South Carolina Case Law

This case law pertains to civilian self-defense, defense of others, defense of property, and citizen's arrest. It is not intended to be all inclusive and may be superseded at any time.

THE LAW OF SELF DEFENSE IN SOUTH CAROLINA

State v. Fuller, 297 S.C. 440, 377 S.E.2d (1989). Fuller sets forth **elements of self-defense** in South Carolina as follows:

(1) the defendant must be without fault in bringing on the difficulty;

(2) the defendant must actually believe he is in imminent danger of loss of life or serious bodily injury or actually was in such danger;

(3) if the defendant believed he was in such danger, a reasonable or prudent man of ordinary firmness and courage would have believed himself to be in such danger; if the defendant actually was in such danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life;

(4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance.

McAninch and Fairey identified a whole host of situations where the **duty of retreat** is not applicable. These include:

(1) In addition to no duty to retreat in one's home, there is no duty to retreat within the home's curtilage. State v. Jackson, supra or beyond the curtilage. State v. Quick, 138 S.C. 147, 135, S.E. 800 (1926).

(2) No duty to retreat in one's place of business even if the aggressor also has a right to be there. State v. Kennedy, 143 S.C. 318, 141, S.E. 559 (1928).

(3) No duty to retreat if a guest in home of another unless required to leave by a householder. State v. Osborne, 202 S.C. 463, 25 S.E. 2d 492 (1942).

(4) No duty to retreat where attacked in a person's club room. ["A man is no more bound to allow himself to be run out of his rest room than his workshop."]

(5) Where both parties own the premises, neither has the duty to retreat where the other is the aggressor. State v. Gibbs, 113 S.C. 256, 102 S.E. 333 (1920).

(6) Where both live in the same home, neither has the duty to retreat if the other is the aggressor. State v. Grantham, 224 S.C. 41, 77 S.E. 2d 291 (1953).

(7) Where both are guests in the same home, neither has the duty to retreat if the other is the aggressor. State v. Smith, 226 S.C. 418, 85 S.E. 2d 409 (1955).

(8) Where both are fellow workers on the same jobsite, neither has the duty to retreat if the other is the aggressor. State v. Gordon, 128 S.C. 422, 122 S.E. 501 (1924).

(9) One need not retreat "if to do so would apparently increase his danger." State v. McGee, 185 S.C. 184, 190, 193 S.E. 303, 306 (1937).

(10) Duty to retreat before using deadly force in self-defense on a public street or highway, even when in own automobile. State v. McGee, supra.

(11) Duty to retreat in a store where public is invited. State v. Peeples, 126 S.C. 422, 120 S.E. 361 (1923).

DEFENSE OF OTHERS

In State v. Hays, 121 S.C. 163, 168, 113 S.E.362, 363 (1922), the Court approved a "**defense of others**" instruction. Such instruction was as follows:

> "in such case the right to take the life of such assailant upon such unprovoked assault extends to any relative, friend, or bystander who would likewise have the right to take the life of such assailant if such act was necessary to save the person so wrongfully assailed from imminent danger of being murdered by such assailant. In other words, if the assailant makes a malicious and unprovoked assault with a deadly weapon upon one person with the apparent malicious intention to take the life of the person assailed and thereby commit murder, then, where the danger of the commission of such murder is imminent, any relative, friend, or bystander could have the right to take the life of such assailant if necessary in order to prevent the commission of such murder, provided there was no other reasonable means of escape for the person so assailed, and provided both the person assailed and the person coming to his defense were without legal fault in bringing on the difficulty."

South Carolina has adopted the so called "**alter ego**" rule with respect to the defense of others. In State v. Cook, 78 S.C. 253, 59 S.E. 862 (1907), the court summarized:

> [a] person who [intervenes on behalf of another] will not be allowed the benefit of the plea of self-defense, unless such plea would have been available to the person whose part he took in case he himself had done the killing since the person interfering is affected by the principle that the party bringing on the difficulty cannot take advantage of his own wrong.

In other words, the person intervening is deemed to "**stand in the shoes**" of the person on whose behalf he is intervening. If that individual "had the right to defend himself, then the intervening party is also protected by that right. If, however, the party had no right to use force…then the intervening party will also assume the liability of the person on whose behalf he interfered" (McAninch & Fairey, p. 494).

The "defense of others" rules apply to "any relative, friend or bystanders…" State v. Hays, supra. The same principles of retreat and withdrawal apply as if the individual himself were acting in self-defense rather than on behalf of someone else. If there was no duty to retreat by the person being assisted, there is no duty imposed upon the intervener.

RESISTANCE TO LAWFUL ARREST

There is no right to resist a lawful arrest. Town of Springdale v. Butler, 299 S.C. 276, 384 S.E. 2d 697 (1989).

CITIZEN'S ARREST

State v. Nall, 304 S.C. 332, 404 S.E. 2d (1991) represents a leading case in the area of citizen's arrest.

The Court summarized the common law of citizen's arrest as follows:

[u]nder the modern common law, any person who views a felony being committed has a duty to endeavor to arrest the felon either personally or by calling others to his aid or by seeking out an officer of the peace.

The law also permits a private person to arrest for a felony not committed in his presence if (1) the felony was actually committed and (2) the private person has reasonable cause to believe the one he is arresting committed the felony for which the arrest is made. Both requirements must be met. If it later appears that the felony for which the arrest has been made was not in fact committed, the arrest is unlawful.

Finally, the law permits a private person to arrest for a misdemeanor committed in his presence, if it constitutes a breach of the peace. A private person has no lawful authority to arrest for misdemeanors not committed in his presence.

Except when made upon view of the felony, a private person making an arrest must give reasonable notice of his purpose to arrest and the cause for the arrest, together with a demand that the suspect submit to arrest.

DEFENSE OF PROPERTY

State v. Hibler, 79 S.C. 170, 60 S.E. 438 (1907), the Court recognized that

> [t]he general rule is too well settled to require the citation of authority that, in the protection of one's dwelling, only such force must be used as is necessary; or apparently necessary, to a reasonably prudent man. Any greater expenditure cannot be justifiable and is therefore punishable.

McAninch and Fairey pointed out that "[t]he weight of modern authority limits deadly force in defense of a dwelling to situations in which the householder reasonably believes that the intruder intends to commit a felony or only when deadly force would be authorized by the law of self-defense."