

Self-Defense Shooting and Disparate Force

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It is a terrible thing when anyone takes the life of another and this should only be as a **last resort** after you have done everything possible to **avoid** a firearm confrontation.

However, to protect your life and the lives of your loved ones in specific deadly scenarios, you might be faced with using a firearm and deadly force to take another's life in self defense. Generally, we should only use equal force in response to the application of specific force against us (the same force against force as used by the assailant.) So if we are not

being immediately threatened with deadly force, we cannot use deadly force in response. Perhaps non-deadly force, like pepper spray, tasers, your fists, or telescopic batons might be used. In my state of Florida, the standard jury instruction for the justifiable use of **non-deadly force** defines "non-deadly

force" as "force not likely to cause death or great bodily harm." However, even the use of non-deadly force is not justified if somebody threatens to hit you and then walks away. You cannot chase them down and beat them from behind and claim self-defense, because the threat of harm was not imminent. Sadly, those who use justifiable non-deadly force **may** still be charged with crimes. The use of pepper spray on non-violent individuals was determined to be excessive where there were less intrusive alternatives. (Headwaters Forest Defense v. County of Humboldt, CA (9th Cir. 2002) 276 F.3rd 1125.) Go figure.



Self-Defense Shooting and Disparate Force

Since I live in Florida, I am addressing Florida concealed carry, disparate force, and self defense, from my layman's perspective. Most of my comments are generalized and are not situation specific and are intended for overall education purposes, so recognize that the specific details and variables of any situation are what more directly determine your specific actions. Understand I am NOT an attorney and am NOT offering legal advice or legal opinions. So, it's up to you to check what I have to say with a lawyer who's licensed to practice law in your state and jurisdiction. Be very careful with this information and check it out for yourself. I assume no liability for your interpretation or use of any of this information; this is generalized for educational awareness only. Here is a website which is very helpful for exploring the use of deadly force for self defense in Florida and allows access to Florida Statutes (FS), including chapter FS 776, the justifiable use of force, and chapter FS 790, Weapons and Firearms: [State of FL Website](#).

Under FS 776.031, it seems to this non-legal layman that you cannot shoot and kill a contemptible bad guy, scumbag trespasser to defend your property in Florida, if he has no weapon. If you do, you will probably be charged and prosecuted with murder. If the trespasser on your property attacks you or pulls out a weapon, you may then use force commensurate with the attack. So, if the trespasser pulls a weapon, Florida law permits the use of deadly force if you **reasonably** believe it is necessary to save your life. This is different from the Florida Castle Doctrine and its **Stand Your Ground** clause, which in Florida permits the GENERALLY unrestricted use of deadly force against an intruder **inside of your home** or **attempting entry** to your home. Florida is a "No Duty to Retreat" jurisdiction, meaning that when confronted with force or the threat of force, you have no legal obligation to run away from your attacker. If you the defendant were not engaged in an unlawful activity and were attacked in any **place where you had a right to be**, you had NO duty to retreat and had the right to stand your ground and meet force with force, including deadly force... if you **reasonably believed** that it was necessary to do so to prevent death or great bodily harm to yourself or a third person or to prevent the commission of a forcible felony. So if you the FL homeowner are asleep, hear crashing

sounds coming from your living room, go there and see a bad guy prying your television off the wall, take your firearm and shoot the intruder in the back without a verbal warning to the intruder who is unarmed, you **probably** would not be arrested or prosecuted. Your protection is under FL Stand Your Ground. It doesn't matter if the intruder wasn't armed, or if you the homeowner didn't shout "Freeze!" or "Don't move!" Florida's Stand Your Ground law is very clear to this layman if someone breaks into your HOME, you may use lethal force against that intruder, whether he was armed or not. A big "**HOWEVER**" is that this is open to **interpretation, subjective, and based on "reasonableness."** Of course, what is reasonable for one is not reasonable for another. FRUSTRATION!

Certainly, we cannot use deadly force or even the **threat** of it either to provoke a confrontation. Even your Concealed Carry Weapons License/Permit is not a Junior G-Man badge to justify the use of deadly force. (I do not recommend carrying a Concealed Weapons Badge, as shown to the left.) By pointing a gun at somebody in Florida, you have committed the FELONY crime of aggravated assault with a firearm. Even if you have never been arrested, have no criminal record, are the honest owner of a community business, and have a legal carry license, it is my layman's understanding you will be arrested and go to jail, have to post a bond, and will face felony charges that carry a **minimum mandatory term in Florida of three years in state prison.** Understand this is different for sworn police officers who may use necessary force to fulfill their duties, as appropriate. Whenever you as a citizen present your gun in a confrontation (even with a concealed carry license), you are on shaky ground, so learn the circumstances and guidelines under which the use of deadly force is warranted legally and morally in your jurisdiction.



You must have the knowledge, training, skills, and the mindset to appropriately and legally handle situations you might encounter, as a patriotic citizen. You must prudently know when to shoot and when not to shoot. Possessing a Concealed Carry License and having proper firearms training for self defense are very important first steps, but there is more. Remember, saving your life is certainly important, but so is not bringing financial ruin to your family and following moral values. Understand that a shooting is not a "proper" shoot until and unless the prosecutor's office agrees your use of deadly force was justified and/or unless a grand jury agrees/rules (depending on your jurisdiction). It's probably also not clearly a proper shoot until any potential civil lawsuit is resolved. There have been cases where the **criminal** aggressor's family has filed a civil lawsuit to get the defender's homeowner's insurance to cover their medical bills, property damage, pain & suffering, and collect damages. For example, Hawaii and New Jersey allow a civil suit against you, even if deadly force was justifiable. Most states with a "Stand-Your-Ground clause" also have a clause which provides immunity from any lawsuit filed on behalf of the assailant for damages or injury resulting from the lawful use of non-excessive force, e.g. Florida (FS 776.032) and Texas. In a civil case, the plaintiffs need only convince a majority of the jurors that their argument is more likely valid than not, unlike a criminal case in which the standards of proof are much higher. Also, convincing the prosecutor, grand jury (if any), trial jury (if any), and civil trial jury (if any) that you were justified in using deadly force may be easier in gun-friendly jurisdictions and more difficult in gun-hostile jurisdictions, so there are complex uncertainties to deal with. It is my general understanding that Ohio is the only state in which you have to specifically prove your justification on using deadly force. Further, California, Colorado, District of Columbia, Idaho, Maryland, Massachusetts, North Carolina, North Dakota, and Rhode Island all emphasize that you cannot use more force than necessary. So, know and follow the deadly force, self-defense, concealed carry, and related laws in your state and jurisdiction.

Based on the website above and my layman's interpretation of Florida law, I understand that **the use of Deadly Force is justified ONLY when you are:**

- Trying to protect yourself or another person from **death or great bodily harm**; or
- Trying to prevent a **forcible felony**, e.g. rape, robbery, burglary, murder, arson, sexual battery, kidnapping.

In addition, as reinforced by Tom Clancy's book title "Clear and Present Danger" and the U.S. Supreme Court decisions about limits on free speech and use of force, I accept that a deadly force danger must be "clear and present," as well as unavoidable and immediate to oneself and others BEFORE one responds with deadly force. Even in those Stand Your Ground states you should not take carte blanche rights to immediately shoot first, because the laws vary so much by definitions, states, and are subjective and interpretive by situation, the judges, and the courts. Specific situational awareness is very key. This is a very serious responsibility, possibly a life and/or death decision, and we must respond (usually quickly) based upon our understanding of the facts of the situation and what is actually happening, our perceptions. So we can't just emotionally respond with our uninformed "shoot the threat" guess reaction. Rather than react by saying "I don't care; if someone is coming toward me with a gun or robbing me, I'm shooting," you must know what is really happening and applicable laws. Are there other bad guy accomplices nearby to harm you, was the person flashing the gun a good guy that was threatened before your arrival, is the one presenting the firearm also licensed to conceal carry, what is his intent, etc. Of course, the quandary is "What if I hesitate?" Truly a challenging and precarious life-changing situation for YOUR QUICK INFORMED decision. During your very stressful encounter with its inherent physiological impairments, it will be very difficult to think rationally, react with fine motor coordination and skills, and process your questions and make decisions. So, avoid if you can, anticipate some possible "what if" scenarios, and pray you don't have to make a life or death decision quickly. Hope what follows helps your decisions.

Using or displaying a handgun could result in your conviction for crimes such as improper exhibition of a firearm, aggravated assault felony, manslaughter, or worse. Generally in a situation involving firearms, an Aggressor, and the use of deadly force in self defense, the author (again, I'm not an attorney & this is NOT LEGALADVICE) believes for a legal shoot that ALL 3 of the below criteria MUST BE PRESENT. These are based on what noted firearm expert Massad Ayoob and other firearms trainers refer to as the triad of Ability, Opportunity, and Jeopardy. Juries and Judges consider the "reasonable person" concept, excessive use of force, non-deadly response options, avoidance tactics, and other factors as well. If you do use deadly force to defend yourself, Ayoob says you'll eventually have to explain what specific things you perceived led you to conclude that your attacker had the (1) ability and (2) opportunity to cause you death or bodily injury, and why you perceived that your life was in (3) jeopardy sufficiently to justify the use of deadly force. The 3 criteria are:



1. **Ability = Means**— Aggressor has (or reasonably appears to have) weapon or power to deliver force sufficient to cause death or grave bodily harm... or bigger size, strength, weight, or height than you, or has special tactical training (judo, boxing, martial arts, etc.) that you don't have. So, a garden hose (means) attack against you does NOT justify your use of deadly force;
2. **Opportunity = Proximity**— Aggressor is nearby within (generally) 21 feet of you or approaching toward you or in position close to you to immediately employ force; AND
3. **Intent = Jeopardy**— Aggressor is verbally or physically threatening you, trying to shoot you, kill you, or interact with you to cause you or a family member serious bodily harm or death; acting in such a manner that a "reasonable person" would conclude that the Aggressor has the intent to kill or cripple. Hostile words or actions. GENERALLY:
 - You **CAN'T shoot** the angry, shouting guy a block away (**NO OPPORTUNITY**) who is not approaching you, but who is wildly swinging a baseball bat in the air while cursing your name.
 - You **CAN'T shoot** the gal who has not interacted with you with hostile actions or hostile words (**NO INTENT**), but happens to have a gun in her hand, pointed at the ground.

- You **CAN'T shoot** the solo unarmed (**NO ABILITY**) person who is roughly your size/strength or smaller who has punched you. (You can't shoot an unarmed person, since that would usually be considered excessive force. If a victim uses excessive force they usually become the Aggressor. Force becomes "excessive" generally when it exceeds that which is needed to assure one's own safety. So when someone says "I give up!" or runs away from you, you have to stop hitting him or shooting. Immediately!)

Another criterion that some talk about is **preclusion**. Briefly, the idea is that there are circumstances where an otherwise justified use of deadly force becomes unjustified because of some action the defender took. Usually, this is an action that transforms the defensive use of force into an aggressive offensive action. Examples of preclusion are: leaving a place of safety such as behind a locked door to be the aggressor and go looking for an assailant; shooting an attacker after he's already down and incapacitated; and taking the offense and firing at an attacker with his back to you as he is running away and there is no further threat from him. So, once the attacker's ability and opportunity to cause you death or injury are over, the jeopardy to your person is over also. And once the jeopardy is over, there is no further justification for using deadly force. Unless, of course, the assailant regains a position where Ability, Opportunity and Jeopardy could exist again. This is complicated, open to subjective interpretation, and varies considerably by situation as I mentioned before. You will have to explain and be accountable for your actions, even as the righteous defender. Be careful out there!

"Disparate Force" is another variable to consider, related to the "Ability" criterion above. Disparate Force indicates that specific factors or skills are considered when evaluating the "Ability" or the "means" criteria of persons in a shooting. **Disparity of Force** is defined as a situation that any reasonable person would conclude places you at an overwhelming disadvantage in your effort to protect yourself against immediate and serious bodily injury. Recognize that there is no law about disparity of force. It is merely an argument which is used to justify ones actions for using deadly force against a person who is usually unarmed. Each situation, state, jurisdiction, and the individuals involved have their own different variables, considerations, factors, and assessments vis-a-vis judges and juries.

"Disparity of Force" Factors to Consider:



- AGE (e.g. coordination, reaction time, alertness, concentration, & reflexes of 25-year-old versus 65-year-old)
- Overwhelming SIZE (e.g. 150 pounds versus 250 pounds)
- Overwhelming STRENGTH (e.g. physical abilities, limitations, muscle power, and means)
- Force of NUMBERS (more than one Aggressor- e.g. 3 against one or a mob against one)
- ADVANCED SKILL in unarmed COMBAT (e.g. boxing, karate, judo, tae kwon do, jujitsu, or martial arts skills)
- MALES against FEMALES (our society assumes females are more vulnerable with less upper body strength & there is a cultural predisposition for males to be more violent, physically aggressive)
- PHYSICALLY CHALLENGED/DISABLED against the ABLE-BODIED (e.g. older, frail and/or physically challenged attacked by a younger, more able-bodied person.)

Interestingly, Florida has a Statute that most are not aware of, **FS 784.08- Assault or Battery on Persons Aged 65 and Older**. Per this law, those convicted of aggravated assault or aggravated battery on a person aged 65 or older in Florida SHALL BE sentenced to a minimum of 3 years in prison AND fined up to \$10,000 AND shall perform up to 500

hours of community service. Regardless of whether or not the assailant knew or had reason to know the age of the victim, the offense SHALL BE reclassified more severely, e.g. in the case of aggravated battery, from a second degree felony to a first degree felony. Be aware!

Overwhelming size, strength and aggression are typically male attributes, but not exclusively. Some women have the physical means to defend against and attack the average man. I experienced this at work with a 6 foot tall, 225 pound muscular woman defending herself against a diminutive male attacker (not me.) Usually women are more successful in the courts with the Disparity of Force defense than are men. Something more than fear of SIZE however, is usually required to justify the use of deadly force in self-defense. However, in Missouri the Supreme Court ruled that size alone could constitute physical force. This varies by state and the courts.

IMPORTANT: Recognize that every situation & individual are DIFFERENT; be aware of your circumstances. Even if all the factors are present, it is necessary to follow the rule to make all efforts to AVOID the USE of DEADLY FORCE and RETREAT if possible. Retreating and avoiding trouble is NOT a sign of weakness or lack of power. It is a rational, disciplined, and prudent thing to do depending on the situation... putting your major goal and priority of saving your life and the lives of your family members first. Is the confrontation with your firearm and with the bad guy worth even only a 1% risk of lives? Remember, the courts will consider your avoidance and retreating, then decide. They are concerned about your using no more force than was necessary to defend against the threat. Often they ask "Were there other possible options rather than using deadly force" and what would a "reasonable" person do in the exact situation, knowing what you knew at the time. Certainly, this makes the situation and the possible verdict very subjective and open to interpretation. If only there was a universal definition of "reasonable" accepted by everyone.

When Disparate Force "MIGHT" Allow A Possible Shoot:**

Understand it is **very difficult and risky to generalize** about the use of force in self-defense, without an awareness of the many specific and complex situational variables and the laws in various jurisdictions. The details and factors of the SPECIFIC situation determine whether you can and/or could possibly shoot in self defense. Don't accept these statements as directives and recommendations on what you must do or could do. Remember, I am NOT an attorney and am NOT giving legal advice or legal opinions. They are **NOT recommendations, suggestions, advice, or legal opinions**, but merely **generalized points for educational purposes and discussions** and for you to think about in advance. I will not be held liable for any actions you decide to take or might take or not take, based on these generalizations. So with these CAUTIONS and your AVOIDANCE of confrontations foremost in mind:

You *probably* COULD shoot the solo, unarmed person who demonstrates MARTIAL ARTS training, who is a few feet away attacking you, obviously trying to break your neck and kill you, because that creates a disparate force scenario. (Ability, Opportunity, & Intent exist.)

CAUTION: Some courts have held that you must have known about the special skills/training in advance AT THE TIME OF THE ATTACK, not learned about them **later**. The burden of proof is on you.

You *probably* COULD shoot individual members of a hostile MOB (large group- more than one attacking) chasing you alone down the street, waving knives at you, and threatening you with SERIOUS bodily harm or death, even if one mob member is unarmed... the mob as a whole is recognized as the threat. (Ability, Opportunity, & Intent exist.)

You *probably* COULD shoot the hostile gals nearby in the front yard of your home lighting the molotov cocktail BOMBS, verbally threatening you, and preparing to throw them directly at you (Ability, Opportunity, & Intent exist.)

You *probably* COULD shoot the guy cursing you, saying "I'm going to kill you" with HOSTILE words and violently swinging the baseball BAT at you, when he aggressively advances close to you, within about 21 feet of you. (Ability, Opportunity, & Intent exist.)

Recognize that, according to the State of Florida website indicated above, **Verbal threats are NOT enough to justify the use of deadly force**. There must be an overt act by the person which indicates that he immediately intends to carry out the threat. The person threatened must **reasonably** believe that he will be killed or suffer serious bodily

harm if he does not immediately take the life of his adversary. It is my understanding from law enforcement administrators and experiences, if you injure or kill someone, no matter what the circumstances, you WILL be arrested and charged with a crime. The police will not make the assumption that you acted in self-defense. The police are not responsible for making that decision and right or wrong judgments. They will let the Attorneys sort that out and the courts decide. Be very cautious out there.

The Florida website specifies: Never display a handgun to gain “leverage” in an argument. **Threatening someone** verbally while possessing a handgun, even if licensed, will land you in jail for three years in Florida. Even if the gun is broken or you don’t have cartridges, you will receive the **mandatory three-year sentence** for a **felony** if convicted in Florida. The law does not allow any possibility of getting out of jail early. Remember to check the applicable laws of your State and jurisdiction. Example: A woman in Florida refused to pay an automobile mechanic whom she thought did a poor job repairing her car. They argued about it and the mechanic removed the radiator hose from the car so she couldn’t drive it away. She reached into her purse, pulled out an unloaded gun, and threatened to kill the mechanic if he touched her car again. The mechanic grabbed the gun and called the police. The woman was convicted of aggravated assault (felony) with a firearm and sentenced to serve a MANDATORY three-year prison term. The fact that the gun was not loaded was irrelevant. Even though she was the mother of three dependent children and had no prior criminal record, the Florida Statute does not allow for parole. Her only recourse was to seek clemency from the Governor.

Here is an Example of the kind of attack that will NOT justify defending yourself with deadly force: Two neighbors got into a fist fight and one of them tried to hit the other by swinging a garden hose. The neighbor who was being attacked with the hose shot the other in the chest. The court upheld the conviction of the neighbor who fired the shot for aggravated battery with a firearm, because an attack with a garden hose is NOT the kind of violent assault that justifies responding with deadly force.

Only you can provide the wisdom, restraint, and good judgment that the law demands of those who possess the ability to take another human life. In receiving a license to carry a concealed weapon for lawful self-defense, you are undertaking a great responsibility. Remember, **a license to carry a concealed weapon is NOT a license to use it and you must know how and when to use it properly and legally.** As difficult as it is to do, carefully try to anticipate various possible scenarios in advance, consider the variables of each situation, consider the laws in your state and jurisdiction, THINK how you would respond, avoid confrontation if possible, and pray for the correct decision. **SUCCESS!**

* This information is provided for education and discussion purposes only. It is **NOT intended as legal advice nor legal opinion.** The information is not recommendations, suggestions, or options for your specific deadly force situations or disparate force considerations. The author is NOT an attorney and is offering only his general ideas and opinions, so it is strongly recommended that you **contact your own Attorney for legal advice** about when and when not to shoot, the use of deadly force, disparate force laws and their interpretations and implementation, and the use of any force in your particular state, jurisdiction, and situation. You should know the laws of your particular state and jurisdiction, as they vary considerably.

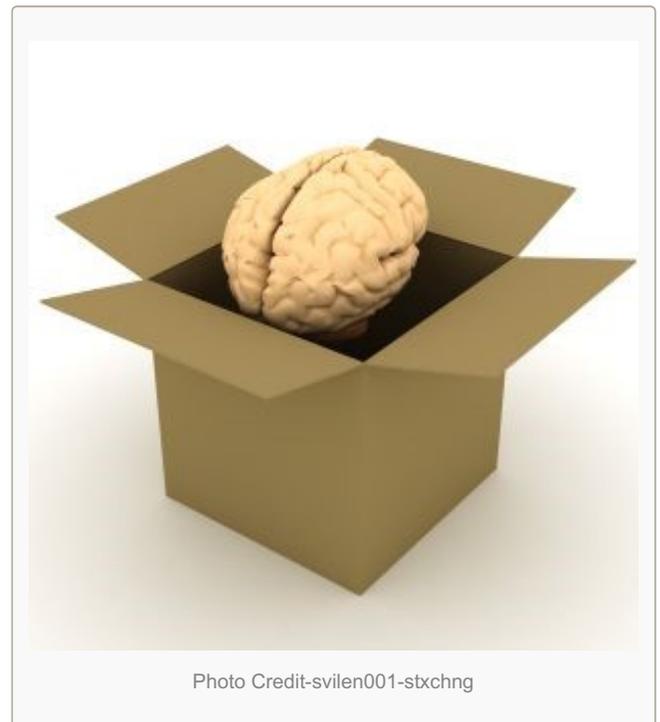


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