

CHAPTER EIGHT: JUSTIFICATIONS

INTRODUCTION

Justifications are otherwise criminal acts that society approves and encourages under the circumstances. In Illinois, justifications for criminal action include: self-defense, defense of the home or property, police use of force, resisting unlawful arrest, and the necessity defense. In the following pages, I will outline the statutes regarding each of the defenses. I will also provide a case study for each defense to give the reader the chance to determine whether or not the defendant may rely on the justification under study.

RULE OF SELF-DEFENSE IN ILLINOIS

(720 ILCS 5/7-1) Sec. 7-1. provides that “a person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. In Illinois, a person has a lawful right to use deadly force “only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself, or another, or the commission of a forcible felony.”

An individual is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.” However, the justification of self-defense is not available to a person who:

- (a) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or
- (b) Initially provokes the use of force against himself, with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or
- (c) Otherwise initially provokes the use of force against himself, unless:
 - (1) Such force is so great that he reasonably believes that he is in imminent danger of death or great bodily harm, and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or
 - (2) In good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force ((720 ILCS 5/7-4) Sec. 7-4.)

The use of self defense is justified only if the defender meets three requirements which demonstrate that self-defense was necessary and the amount of force used was appropriate:

1. The force used must seem necessary to prevent the attack;
2. The force used must have been proportional to the gravity of the attack; and
3. The threat of force by the attacker must have been immediate and imminent.

CASE STUDY

***People v. Lee* 797 N.E.2d 1137** The evidence elicited at defendant's jury trial showed the following. On the evening of February 6, 1997, defendant and several of his friends went to a party at Sky Harbor Inn in Springfield. The group took along a handgun for protection, but initially left it in the car. Approximately one hour after the group arrived at the party, twin brothers Wile and Willis Trotter, who were allegedly known for carrying guns, also arrived at the

party. Defendant presented evidence that Wile and Willis had previously shot at defendant and his friends, pointed a gun at one or more of them without shooting, and shot at other people. Following the arrival of Wile and Willis, defendant and two of his friends went to their cars to get some drinks. At this time, defendant retrieved the handgun from his friend's car and put it in his waistband. The three then returned to the party.

Shortly thereafter, defendant's group decided to leave the party. Once outside, Willis began arguing with one of defendant's friends. The two yelled at each other and exchanged profanities. According to the statements of defendant and two of his friends, Willis appeared to reach for a gun inside his pocket during the argument. Defendant stated that because he believed Willis was reaching for a gun, he pulled the handgun from his waistband and shot Willis.

Defendant also believed that Wile was reaching for a gun in his coat. Defendant shot Wile three times. Defendant and his group then fled the scene. When police arrived, Wile told them that two of the others in the group had shot him. Police found no weapons at the scene. Shortly thereafter, the police stopped a car and a passenger, later identified as defendant, ran from the car toward some nearby houses. Police searched the remaining members of defendant's group who were also in the car, but did not find any weapons. The group was taken to the police station for questioning. Defendant was later arrested. He initially claimed that he was inside the Sky Harbor Inn at the time of the shooting. When police told him other witnesses contradicted this claim, he signed a statement where he admitted to shooting Wile and Willis. However, he claimed the shootings were in self-defense.

According to Illinois' rules of self-defense, did the defendant have the right to claim self-defense?

DEFENSE OF HOME AND OTHER PROPERTY

(720 ILCS 5/7-2) Sec. 7-2. provides that “a person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon a dwelling. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if:

- (a) The entry is made or attempted in a violent, riotous, or tumultuous manner, and he reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to, him or another then in the dwelling, or
- (b) He reasonably believes that such force is necessary to prevent the commission of a felony in the dwelling.”

(720 ILCS 5/7-3) Sec. 7-3. provides that “a person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than a dwelling) or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.”

CASE STUDY

Ralph Foster was a young man about twenty-nine years of age, and, excepting about three years' absence while working in Chicago, had resided during the whole of his lifetime in the village of Lovington, Illinois. Plaintiff... was about the same age, and these two young men had grown up

together, were schoolmates and had been closely associated all their lives. Plaintiff's... wife was a first cousin of the deceased and their families were intimate and on friendly terms. Plaintiff in error was an official of the Shepherd National Bank, located at Lovington. The father of Ralph Foster had been a merchant in Lovington and had died a few years before the death of his son. The deceased at the time of his death was acting as trustee under the last will and testament of his father, and as such trustee was conducting the mercantile business left by his father. The store building in which this business was conducted was located at the north-east corner of the intersection of the streets known as State and Broadway. The residence of plaintiff... was located at the north-west corner of the intersection of the streets known as State and Washington, three blocks west of the Foster store. Ralph Foster's residence was located across Washington street east from the residence of Homer Shepherd and about half a block north. The residence of the mother of Ralph Foster was located one block north and one or one and one-half blocks west of the residence of plaintiff... About eleven o'clock on the night of August 19, 1909, the reports of three gun shots were heard by persons in the vicinity of the residence of plaintiff..., and a few minutes thereafter the dead body of Ralph Foster was found lying on the sidewalk on the north side of State street, immediately south of the residence of Homer Shepherd. The body was lying on its back, with the feet about the middle of the sidewalk and extended towards the north-west, and the head lying south of the south line of the sidewalk and extended towards the south-east. Upon examination it was discovered that Foster had been shot in the back, the bullet entering just above the right shoulder-blade or scapula and about four inches to the right of the spinal column. It was later learned that the bullet had taken a downward course through the lungs and supposedly through the right ventricle of the heart, and was found located immediately underneath the skin four inches to the left of the navel.

Ralph Foster was last seen alive at about 10:30 o'clock that evening on Broadway street, near his store building. At the time the body was found it was discovered that the two lower buttons in the lapel of the trousers were unbuttoned and the trousers gaping. The theory of the plaintiff... is that the deceased left his store building and started to go to the residence of his mother to spend the night there, and while walking along the sidewalk south of plaintiff's...home he stopped under a tree, with his back toward the south side of the Shepherd residence, to urinate, and was shot from the south window of the second-story west room of the Shepherd house and killed at the place where his body was found. Plaintiff...does not deny the killing, but defends upon the theory that Foster had come across the street from his own home for the purpose of frightening him by pretending to be a burglar, and that he fired the shots from the west window of his bed-room believing that deceased was a burglar in the act of committing a burglary upon his residence at the time, and that he acted in defense of his family and his property.

Did the plaintiff have the right to use deadly force to protect his home?

ILLINOIS' RULE ON POLICE USE OF FORCE

Under state law, "deadly force is that force which is likely to cause death or great bodily harm 720 ILCS 5/7-8 (2002). Under Illinois law, the use of a firearm equipped with special less-than-lethal ammunition does not constitute deadly force. 720 ILCS 5/7-8 (b) (1998) provides that "[an] officer's discharge of a firearm using ammunition designed to disable or control an individual without creating the likelihood of death or great bodily harm shall not be considered force likely to cause death or great bodily harm within the meaning of Sections 7-5 and 7-6 [720 ILCS 5/7-5 and 5/7-6 (1998)]." Under federal law, it is an open question whether or not bean bag rounds, or other less lethal technology, constitute "deadly force."

In Illinois the authority of a police officer to use force in making an arrest is governed by the provisions of Article I, Section 6 of the Illinois Constitution and 720 ILCS 5/7-5 (2002). That statute provides in pertinent part that “[a] peace officer (or any person whom he has summoned or directed to assist him), need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest.”

If an officer conducts a stop of a person based on reasonable suspicion in accordance with the requirements of *Terry v. Ohio*, 392 U.S. 1 (1968)¹, force can be used to effectuate the stop (725 ILCS 5/107-5 and 5/107-14 (2002)). However, if an officer is making a Terry stop he should be mindful that under the balancing test used to assess the reasonableness of a given use of force, it is unlikely that substantial force would be found to be warranted. Officers are, however, able to use force necessary to restrain the subject of a Terry stop and to protect themselves from the subject. Although flight from police alone is insufficient for a Terry stop, flight combined with other factors, such as its occurrence in a high crime area upon noticing police can support a stop. However, officers must be aware that the area is a high crime area.

720 ILCS 5/7-5 (2002), entitled “Peace Officer’s Use of Force in Making Arrest,” states:

(a) . . . An officer is justified in the use of any force which he/she reasonably believes to be necessary to defend self or another from bodily harm while making the arrest. However, he/she is justified in using force likely to cause death or great bodily harm only when he/she reasonably believes that such force is necessary to prevent death or great bodily harm to self or such other person, or when he/she reasonably believes both that:

- (1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and
- (2) The person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

While the term “forcible felony” is defined in 720 ILCS 5/2-8 (2002), not every forcible felony provides a basis for the use of deadly force. For purposes of deadly force, “forcible felony” means first degree murder, second degree murder, aggravated criminal sexual assault, criminal sexual assault, predatory criminal sexual assault of a child, robbery, aggravated arson, arson, aggravated kidnapping, kidnapping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement, and any other felony, which involves the use of threat of physical force or violence against any individual (heinous battery, home invasion, aggravated discharge of a firearm).

ILLINOIS’ RULE ON RESISTING UNLAWFUL ARREST

720 ILCS 5/7-7 (1998) provides that “[a] person is not authorized to use force to resist arrest which he knows is being made by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and in fact the arrest is unlawful.” Two issues are of special note. First, the statute only applies where an individual is known to be a peace officer. Thus, it is incumbent on an officer not in uniform to properly identify himself or herself. Second, where an officer uses excessive force in making an arrest, the arrestee is entitled to use force in self-defense. Moreover, where an offender attempts

¹ In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court of the United States held that police have the ability to do a limited search for weapons of areas within the suspect’s control based on a reasonable and articulable suspicion that the person stopped was “armed and dangerous” and had been, is, or was about to engage in a criminal act.

to resist arrest, the amount of force an officer is authorized to use to affect arrest increases. The same logic applies to individuals who attempt to flee.

CASE STUDY

People v. Wicks 823 N.E.2d 1153 The State charged defendant with three counts of resisting a peace officer. In the first count, the State alleged that defendant "refused to obey James Dietz orders and resisted the handcuffing procedure." The State subsequently added two other counts that alleged defendant "also resisted officers Jeremy Harrison and Joseph Egizio."

At trial, Officer Harrison testified that he and his partner, Officer Dietz, were on patrol when he observed a car being parked along a street. He noticed that loud music was coming from the car. Harrison parked behind the car in order to issue the driver a citation for illegal sound amplification.

The driver, who was later identified as defendant, turned the music off and began to exit the car. As defendant was exiting the car, the officers approached him and asked to see his driver's license and proof of insurance. Defendant replied that the officers did not need to see those items, and began to walk away.

Harrison grabbed defendant by the elbow and told him to stop. Defendant put his hands in his pockets and pulled away from Harrison. Harrison told defendant he was under arrest, but defendant continued to try to walk away. The officers responded by trying to pull defendant's hands out of his pockets. Harrison testified that he was afraid because he thought defendant might have a weapon in his pocket.

Defendant managed to keep his hands in his pockets. At that point, Harrison informed defendant that he would be sprayed with pepper spray if he did not comply with the command to remove his hands from his pockets. Defendant stated "f you, spray me." Harrison then sprayed defendant with pepper spray. However, defendant still kept his hands in his pockets.

Harrison threatened to strike defendant if he continued to struggle with the officers. Defendant responded by stating "f you, hit me." After Harrison hit him twice in the face, defendant removed his hands from his pockets and began "swatting" at Harrison. The officers wrestled defendant to the ground and handcuffed him. Defendant was spitting blood at the officers and trying to kick them. The officers eventually placed defendant in a transport van.

Officer James Dietz testified that defendant was arrested after he refused to produce identification for Harrison. When he was informed he was under arrest, defendant placed his hands in his pockets and refused to be handcuffed. After he was sprayed with pepper spray and struck in the face, defendant removed his hands from his pockets and began flailing at the officers. The officers wrestled defendant to the ground. Defendant then spat blood at the officers and tried to kick them.

Officer Joseph Egizio testified that defendant was on the ground struggling with Harrison and Dietz when he arrived. Egizio helped handcuff defendant.

Defendant testified that he was standing outside his car when the officers approached him. He told Officer Harrison that he did not have his driver's license, but he had an insurance card. As he began reaching into the car for his insurance card, Harrison grabbed him and instructed him to place his hands on the car. Harrison patted him down and ordered him to place his hands behind

his back. When defendant asked why he was being arrested, Harrison told defendant not to question him. Defendant then placed his hands in his pockets.

Defendant testified that Harrison sprayed him with mace, but he kept his hands in his pockets because he was upset. Harrison then began hitting him. Harrison also kicked him after the officers took him to the ground. Defendant denied spitting blood at the officers. Defendant testified that he was very agitated and was cursing after being arrested.

Willie C. Tanzy, Jr., testified that he was riding in the car with defendant. They stopped and got out of the car to talk to some friends. Defendant left the car running. He turned the music in his car down and turned the car off when he saw the police officers approaching. Defendant was standing by the driver's side door when the officers pulled up to the car.

The officers asked defendant for his driver's license and insurance card. When defendant reached into his car for his insurance card, the officers exited their squad car and patted him down. Defendant "got loud" and asked why he was being arrested. Defendant then placed his hands in his pockets. One of the officers told defendant that he was going to be sprayed with mace. The officer then sprayed defendant with mace and began hitting him in the face. The officers put defendant on the ground and placed him in handcuffs.

At the close of evidence, defendant requested that the court instruct the jury on self-defense. The trial court denied this request, concluding that there was no evidence to support such an instruction. The jury found defendant guilty of the counts that charged defendant with resisting Officer Dietz and Officer Harrison, but not guilty of the charge of resisting Officer Egizio. The trial court sentenced him to concurrent terms of six months' conditional discharge on each conviction.

Were the officers excessive in their use of force? Was the defendant resisting an unlawful arrest?

NECESSITY

(720 ILCS 5/7-13) Sec. 7-13. provides that "conduct which would otherwise be an offense is justifiable by reason of necessity if the accused was without blame in occasioning or developing the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct."

CASE STUDY

People v. Unger 362 N.E.2d 319 Defendant, Francis Unger, was charged with the crime of escape (Ill. Rev. Stat. 1971, ch. 108, par. 121), and was convicted following a jury trial before the circuit court of Will County. Defendant was sentenced to a term of three to nine years to be served consecutively to the remainder of the sentence for which he was imprisoned at the time of the escape. The conviction was reversed upon appeal and the cause was remanded for a new trial over the dissent of one justice. (33 Ill. App. 3d 770.) We granted leave to appeal and now affirm the judgment of the appellate court.

At the time of the present offense, the defendant was confined at the Illinois State Penitentiary in Joliet, Illinois. Defendant was serving a one- to three-year term as a consequence of a conviction for auto theft in Ogle County. Defendant began serving this sentence in December of 1971. On February 23, 1972, the defendant was transferred to the prison's minimum security, honor farm. It is undisputed that on March 7, 1972, the defendant walked off the honor farm. Defendant was

apprehended two days later in a motel room in St. Charles, Illinois.

At trial, defendant testified that prior to his transfer to the honor farm he had been threatened by a fellow inmate. This inmate allegedly brandished a six-inch knife in an attempt to force defendant to engage in homosexual activities. Defendant was 22 years old and weighed approximately 155 pounds. He testified that he did not report the incident to the proper authorities due to fear of retaliation. Defendant also testified that he is not a particularly good fighter.

Defendant stated that after his transfer to the honor farm he was assaulted and sexually molested by three inmates, and he named the assailants at trial. The attack allegedly occurred on March 2, 1972, and from that date until his escape defendant received additional threats from inmates he did not know. On March 7, 1972, the date of the escape, defendant testified that he received a call on an institution telephone. Defendant testified that the caller, whose voice he did not recognize, threatened him with death because the caller had heard that defendant had reported the assault to prison authorities. Defendant said that he left the honor farm to save his life and that he planned to return once he found someone who could help him. None of these incidents were reported to the prison officials. As mentioned, defendant was apprehended two days later still dressed in his prison clothes.

May the defendant use the defense of necessity?

QUESTIONS FOR REVIEW

1. Which of the following is not a requirement for self-defense?
 - A. The force used must seem necessary to prevent the attack;
 - B. The force used must have been proportional to the gravity of the attack
 - C. The defender may be the aggressor
 - D. The threat of force by the attacker must have been immediate and imminent

Answer: C

2. True or False? Under Illinois law, the use of a firearm equipped with special less-than-lethal ammunition does constitute deadly force.

Answer: False

3. True or False? Where an officer uses excessive force in making an arrest, the arrestee is entitled to use force in self-defense.

Answer: True

4. When may an individual rely on the defense of necessity?
 - A. When the injury is greater than the offense
 - B. When the accused is not to blame in developing the situation
 - C. The accused reasonably believes the conduct to be necessary
 - D. All of the above

Answer: D

5. True or False? An individual is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a misdemeanor.

Answer: False

WEB RESOURCES

- <http://www.ptb.state.il.us/publications/UseofforceStudentManual.pdf>
- <http://jenningscc.com/TaeKwonDo/Laws%20-%20IL.htm>
- <http://www.fhattys.com/default.asp?page=14>
- www.stolenlives.org
- www.refuseandresist.org