

SELF DEFENSE

Many criminal investigations are challenging, but they're especially difficult when both parties get "violent." Sometimes it's hard to determine just who is the "aggressor" and who is the "victim." Unfortunately, when police can not figure this out, they often make random choices. This is especially true in "domestic violence" where the "mandatory arrest" laws force them into tough and immediate decisions. Unfortunately, inexperienced prosecutors often overlook the very complex but powerful nature of this legal defense.

Civil Reimbursement

Self Defense is such a well founded right that our government actually forces prosecutors to reimburse you when you prevail in court. No other defense principle has this remedy. **RCW 9A.16.110:**

No person in the state shall be placed in legal jeopardy of any kind whatsoever for protecting by any reasonable means necessary, himself or herself, his or her family, or his or her real or personal property, or for coming to the aid of another who is in imminent danger of or the victim of assault, robbery, kidnapping, arson, burglary, rape, murder, or any other violent crime as defined in RCW [9.94A.030](#).

Washington is a "Stand Your Ground" State

The right to stand your ground is a long "standing" principle recently demonstrated in the Trayvon Martin / George Zimmerman trial. Like Florida, our state declares:

It is lawful for a person who is in a place where they have a right to be and who has reasonable ground to believe they are being attacked to stand their ground and defend against such an attack by the use of lawful force. The law does not impose a duty to retreat. WPIC 16.08

This not only applies to couples fighting at home but just about anyone anywhere as long as they are not trespassing.

The trick is the term "lawful force." This is where all the legal battles begin and end for it is both the circumstances and the degree of force that can make all the difference

Lawful Force

The Washington Pattern Jury Instruction summarizes the Law:

Force is lawful when used by a person who (1) reasonably believes that they are about to be injured, (2) by someone lawfully aiding a person who they reasonably believe is about to be injured, (3) to prevent a malicious trespass or other malicious interference with real or personal property lawfully in that person's possession preventing and when the force is not more than is necessary. WPIC 17.02

The force must be the force “a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of the incident.” WPIC 17.02

The State has the Burden of Proof not the Defendant

The government has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful. WPIC 17.02

The Force must be Proportional

The force must be “not more than necessary.” This again, is where most of the legal battles begin and end. A person can not shoot or stab someone simply because they are punched. Things get difficult however, if there is history between the parties, if threats of serious violence are used, if weapons are mentioned or displayed, if someone has a reputation for deadly violence etc.

In **Domestic Violence**, this area gets extremely complicated with long histories of abuse. Juries have acquitted and the law has carved out specific exceptions for the “**abused spouse syndrome**” when wives or husbands act out dramatically.

Self Defense Puts the Victim on Trial and then Bends the Rules

Under the Rules of Evidence, the government is usually forbidden from bringing out everything in the defendant’s past including prior convictions, prior “bad acts” whether convicted or not, and a host of other things.

This rule, in general, does not apply to legal defense and in many cases, a good defense attorney can put the accuser “on trial.” This is especially true in claims of self defense.

Self defense allows a defendant to bring out all of the past violent acts by the victim IF they were aware of these acts prior to their own forceful actions in order to explain why they took the steps they did. These can even include rumors and “reputations.” They do not need to be true or “confirmed” as long as the defense can establish that they had heard the rumor and the court finds that credible.

In prior legal presentations, I have summarized Self Defense law with this one sentence: “It’s all I could do and you’d do it too, if you knew what I knew.”

In one successful trial, our office convinced the jury that our client was merely acting out in self defense when he pushed back on his girlfriend. This was despite the fact that he was six and a half feet tall and she was five feet two. The trial began to change tide, on

cross examination, once the victim admitted that she was furious at him for calling another girl.

If you have been charged with a crime where you have acted out in self defense, **CONTACT OUR OFFICE FOR A FREE CONSULTATION.** We may also be able to help you get reimbursed for your legal fees.