID cover and exit strategies – call out!
 - 4. Red – imminent action – escape – retreat – take cover – defend
- B. "Tueller Drill"
Reaction time – 3 seconds or more (3 seconds attacker covers 50 feet')

VICTIM

- A. You are being watched!
 - 1. Do not walk slowly – faster than the crowd
 - 2. Heads up!
 - 3. Walk with a "purpose"

4. Situational awareness

5. No phone

HOME DEFENSE CHECK LIST

- A. Are the front and back lights on?
- B. Is the alarm on?
- C. Is the firearm appropriately staged to prevent unauthorized access? (Keep in mind that You will need to follow federal and state safe storage laws.)
- D. Where is the phone and how do I dial 911 (in the dark, with a head full of cobwebs)!
- E. If the home is invaded, what room do we move to?
- F. If we need to exit the home, which neighbor's house to we go to?
- G. What commands do we give!
- H. How do I identify a friend from a foe?
- I. What's a family code word to identify whom and where you are?
- J. How do we inform our family that we'll be coming home late, or that a guest will be in the home?
- K. Does each family member know how to dial 911?
- L. Does each age-appropriate family member know how to use the home defense firearm?
- M. What do we do when the police arrive?

UNIVERSAL SAFETY RULES

- A. Treat all guns as though they are always loaded.
- B. Never point your gun at anything that you are not willing to destroy!
- C. Keep your finger OFF the trigger and outside the trigger guard until you are on target and have made the decision to shoot!
- D. Always be sure of your target and beyond!

DEADLY FORCE

“Deadly force may only be used when there is an immediate, and unavoidable danger of death or great/grave bodily harm to an innocent person, where no other option exists other than the use of deadly force.” Michael Martin, “Concealed Carry Fundamentals”, 2nd Ed p. 158.

Also see MS Code § 97-3-15 (Attached)

RULES GOVERNING THE USE OF DEADLY FORCE OUTSIDE THE HOME

- A. Must be in immediate fear of death or great/grave bodily harm for yourself or another person.
- B. Must be an innocent party. You cannot be seen as the person who started or escalated the conflict.
- C. No lesser force is sufficient or available to stop the threat.
- D. Must have no reasonable means of retreat or escape.*

*The obligation to retreat has been removed in a number of states through enhanced “Castle Doctrine” laws, however, it is your obligation to understand your rights and obligations under your state’s laws.

MEMORANDUM

Self Defense and Use of Deadly Force in Mississippi

To: Robert

From: Billy

Date: 7/6/22

INTRODUCTION: Ms Code §97-3-15 (attached) provides for the lawful killing of a person when justified by self-defense. The statute is our "stand your ground law" or "shoot first" law. The statute is poorly written and, while it does very clearly remove the duty to retreat, one must still look to case law prior to the statute and after the statute when analyzing the legality of the use of deadly force. Below you will find a survey of the case law both before and after the 2006 law. The model jury instructions provided by the Mississippi Supreme Court are also instructive:

INSTRUCTION NO. Self Defense

The court instructs the jury that to make a killing justifiable on the grounds of self-defense, the danger to the defendant must be either actual, present and urgent, or the defendant must have reasonable grounds to believe that the victim intended to kill the defendant or to do him some great bodily harm, and in addition to this, he must have reasonable grounds to believe that there is imminent danger of such act being accomplished. It is for the jury to determine the reasonableness of the grounds upon which the defendant acts. If you, the jury, unanimously find that the defendant acted in self-defense, then it is your sworn duty to return a verdict in favor of the defendant.

INSTRUCTION: Use of Deadly Force

If you believe from the evidence that the deceased was a much larger and stronger person than the Defendant, and was capable of inflicting great and serious bodily harm upon the Defendant with his/her hands, and that the Defendant had reason to believe and did believe as a man of ordinary reason that he/she was then and there in danger of such harm at the hands of the deceased and used a [deadly weapon], with which he/she fatally [injured, stabbed, other description] the deceased, to protect himself/herself from such harm, then the Defendant was justified, and your verdict shall be "not guilty" even though the deceased may not have been armed.¹

¹ *Robinson v. State*, 858 So. 2d 887 (Miss. Ct. App. 2003). NOTE (This model jury instruction comes from a 2003 case decided three (3) years prior to our stand your ground statute. The right to self defense was well established by jurisprudence prior to its codification in 2006 and that jurisprudence remains, for the most part, good law.

Self-defense may be used as a defense if the danger to the defendant is actual, present, and urgent, or the defendant has reasonable grounds to believe the victim intends to kill or to do him or her some great bodily harm, and there is imminent danger of that happening.² The danger is imminent and apparent if there is an overt, actual demonstration to take life or do a great personal injury, as evidenced by the adversary's conduct that makes the defendant's acts necessary for self-preservation.³ The defendant might be justified in using a weapon to defend himself or herself where his or her attacker, although only using his or her fists, is much larger in size than the defendant.⁴ If the defendant is the aggressor, the defense of self-defense is not available even where he or she must resort to defending himself or herself against an unexpectedly aggressive intended victim.⁵

A defendant does not lose the right to claim self-defense although he or she could have fled in order to avoid the threat to his or her safety. "Flight is a mode of escaping danger to which a party is not bound to resort, so long as he [or she] is in a place where he [or she] has a right to be, and is neither engaged in an unlawful, nor the provoker of, nor the aggressor in, the combat. In such case he [or she] may stand his [or her] ground and resist force by force, taking care that his [or her] resistance be not disproportioned to the attack."⁶ However, the defense of self-defense is not available to the defendant if he or she becomes the aggressor by arming himself or herself in advance with the intent of using the weapon, if necessary, to overcome his

² *Anderson v. State*, 571 So. 2d 961 (Miss. 1990).

³ *Griffin v. State*, 495 So. 2d 1352 (Miss. 1986).

⁴ *Manuel v. State*, 667 So. 2d 590, 592 (Miss. 1995) ("[W]here an attacker is much larger than the one attacked, the nature of the assault, though only with fists, might be such as to reasonably show that the one being attacked is in danger of great bodily harm, and therefore is justified in the use of a deadly weapon to defend herself.").

⁵ *Dean v. State*, 746 So. 2d 891 (Miss. Ct. App. 1998).

⁶ *Haynes v. State*, 451 So. 2d 227, 229 (Miss. 1984) (quoting *Long v. State*, 52 Miss. 23, 34, 1876 WL 5157 (1876)).

or her adversary⁷ or by arming himself or herself after leaving an altercation and returning with the intent to use his or her weapon.⁸

In *Anderson v. State*,⁹ the defendant, who had been tried for and convicted of deliberate-design murder, aggravated assault, and being a felon in possession of a firearm, asserted self-defense. Over the defense's objection, the trial judge granted the State's flight instruction. The Mississippi Supreme Court held that no evidence was introduced to support the assertion that the defendant's flight was caused by something other than consciousness of guilt. The defendant never testified he left the scene because he was worried about retaliation. The trial court determined that the evidence of flight was probative and did not err in allowing the jury to consider it. Justice Dickinson dissented, arguing that the Mississippi Supreme Court should abolish flight instructions.¹⁰

In 2006, the Mississippi Legislature amended the justifiable homicide statute¹¹ by adding the so-called "Castle Doctrine." The amended statute is an attempt by the Legislature to enact a broad Castle Doctrine (other states have added similar, often less sweeping, provisions to their statutes) that will give citizens the right to use deadly force under several sets of circumstances. It remains to be seen exactly what the scope of the law will be once the appellate courts have had enough cases to sort it out.

The statute sets out several scenarios in which the use of deadly force is permitted.¹² One criterion has to do with the location of "the person who used defensive force," in the language of the statute.¹³ One who is inside, or in the immediate vicinity, of a vehicle, a dwelling, or a place

⁷ *Anderson v. State*, 571 So. 2d 961 (Miss. 1990).

⁸ *Wade v. State*, 724 So. 2d 1007 (Miss. Ct. App. 1998).

⁹ *Anderson v. State*, 185 So. 3d 966 (Miss. 2015).

¹⁰ *Anderson v. State*, 185 So. 3d 966 (Miss. 2015).

¹¹ Miss. Code Ann. § 97-3-15.

¹² Miss. Code Ann. § 97-3-15.

¹³ Miss. Code Ann. § 97-3-15(3).

Castle Doctrine, but the court refused it. The court of appeals reversed, holding that “Thomas was entitled to a jury instruction that properly covered his theory of defense under the Castle Doctrine.”¹⁷ Thomas's two subsequent retrials each ended in mistrials.

Other cases show the uncertain application of the Castle Doctrine. For example, in August 2008, Sabrinder Pannu shot and killed James Hawthorne outside a convenience store in Jackson. Hawthorne had stolen some beer and was in a car, leaving the scene, when Pannu killed him.

The Hinds County District Attorney decided to charge Pannu with murder and with firing into an occupied vehicle. The prosecution argued that no one's life was in danger as Hawthorne drove away. But Pannu was acquitted of both charges by a jury. Shortly after the Hawthorne homicide, Terrance Prior used a gun to rob another Hinds County convenience store. The clerk ran after the robber and fatally shot him. This time, however, authorities declined to charge the clerk, citing the Castle Doctrine.

A defendant may also have a right to assert self-defense where he or she is the victim of an unlawful arrest. The right is only available where the arrest is illegal, and both the defendant and his or her arrestor have reason to know this or where the arrestor uses excessive force.¹⁸ In addition, the defendant may only use such reasonable force as is necessary to effect his or her escape and cannot do this by use of a deadly weapon if there is no greater danger than the unlawful arrest.¹⁹

¹⁷ *Thomas v. State*, 75 So. 3d 1112, 1116 (Miss. Ct. App. 2011).

¹⁸ *Murrell v. State*, 655 So. 2d 881, 888 (Miss. 1995) (“There is no right to resist an arrest based upon good faith reliance on a duly issued arrest warrant where the arrestee has no reasonable basis to conclude that the warrant was issued in bad faith.”).

¹⁹ *Murrell v. State*, 655 So. 2d 881 (Miss. 1995).

A defendant may not use deadly force in self-defense “based upon a subjective fear of great bodily injury unless it is determined by a jury that this fear is reasonable under the circumstances.”²⁰ The Mississippi Supreme Court has recognized a theory of “imperfect self-defense” which reduces an intentional killing to manslaughter where it was committed without malice but with a bona fide, although unfounded, belief that it was necessary in order to prevent death or great bodily harm.²¹ Whereas a defendant's “apprehension must be objectively reasonable before his [or her] homicide is justified,” the homicide may be manslaughter when the defendant's “apprehension is only subjectively, in his or her own mind, reasonable.”²² Whether an instrument is to be considered deadly is a question of fact which must be determined by the jury.²³ Instruments which are not ordinarily considered deadly weapons can become deadly weapons when used in such a manner which would likely produce death.²⁴ The defendant is judged by a “reasonable person” standard rather than by his “own particular mental frailties.”²⁵ The test is whether a reasonable person acting under the same or similar circumstances would consider himself or herself to be in danger and to have reasonable cause to kill the victim for his or her own protection.²⁶ This standard applies even to cases where a battered woman kills her abuser.²⁷

²⁰ *Ellis v. State*, 708 So. 2d 884, 887 (Miss. 1998).

²¹ *Cook v. State*, 467 So. 2d 203, 207 (Miss. 1985).

²² *Cook v. State*, 467 So. 2d 203, 207 (Miss. 1985).

²³ *Reynolds v. State*, 776 So. 2d 698 (Miss. Ct. App. 2000).

²⁴ *Pulliam v. State*, 298 So. 2d 711 (Miss. 1974) (holding that the use of feet and fists can constitute deadly weapons if used in a manner likely to produce death).

²⁵ *Hart v. State*, 637 So. 2d 1329, 1339 (Miss. 1994) (abrogated on other grounds by, *Taylor v. State*, 2020 WL 103757 (Miss. 2020)).

²⁶ *Buchanan v. State*, 567 So. 2d 194 (Miss. 1990).

²⁷ *Lentz v. State*, 604 So. 2d 243 (Miss. 1992). See also *May v. State*, 460 So. 2d 778, 785 (Miss. 1984) (“[T]he battered wife syndrome ... does not ... supplant accountability. When a wife kills her husband under circumstances where, objectively speaking, it was not reasonably necessary that she do so in her own self-defense, she should not expect acquittal at the hands of our law, no matter how long she may have been a battered wife.”).

The issue of whether the defendant has acted justifiably in self-defense is one for the jury to decide.²⁸ The court should be careful when granting an instruction which tells the jury that the defendant is precluded from claiming self-defense because such an instruction is almost never proper.²⁹ The defendant cannot use more force to protect himself or herself than reasonably appears necessary, and where he or she “repels an assault with a deadly weapon, he [or she] acts at his [or her] own peril and the question of whether he [or she] was justified in using the weapon is for determination by a jury unless there is no reasonable inference in the evidence except that the use of the deadly weapon appeared necessary to protect the person from death or great bodily harm at the hands of his [or her] assailant.”³⁰ The State has the burden of proving that the defendant did not act in self-defense, and the jury should be so instructed.³¹

In addition to self-defense, defense of others is available to the defendant as a defense where he or she uses force reasonably believing that another person may be in danger of imminent death or great bodily injury.³² Another defense, defense of property, allows a landowner to use “such force as is reasonably necessary to protect his [or her] property or evict trespassers from his [or her] property.”³³ In protecting his or her property, the defendant cannot use unreasonable means or excessive force, which is not reasonably necessary.³⁴ An agent of the owner has the same right to use reasonable force to protect the property as does the owner.³⁵

²⁸ *Bailey v. State*, 785 So. 2d 1071 (Miss. Ct. App. 2000).

²⁹ *Thompson v. State*, 602 So. 2d 1185, 1190 (Miss. 1992) (“The reason for permitting a self defense theory to be decided by a jury far outweighs the reasons for estopping one from asserting this most basic right. The right of self defense is firmly ingrained in the common law and our heritage. This alone should persuade prosecutorial authorities to stop, think, ponder, and assess the facts carefully, before running the risk of reversal by requesting this often condemned charge.”).

³⁰ *Griffin v. State*, 495 So. 2d 1352, 1354 (Miss. 1986).

³¹ *McGee v. State*, 820 So. 2d 700 (Miss. Ct. App. 2000).

³² *Sheppard v. State*, 777 So. 2d 659 (Miss. 2000).

³³ *Tate v. State*, 784 So. 2d 208, 211 (Miss. 2001).

³⁴ *Anderson v. Jenkins*, 220 Miss. 145, 70 So. 2d 535 (1954).

³⁵ *Higgenbotham v. State*, 237 Miss. 841, 116 So. 2d 407 (1959).

West's Annotated Mississippi Code

Title 97. Crimes

Chapter 3. Crimes Against the Person (Refs & Annos)

Miss. Code Ann. § 97-3-15

§ 97-3-15. Justifiable homicide

Currentness

- (1) The killing of a human being by the act, procurement or omission of another shall be justifiable in the following cases:
- (a) When committed by public officers, or those acting by their aid and assistance, in obedience to any judgment of a competent court;
 - (b) When necessarily committed by public officers, or those acting by their command in their aid and assistance, in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty;
 - (c) When necessarily committed by public officers, or those acting by their command in their aid and assistance, in retaking any felon who has been rescued or has escaped;
 - (d) When necessarily committed by public officers, or those acting by their command in their aid and assistance, in arresting any felon fleeing from justice;
 - (e) When committed by any person in resisting any attempt unlawfully to kill such person or to commit any felony upon him, or upon or in any dwelling, in any occupied vehicle, in any place of business, in any place of employment or in the immediate premises thereof in which such person shall be;
 - (f) When committed in the lawful defense of one's own person or any other human being, where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished;
 - (g) When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed;
 - (h) When necessarily committed in lawfully suppressing any riot or in lawfully keeping and preserving the peace; and
 - (i) When necessarily committed in the performance of duty as a member of a church or place of worship security program as described in Section 45-9-171.

(2)(a) As used in subsection (1)(c) and (d) of this section, the term "when necessarily committed" means that a public officer or a person acting by or at the officer's command, aid or assistance is authorized to use such force as necessary in securing and detaining the felon offender, overcoming the offender's resistance, preventing the offender's escape, recapturing the offender if the offender escapes or in protecting himself or others from bodily harm; but such officer or person shall not be authorized to resort to deadly or dangerous means when to do so would be unreasonable under the circumstances. The public officer or person acting by or at the officer's command may act upon a reasonable apprehension of the surrounding circumstances; however, such officer or person shall not use excessive force or force that is greater than reasonably necessary in securing and detaining the offender, overcoming the offender's resistance, preventing the offender's escape, recapturing the offender if the offender escapes or in protecting himself or others from bodily harm.

(b) As used in subsection (1)(c) and (d) of this section the term "felon" shall include an offender who has been convicted of a felony and shall also include an offender who is in custody, or whose custody is being sought, on a charge or for an offense which is punishable, upon conviction, by death or confinement in the Penitentiary.

(c) As used in subsections (1)(e) and (3) of this section, "dwelling" means a building or conveyance of any kind that has a roof over it, whether the building or conveyance is temporary or permanent, mobile or immobile, including a tent, that is designed to be occupied by people lodging therein at night, including any attached porch.

(3) A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling, or against a vehicle which he was occupying, or against his business or place of employment or the immediate premises of such business or place of employment, if the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle, business, place of employment or the immediate premises thereof or if that person had unlawfully removed or was attempting to unlawfully remove another against the other person's will from that dwelling, occupied vehicle, business, place of employment or the immediate premises thereof and the person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred. This presumption shall not apply if the person against whom defensive force was used has a right to be in or is a lawful resident or owner of the dwelling, vehicle, business, place of employment or the immediate premises thereof or is the lawful resident or owner of the dwelling, vehicle, business, place of employment or the immediate premises thereof or if the person who uses defensive force is engaged in unlawful activity or if the person is a law enforcement officer engaged in the performance of his official duties.

(4) A person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force under subsection (1)(e) or (f) of this section if the person is in a place where the person has a right to be, and no finder of fact shall be permitted to consider the person's failure to retreat as evidence that the person's use of force was unnecessary, excessive or unreasonable.

(5)(a) The presumptions contained in subsection (3) of this section shall apply in civil cases in which self-defense or defense of another is claimed as a defense.

(b) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant acted in accordance with subsection (1)(e) or (f) of this section. A defendant who has previously been adjudicated "not guilty" of any crime by reason of subsection (1)(e) or (f) of this section shall be immune from any civil action for damages arising from the same conduct.

Credits

Laws 1983, Ch. 382, § 1, eff. January 1, 1984; Laws 2006, Ch. 492, § 1, eff. July 1, 2006. Amended by Laws 2016, Ch. 421, (H.B. No. 786), § 4, eff. from and after passage (approved April 15, 2016).

Notes of Decisions (321)

Miss. Code Ann. § 97-3-15, MS ST § 97-3-15

The Statutes and Constitution are current with laws from the 2022 Regular Session effective through June 30, 2022. Some statute sections may be more current, see credits for details. The statutes are subject to changes provided by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

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