

**Ala. Code 1975, § 13A-3-25**

**Use of Force in Defense of Premises**

One of the issues in this case is the use of force in defense of premises.

Physical Force:

A person in lawful possession or control of premises, or a person who is licensed or privileged to be thereon, may use physical force upon another person when and to the extent that he/she reasonably believes it necessary to prevent or terminate what he/she reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon such premises.

For the defendant's use of force against another person to be justified, the force must have been used under the following circumstances:

- (1) The defendant must have been in lawful possession or control of the premises, or a person who was licensed or privileged to be thereon;
- (2) The defendant must have reasonably believed it necessary to prevent or terminate what he/she reasonably believed to be the commission or attempted commission of a criminal trespass by the other person in or upon such premises; **(AND)**
- (3) The defendant must have used no more force than he/she reasonably believed to be necessary for the purpose of defense.

**[Read if appropriate]** - Deadly Physical Force

A person in lawful possession or control of premises, or a person who is licensed or privileged to be thereon, may use deadly physical force upon another person only:

- (1) In defense of a person (as provided in Section 13A-3-23); **(OR)**
- (2) When he/she reasonably believes it necessary to prevent the commission of arson in the first or second degree by the trespasser.

The defendant is not justified in using physical force if: **[Read appropriate part]**

- (1) With intent to cause physical injury or death to another person, he/she provoked the use of unlawful physical force by such other person;
- (2) He/she was the initial aggressor, except that his/her use of physical force upon another person under the circumstances is justifiable if he/she

withdraws from the encounter and effectively communicates to the other person his/her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force; **(OR)**

(3) The physical force involved was the product of a combat by agreement not specifically authorized by law.

*Premises* includes any building and any real property. (13A-3-20(5))

A *building* is a structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and includes any vehicle, aircraft, or watercraft used for the lodging of persons or carrying on business therein. Each unit of a building consisting of 2 or more units separately occupied or secured is a separate building. (13A-3-20(1))

A *vehicle* is a motorized conveyance which is designed to transport people or property. (13A-3-20(7))

*Force* is physical action or threat against another, including confinement. (13A-3-20(4))

A *reasonable belief* is a belief formed in reliance upon reasonable appearances. It is a belief not formed recklessly or negligently. The test of reasonableness is not whether the defendant was correct in his/her belief but whether the belief was reasonable under the circumstances existing at the time. (Commentary)

**[Read if Criminal Trespass or Arson I or II]** - *Deadly physical force* is force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury. (13A-3-20(2))

The defendant does not have the burden of proving that he/she acted in self-defense. To the contrary, once self-defense becomes an issue, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

### **Use Notes**

If a person is justified or excused in using force against a person, but he/she recklessly or negligently injures or creates a substantial injury to another person, the justification is unavailable in a prosecution for recklessness or negligence. (13A-3-21)

Unless inconsistent with a provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of his/her official powers, duties or functions. (13A-3-22)

A person may not use physical force to resist a lawful arrest by a peace officer who is known or reasonably appears to be a peace officer. (13A-3-28)

[Approved 10-17-14.]