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SELF-DEFENCE

INTRODUCTION

At common law the defence of self-defence operates in three spheres. It allows a person to use reasonable force to:

(a) Defend himself from an attack.

(b) Prevent an attack on another person, eg ***R v Rose*** (1884) 15 Cox 540, where the defendant who had shot dead his father whilst the latter was launching a murderous attack on the defendant's mother, was acquitted of murder on the grounds of self-defence.

(c) Defend his property.

In addition, s3(1) of the Criminal Law Act 1967 provides that:

> "A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

Both the common law and statutory defences can be raised in respect of any crime with which the defendant is charged, and if successful will result in the defendant being completely acquitted. However, if a defendant uses excessive force this indicates that he acted unreasonably in the circumstances. There will therefore be no valid defence, and the defendant will be liable for the crime.

1. REASONABLE FORCE

The general principle is that the law allows only reasonable force to be used in the circumstances and, what is reasonable is to be judged in the light of the circumstances as the accused believed them to be (whether reasonably or not). In assessing whether a defendant had used only reasonable force, Lord Morris in ***Palmer v R*** [1971] AC 814, felt that a jury should be directed to look at the particular facts and circumstances of the case. His Lordship made the following points:

* A person who is being attacked should not be expected to "weigh to a nicety the exact measure of his necessary defensive action".
* If the jury thought that in the heat of the moment the defendant did what he honestly and instinctively thought was necessary then that would be strong evidence that only reasonable defensive action had been taken.
* A jury will be told that the defence of self-defence will only fail if the prosecution show beyond reasonable doubt that what the accused did was not by way of self-defence.

Palmer was cited with approval by the Court of Appeal in ***Whyte*** [1987] 3 All ER 416.

For excessive use of force not being a defence at all, see ***R v Clegg*** [1995] 1 All ER 334 (fourth bullet fired at a car which did not stop at a checkpoint was not fired in self-defence).

The issue of a mistake as to the amount of force necessary was considered by the Court of Appeal in ***R v Scarlett*** [1994] Crim LR 288:

- ***R v Scarlett*** - The defendant, a publican, sought to eject a drunk person from his premises. The drunk person made it clear that he was not going to leave voluntarily. The defendant believed that the deceased was about to strike him and so he put his arms around the drunk person's body, pinning his arms to his sides. He took him outside and placed him against the wall of the lobby. The drunk person fell backwards down a flight of five steps, struck his head and died. The jury were directed that if they were satisfied that the defendant had used more force than was necessary in the bar and that had caused the deceased to fall and strike his head he was guilty of manslaughter. The defendant was convicted and appealed on the ground that he honestly (albeit unreasonably) believed the amount of force he had used to evict the drunken man from his premises was necessary. In allowing the appeal, Beldam LJ gave the following direction for juries:

  "They ought not to convict him unless they are satisfied that the degree of force used was plainly more than was called for by the circumstances as he believed them to be and, provided he believed the circumstances called for the degree of force used, he was not to be convicted even if his belief was unreasonable."

  Note that in ***R v Owino*** [1995] Crim LR 743, the Court of Appeal firmly denied that *Scarlett* is to be interpreted as permitting a subjective test in examining whether force used in self-defence is reasonably proportionate. The true rule is that a person may use such force as is (objectively) reasonable in the circumstances as he (subjectively) believes them to be.

2. A DUTY TO RETREAT?

There is no rule of law that a person attacked is bound to run away if he can. A demonstration by the defendant that at the time he did not want to fight is no doubt, the best evidence that he was acting reasonably and in good faith in self-defence; but it is no more than that. A person may in some circumstances act without temporising, disengaging or withdrawing; and he should have a good defence (Smith and Hogan, *Criminal Law*, 1996, p264). This statement was approved in:

- ***R v Bird*** [1985] 1 WLR 816 - The defendant had been slapped and pushed by a man. She was holding a glass in her hand at the time and she had hit out at the man in self-defence without realising that she still held the glass. The trial judge directed the jury that self-defence was only available as a defence if the defendant had first shown an unwillingness to fight. The Court of Appeal quashed the defendant's conviction saying that it was unnecessary to show an unwillingness to fight and there were circumstances where a defendant might reasonably react immediately and without first retreating. It was up to a jury to decide on the facts of the case.

  It is therefore, a matter for the jury to decide as to whether the defendant acted reasonably in standing his ground to defend himself, or whether the reasonable man would have taken the opportunity to run away.

3. IMMINENCE OF THE THREATENED ATTACK

It is not absolutely necessary that the defendant be attacked first. As Lord Griffith said in ***Beckford v R*** [1988] AC 130: “A man about to be attacked does not have to wait for his assailant to strike the first blow or fire the first shot; circumstances may justify a pre-emptive strike."

In ***Attorney-General's Reference (No 2 of 1983)*** [1984] 2 WLR 465, the defendant made ten petrol bombs, during the Toxteth riots after his shop was damaged and looted, "to use purely as a last resort to keep them away from my shop". The expected attack never occurred. He was then charged with an offence under s4(1) of the Explosive Substances Act 1883 of possessing an explosive substance in such circumstances as to give rise to a reasonable suspicion that he did not have it for a lawful object. It was a defence under the terms of the section for the defendant to prove that he had it for a lawful object.

The Court of Appeal held that there was evidence on which a jury might have decided that the use of the petrol bombs would have been reasonable force in self-defence against an apprehended attack. If so, the defendant had the bombs for a “lawful object” and was not guilty of the offence charged. However, it was assumed that he was committing offences of manufacturing and storing explosives contrary to the Explosives Act 1875. The court agreed with the Court of Appeal in N. Ireland in ***Fegan*** [1972] NI 80, that possession of a firearm for the purpose of protecting the possessor may be possession for a lawful object, even though the possession was unlawful, being without a licence. Lord Lane CJ said:

‘There is no question of a person in danger of attack “writing his own immunity” for violent future acts of his. He is not confined for his remedy to calling in the police or boarding up his premises. He may still arm himself for his own protection, if the exigency arises, although in so doing he may commit other offences. That he may be guilty of other offences will avoid the risk of anarchy contemplated by the Reference.’

4. DEFENCE OF PROPERTY

It can rarely, if ever, be reasonable to use deadly force for the protection of property. Would it have been reasonable to kill even one of the Great Train Robbers to prevent them from getting away with their millions of pounds of loot, or to kill a man about to destroy a priceless old master? - even assuming that no means short of killing could prevent the commission of the crime (Smith and Hogan, *Criminal Law*, 1996, p266).

In ***R v Hussey*** (1924) 18 Cr App R 160, the defendant was barricaded in his room while his landlady and some accomplices were trying to break down his door to evict him unlawfully. The defendant had fired a gun through the door, and wounded one of them. He was acquitted of the wounding charge on the grounds of self-defence. It was stated that it would be lawful for a man to kill one who would unlawfully disposes him of his home.

Note: today it would seem difficult to contend that such conduct would be reasonable because legal redress would be available if the householder were wrongly evicted. Insofar as the householder is preventing crime, his conduct would be regulated by s3 Criminal Law Act 1967 which replaces the rules of common law.

Thus, only reasonable force may be used. It would seem clear, for instance, that despite a common belief to the contrary, one is not at liberty to shoot dead a burglar wandering around one's house if one does not fear for one's own life (Clarckson and Keating, *Criminal Law*, 1994, p301). In ***Forrester*** [1992] Crim LR 792, it was held that a trespasser can plead self-defence if the occupier of the house uses excessive force to try to remove him.

5. MISTAKE AS TO SELF-DEFENCE

It is possible that a defendant might mistakenly believe himself to be threatened or might mistakenly believe that an offence is being committed by another person. On the basis of *R v Williams (Gladstone)* (1984) 78 Cr App R 276 and *Beckford v R* [1988] AC 130, it would appear that such a defendant would be entitled to be judged on the facts as he honestly believed them to be, and hence would be permitted to use a degree of force that was reasonable in the context of what he perceived to be happening:

- In ***R v Williams (Gladstone)*** (1984), a man named Mason had seen a youth trying to rob a woman in the street, and had chased him, knocking him to the ground. Williams, who had not witnessed the robbery, then came onto the scene and was told by Mason that he was a police officer (which was untrue). W asked M to produce his warrant card, which he was of course unable to do, and a struggle ensued. W was charged with assault occasioning actual bodily harm, and at his trial raised the defence that he had mistakenly believed that M was unlawfully assaulting the youth and had intervened to prevent any further harm. The trial judge directed the jury that his mistake would only be a defence if it was both honest and reasonable. The Court of Appeal quashed the conviction and held that the defendant's mistaken but honest belief that he was using reasonable force to prevent the commission of an offence, was sufficient to afford him a defence. Lord Lane CJ said:

  the jury should be directed first of all that the prosecution have the burden or duty of proving the unlawfulness of the defendant's actions; secondly, if the defendant may have been labouring under a mistake as to the facts, he must be judged according to his mistaken view of the facts; thirdly, that is so whether the mistake was, on an objective view, a reasonable mistake or not.

  * In a case of self-defence, where self-defence or the prevention of crime is concerned, if the jury came to the conclusion that the defendant believed, or may have believed, that he was being attacked or that a crime was being committed, and that force was necessary to protect himself or to prevent the crime, then the prosecution have not proved their case.
  * If however the defendant's alleged belief was mistaken and if the mistake was an unreasonable one, that may be a powerful reason for coming to the conclusion that the belief was not honestly held and should be rejected.
  * Even if the jury came to the conclusion that the mistake was an unreasonable one, if the defendant may genuinely have been labouring under it, he is entitled to rely upon it.

- In ***Beckford v R*** (1988), the defendant police officer shot dead a suspect, having been told that he was armed and dangerous, because

he feared for his own life. The prosecution case was that the victim had been unarmed and thus presented no threat to the defendant. The trial judge directed the jury that the defendant's belief in the need to shoot in self-defence had to be both honest and reasonable.

In rejecting this direction, the Privy Council approved the approach in ***Williams***. Lord Griffiths commented that juries should be given the following guidance: “Whether the plea is self-defence or defence of another, if the defendant may have been labouring under a mistake as to facts, he must be judged according to his mistaken belief of the facts: that is so whether the mistake was, on an objective view, a reasonable mistake or not." The defendant therefore, had a defence of self-defence because the killing was not unlawful if, in the circumstances as he perceived them to be, he had used reasonable force to defend himself.

6. INTOXICATION AND SELF-DEFENCE

One effect of alcohol can be to lead the drinker to interpret the words and actions of others as threatening, thereby increasing "defensive activity" (Clarkson and Keating, *Criminal Law*, 1994, p402). In other words, a drunken person may act violently, mistakenly believing himself to be under attack. What is the position where such a person makes a mistake as to a "defence"? The view now taken by the courts is that such a drunken mistake, however genuinely believed, is no defence to a criminal charge - not even to crimes of specific intent. The two leading cases are:

- ***R v O'Grady*** [1987] 3 WLR 321 - The defendant woke from a drunken stupor to find his equally drunk friend hitting him. In order to defend himself he retaliated with several blows and then returned to sleep. He awoke to find his friend dead. The defendant was convicted of manslaughter and appealed against conviction, relying on the defence of self-defence in the circumstances as he mistakenly believed them to be. The Court of Appeal dismissed the appeal and said that a mistake arising from voluntary intoxication could never be relied on in putting forward a defence, whatever the crime. Lord Lane CJ also rejected the relevance of the distinction between crimes of basic and specific intent on this aspect of the matter.

- ***R v O'Connor*** [1991] Crim LR 135 - The defendant while drunk head-butted his victim, who died. He claimed he thought he was acting in self-defence. He was convicted of murder and appealed on the grounds that his mistaken belief was relevant. The Court of Appeal held that, following *O'Grady*, a drunken mistake as to the need for self-defensive action was to be ignored by the jury. However, in murder cases the drunkenness of the defendant could be taken into consideration in determining whether the defendant had the necessary specific intent (and on this basis a verdict of manslaughter was substituted).