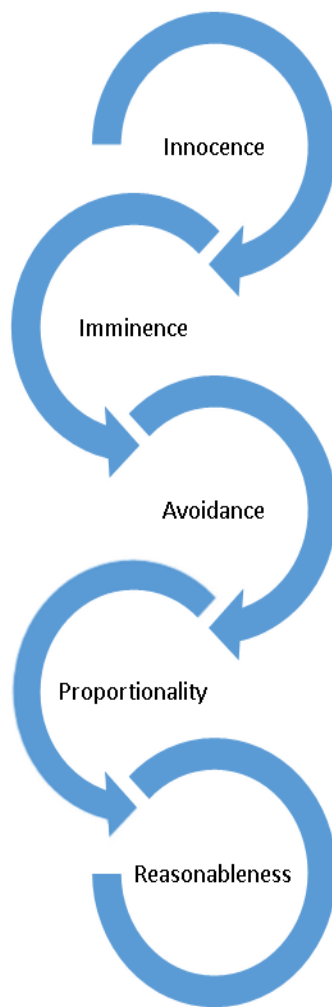


A Conundrum – Self-Defense & the Law

What is a conundrum? The word is often described as “a confusing and difficult problem or question.” When we look at the spider web of laws relating to self-defense, they can appear to be a definite conundrum. We will start with the basic principles of what constitutes a legal self-defense claim. I will tell you right now – while all five elements must be met, it’s crucial to understand you may not be in the clear even if you meet them.



We will go through each one and hopefully explain in simple terms what each means.

1. **Innocence:** The bottom line is, you *must* be the innocent party from the start. If you are the initial aggressor in any physical manner, you forfeit your claim of self-defense. This relates to the specific incident. If you strike someone and walk away, stating, “I don’t want to fight you,” and the person chases and begins to attack you physically, it is viewed as a separate occurrence.
2. **Imminence:** This is a big pitfall of many who attempt of many who try to claim self-defense. You cannot physically defend yourself against verbal threat or some perceived future threat. Also, you cannot legally claim self-defense for something that occurred days or even minutes before if the other person or people ended the actions. You must be under attack, or it must happen right then, before you take any defensive action.
3. **Avoidance:** Another big entanglement. You may have heard of Stand Your Ground Laws. The state you live in most likely has them on the books. This is great, with a considerable caveat. If you can get away safely and fail to try, the prosecution will argue the fact. They will tell the jury that any *reasonable* person would want to get away and avoid a fight. If you had an opportunity to do so safely and didn’t, well, your claim of self-defense will probably fly out the window.
4. **Proportionality:** This chiefly relates to only being legally allowed to use deadly force when lethal force is being used against you. You can only use non-deadly force if

you're the recipient of non-deadly force. What also comes into play is your size versus the aggressors, weight differences, gender, etc.

5. Reasonableness: I regret to inform you that what you or I consider reasonable will not be seen in such a light by the prosecutorial team. You must base your responses and actions along the lines of what a reasonable, ordinary person would do. The problem is, this is open to interpretation.

An overriding issue with this is that confusion still reigns. As Andrew Branca, in his third decade specializing in self-defense law of the United States (where he is an internationally recognized expert), has written and said, "Self-Defense laws are, in general, penned by academic lawyers, many of whom have little understanding of what they are formulating." Throw in the legislators who pass these laws with no grasp of their impact or interpretations, and you have a bag of worms.



Andrew Branca
*The expert experts go to
when it comes to the law of
self-defense*

In all 50 states, the prosecutor's team bears the weight of proving its case against you. To clarify, it is the state that must *disprove* your claim of self-defense if they have filed criminal charges against you. I repeat, the norm in America is that self-defense is a legal justification

the prosecution must *disprove* beyond a reasonable doubt. The exception is that they need *only* disprove any *one* of the five elements to score a win against your claim of self-defense, and your case goes out the window.

Now, however, there is never a guarantee for either side on what verdict a jury will reach. I will do my best, within the limited scope of this Blog post, to explain two similar actual cases with different verdict outcomes. Neither is easy to contemplate and understand on an emotional level, let alone a legal one. However, put any politics, agendas, emotions, and opinions aside for a few minutes. My purpose is *not* to elicit those mentioned earlier. The goal is to provide you with a better understanding of how the laws and judicial system operate, both in right and wrong contexts. Although both cases involved *deadly* force, the laws generally apply to *all* use-of-force incidents.

The first is one many may be familiar with. The Trayvon Martin incident in Sanford, Florida, on February 26, 2012. One George Zimmerman, a private citizen who lived in an apartment complex in Sanford, became suspicious of an individual, later identified as Trayvon Martin. Mr. Zimmerman called the police to report this individual. Before the police arrived, Zimmerman exited his vehicle and confronted Mr. Martin. Mr. Zimmerman was armed with a firearm and had a valid concealed firearms license. At no point did evidence arise during the trial, or after the trial, that Mr. Zimmerman displayed the firearm (if he did, we may never know) before his version of events leading to the shooting. After allegedly verbally challenging Mr. Martin as to his purpose at the apartment complex, Mr. Martin physically attacked him, according to Mr. Zimmerman. Mr. Zimmerman was

knocked to the ground, and Mr. Martin jumped on him. At one point, with Mr. Martin straddling Mr. Zimmerman, Mr. Martin began to bang Zimmerman's head onto the sidewalk, according to Zimmerman (he had injuries consistent with the claim). It was at this time, according to Zimmerman, that he pulled out his firearm and shot Mr. Martin. Mr. Martin died.

Mr. Zimmerman was arrested, taken to jail, and processed. He then claimed *self-defense immunity* and was released. Now, here is where a whole lot of confusion and outright lies come into play. He *did not* claim "*stand your ground*" as a defense. There are no Florida legal statutes related to the phrase "stand your ground" (and to the best of my knowledge, none in any other state). "Stand your ground" is a term that has been hyped in the media. What the law says is that a person in a place he has a legal right to be and is not in the act of committing a crime, has *no* legal duty to retreat if physically attacked. Remember, we are talking *the law* here, not common sense or prudence. An argument brought up by Mr. Zimmerman's defense team was that, as he was prone on his back with Mr. Martin straddling him, he *could not* retreat even if he wanted to. A Grand Jury indicted Mr. Zimmerman, and the case went to trial. A jury acquitted Zimmerman and he is now a free man.

The second case happened in my hometown. A local man was involved in the fatal shooting of an unarmed man during a dispute over a handicapped parking space at a convenience store. One Mr. Michael Drejka confronted a female sitting in the driver's seat of a vehicle parked in a handicapped space. There was no permit displayed. This upset Mr. Drejka to

the point that he confronted the woman. The female's fiancé, Mr. Michael McGlockton, was inside the store when he heard the commotion. He rushed out and pushed Drejka, who fell backwards onto the pavement. Drejka produced a firearm, which he had a valid firearms license to carry. Surveillance camera videotape showed Mr. McGlockton stepping backwards. Drejka fired, killing Mr. McGlockton. Once again, there were protests over Drejka being released because of "stand your ground." *Nope*. And again, no matter the wording of the law, it does *not mean* the person will *not be brought to trial*. A Grand Jury indicted Michael Drejka, the case went to trial, and Drejka was found guilty of manslaughter by a jury and sentenced to twenty years in prison.

So, two similar actual cases with two different outcomes. The most *significant* difference/factor was the fact that once Mr. McGlockton began backing away, Drejka was *no longer in imminent fear of grave bodily harm or death*. So, he had no legal claim of self-defense immunity. The laws are complex, especially in criminal cases. Beware the traps and pitfalls, and as with many things, let prudence, based on the knowledge of facts, be your guide in any actions. I want to emphasize that laws are a maze, and no two cases will ever be the same, regardless of how similar they may appear.

Stay aware. Stay safe. Stay tuned to <https://www.protectionmattersinstitute.com/>

Regards,

John

Please email me with any comments, suggestions, future topics, or concerns at:
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Verified Graduate of the Law of Self Defense Instructor Program

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