

Use of Deadly Force in PA¹ by Josh Bodene, Esq.



Before unholstering your firearm, be able to answer "YES" to both I & II:

I. May I use DEADLY FORCE? (shooting a gun is always "deadly force")

A. YES, IF:

1. you did not first provoke the other person in the same encounter by attempting to inflict upon them death or serious bodily injury, **AND**
2. you sincerely hold the reasonable belief, based on facts you can point to from the totality of the circumstances that:
3. the other person imminently intends, and is able, to imminently inflict upon you (or someone else):
 - a) **Death;**
 - b) **Serious Bodily Injury** (not just a punch to the face, but a baseball bat to the head, for instance);
 - c) **Kidnapping; OR**
 - d) **Rape** ("Sexual intercourse compelled by force or threat").

Your use of deadly force is **PRESUMED** to be justified when you reasonably believe that the other person has already (or is in the act of) unlawfully and forcefully:

1. entering, and is present in, your home or *occupied* vehicle; **OR**
2. removing, a person against his will from your home or *occupied* vehicle.

However ***YOU LOSE THE PRESUMPTION IF:*** (1) the other person is lawfully present (though ***NOT A CATEGORICAL DISQUALIFIER***); (2) the totality of the circumstances suggests otherwise (***NOT A CATEGORICAL DISQUALIFIER***); (3) you are engaged in a criminal activity (***DISQUALIFIER***); **OR** (4) you knew / should have known that the other person is a police officer (***DISQUALIFIER***).

IN THE DEFENSE OF SOMEONE ELSE you may legally use deadly force when (1) you would be justified in doing so if you were in his shoes; **AND** (2) he'd be justified in doing so on his own behalf.

II. May I use deadly force without first RETREATING?

A. YES, IF:

1. **You CANNOT first retreat to complete safety; OR**
2. **You are at HOME** (or temporary dwelling) (**CASTLE DOCTRINE**) even if the other person has an equal right to be there
 - a) **unless** you were the initial aggressor, in which case you must first retreat; **OR**
3. **You are at WORK** (**CASTLE DOCTRINE**)
 - a) **unless** you were the initial aggressor, in which case you must first retreat.
 - b) (NOTE: but if you are at work you do have a duty to retreat first, before using deadly force, if you know the other person is a coworker, i.e. it's his or her workplace too); **OR**
4. **You're neither at home, nor at work (STAND YOUR GROUND), but nonetheless:**
 - a) the person displays "an item that can reasonably be perceived to be...a weapon readily or apparently capable of lethal use" (i.e. a gun, baseball bat, axe);
 - b) you are not engaged in criminal activity;
 - c) you legally possess your gun; **AND**
 - d) you have a right to be where you are (i.e. you're not trespassing).

(That being said, best practice is to ***retreat if you can***, even if the law doesn't require it)

IN THE DEFENSE OF SOMEONE ELSE, retreat to the extent the "someone else" must retreat.