

DEFENSES: LESSERS & JUSTIFICATION – SELF-DEFENSE, DEFENSE OF ANOTHER & THE CASTLE DOCTRINE

PRESENTED BY: JOHN M. LYNCH



LESSERS & DEFENSES

Know the differences between the two

- ***Sua sponte* instruction vs. discretionary instruction**
- **A lesser included offense includes criminal conduct for which all of the elements needed to impose liability also happen to be the same elements for a more serious crime (merger doctrine)**
 - Like the full gamut of homicide offenses
 - ***State v. Pierce*, 433 S.W.3d 424, 430 (Mo. banc 2014)**

Sample Defenses

- Intoxication.
- Mistake Of Fact
- Necessity
- Self defense
- Duress

YOU ARE COVERED IN MO



- **556.046. CONVICTION OF INCLUDED OFFENSES — JURY INSTRUCTIONS. — 1. A PERSON MAY BE CONVICTED OF AN OFFENSE INCLUDED IN AN OFFENSE CHARGED IN THE INDICTMENT OR INFORMATION. AN OFFENSE IS SO INCLUDED WHEN:**
 - **(1) IT IS ESTABLISHED BY PROOF OF THE SAME OR LESS THAN ALL THE FACTS REQUIRED TO ESTABLISH THE COMMISSION OF THE OFFENSE CHARGED; OR**
 - **(2) IT IS SPECIFICALLY DENOMINATED BY STATUTE AS A LESSER DEGREE OF THE OFFENSE CHARGED; OR**
 - **(3) IT CONSISTS OF AN ATTEMPT TO COMMIT THE OFFENSE CHARGED OR TO COMMIT AN OFFENSE OTHERWISE INCLUDED THEREIN.**
- **2. THE COURT SHALL NOT BE OBLIGATED TO CHARGE THE JURY WITH RESPECT TO AN INCLUDED OFFENSE UNLESS THERE IS A BASIS FOR A VERDICT ACQUITTING THE PERSON OF THE OFFENSE CHARGED AND CONVICTING HIM OF THE INCLUDED OFFENSE. AN OFFENSE IS CHARGED FOR PURPOSES OF THIS SECTION IF:**
 - **(1) IT IS IN AN INDICTMENT OR INFORMATION; OR**
 - **(2) IT IS AN OFFENSE SUBMITTED TO THE JURY BECAUSE THERE IS A BASIS FOR A VERDICT ACQUITTING THE PERSON OF THE OFFENSE CHARGED AND CONVICTING THE PERSON OF THE INCLUDED OFFENSE.**
- **3. THE COURT SHALL BE OBLIGATED TO INSTRUCT THE JURY WITH RESPECT TO A PARTICULAR INCLUDED OFFENSE ONLY IF THERE IS A BASIS IN THE EVIDENCE FOR ACQUITTING THE PERSON OF THE IMMEDIATELY HIGHER INCLUDED OFFENSE AND THERE IS A BASIS IN THE EVIDENCE FOR CONVICTING THE PERSON OF THAT PARTICULAR INCLUDED OFFENSE**

Exception to the societal and legal prohibition of committing certain offenses

A VALID DEFENSE TO A PROSECUTION FOR A CRIME

IF AN ACT IS JUSTIFIED, THE ACTOR IS NOT LIABLE EVEN WHERE THE ACT WOULD OTHERWISE BE DEEMED A CRIME

NOT THE SAME AS AN EXCUSE

**DEFENSE OF
JUSTIFICATION**

WHAT IS THEN?



GENERALLY ACCEPTED DEFENSES TO CRIMES

- REASONABLY NECESSARY
- SELF-DEFENSE OR DEFENSE OF OTHERS
- DEFENSE OF PROPERTY
- PREVENTION OF A CRIME

STAND YOUR GROUND OR THE CASTLE DOCTRINE ARE ALIVE AND WELL IN MISSOURI

- IN 2017, AMENDMENTS TO SECTION 563 REALLY EXPANDED MISSOURI'S STAND YOUR GROUND LAWS MAKING THE USE OF DEADLY FORCE IN CERTAIN SITUATIONS LESS CONCERNING FOR THE VICTIM THAN PREVIOUS INCARNATIONS OF THE LAW. MISSOURI JOINS ABOUT HALF OF THE STATES IN FULL ACCEPTANCE OF AN EXPANSIVE APPLICATION OF SELF-DEFENSE LAWS TO PROTECT WOULD BE VICTIMS
 - BURDEN SHIFTING
 - RETREAT BE DAMNED
 - ALIGNED WITH OPEN CARRY



"GO AHEAD PUNK, MAKE MY DAY"

MAKES A SELF-DEFENSE SITUATION AN...

- **EYE OF THE BEHOLDER** CASE WHERE YOU, AS THE ADVOCATE GET TO RELAY YOUR CLIENT'S STORY TO A JURY FROM YOUR CLIENT'S PERSPECTIVE- NOT THE PERSPECTIVE OF A LAW ENFORCEMENT OFFICER
- WHO ELSE IS BETTER SUITED TO EXPLAIN AN ELEMENT OF FEAR
- TAKES THE PROSECUTION'S OPINION OUT OF THE EQUATION



APPLICABLE MISSOURI LAW



Missouri Revised Statutes:



Section **563.031** Use of physical force
in defense of others



Section **563.041** Use of physical force
in defense of property



Section **563.033** Battered spouse
evidence for self-defense

563.031. USE OF FORCE IN DEFENSE OF PERSONS

1. A PERSON MAY, SUBJECT TO THE PROVISIONS OF SUBSECTION 2 OF THIS SECTION, USE PHYSICAL FORCE UPON ANOTHER PERSON WHEN AND TO THE EXTENT HE OR SHE REASONABLY BELIEVES SUCH FORCE TO BE NECESSARY TO DEFEND HIMSELF OR HERSELF OR A THIRD PERSON FROM WHAT HE OR SHE REASONABLY BELIEVES TO BE THE USE OR IMMINENT USE OF UNLAWFUL FORCE BY SUCH OTHER PERSON, UNLESS:

(1) THE ACTOR WAS THE INITIAL AGGRESSOR; EXCEPT THAT IN SUCH CASE HIS OR HER USE OF FORCE IS NEVERTHELESS JUSTIFIABLE PROVIDED:

(A) HE OR SHE HAS WITHDRAWN FROM THE ENCOUNTER AND EFFECTIVELY COMMUNICATED SUCH WITHDRAWAL TO SUCH OTHER PERSON BUT THE LATTER PERSISTS IN CONTINUING THE INCIDENT BY THE USE OR THREATENED USE OF UNLAWFUL FORCE; OR

(B) HE OR SHE IS A LAW ENFORCEMENT OFFICER AND AS SUCH IS AN AGGRESSOR PURSUANT TO SECTION 563.046; OR

(C) THE AGGRESSOR IS JUSTIFIED UNDER SOME OTHER PROVISION OF THIS CHAPTER OR OTHER PROVISION OF LAW;

(2) UNDER THE CIRCUMSTANCES AS THE ACTOR REASONABLY BELIEVES THEM TO BE, THE PERSON WHOM HE OR SHE SEEKS TO PROTECT WOULD NOT BE JUSTIFIED IN USING SUCH PROTECTIVE FORCE;

(3) THE ACTOR WAS ATTEMPTING TO COMMIT, COMMITTING, OR ESCAPING AFTER THE COMMISSION OF A FORCIBLE FELONY.



563.031.1 CONT'D

2. A PERSON SHALL NOT USE DEADLY FORCE UPON ANOTHER PERSON UNDER THE CIRCUMSTANCES SPECIFIED IN SUBSECTION 1 OF THIS SECTION UNLESS:

(1) HE OR SHE REASONABLY BELIEVES THAT SUCH DEADLY FORCE IS NECESSARY TO PROTECT HIMSELF, OR HERSELF OR HER UNBORN CHILD, OR ANOTHER AGAINST DEATH, SERIOUS PHYSICAL INJURY, OR ANY FORCIBLE FELONY;

(2) SUCH FORCE IS USED AGAINST A PERSON WHO UNLAWFULLY ENTERS, REMAINS AFTER UNLAWFULLY ENTERING, OR ATTEMPTS TO UNLAWFULLY ENTER A DWELLING, RESIDENCE, OR VEHICLE LAWFULLY OCCUPIED BY SUCH PERSON; OR

(3) SUCH FORCE IS USED AGAINST A PERSON WHO UNLAWFULLY ENTERS, REMAINS AFTER UNLAWFULLY ENTERING, OR ATTEMPTS TO UNLAWFULLY ENTER PRIVATE PROPERTY THAT IS OWNED OR LEASED BY AN INDIVIDUAL, OR IS OCCUPIED BY AN INDIVIDUAL WHO HAS BEEN GIVEN SPECIFIC AUTHORITY BY THE PROPERTY OWNER TO OCCUPY THE PROPERTY, CLAIMING A JUSTIFICATION OF USING PROTECTIVE FORCE UNDER THIS SECTION.



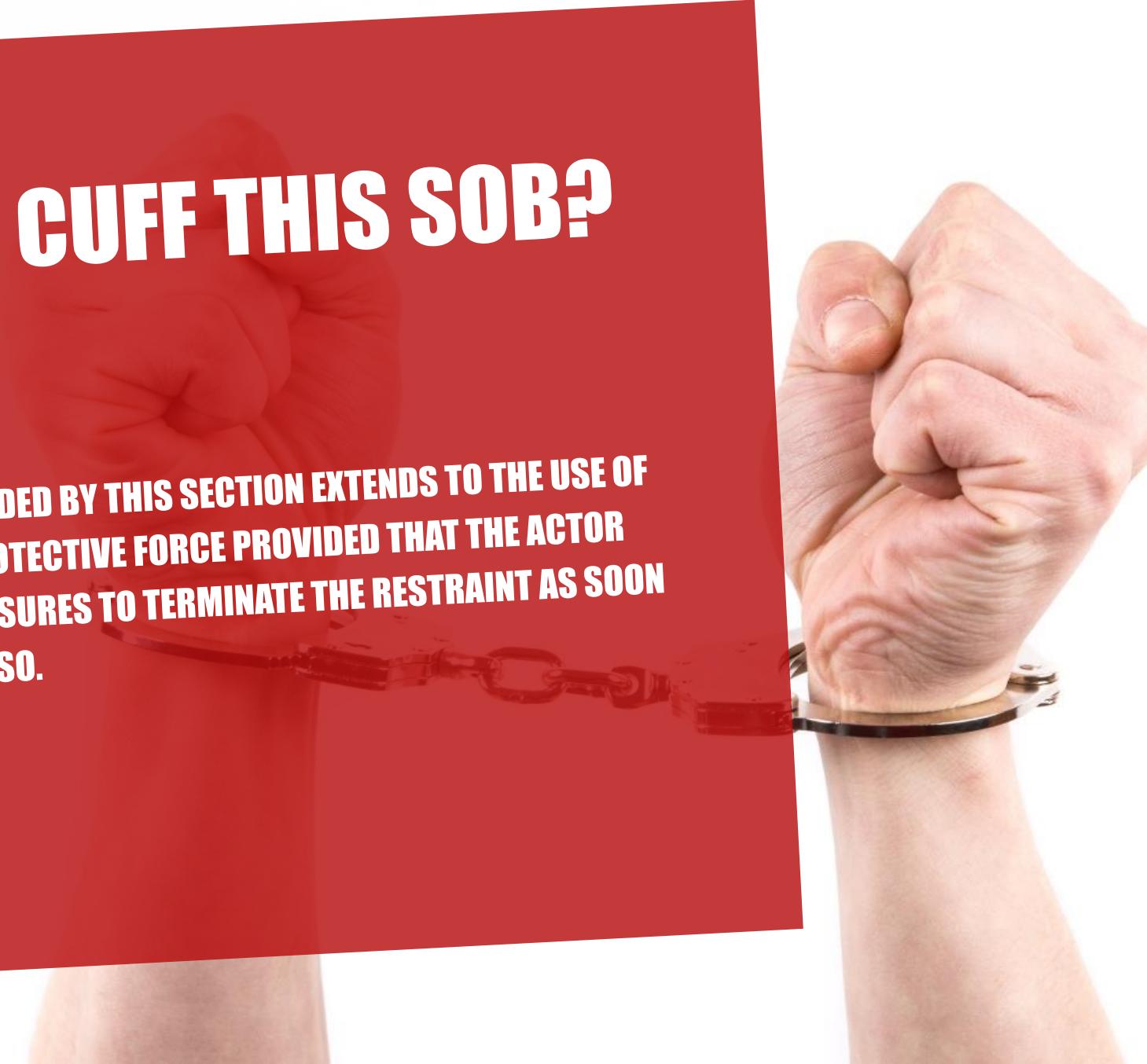
NO RETREATING COLONEL~

3. A person does not have a duty to retreat:

- (1) From a dwelling, residence, or vehicle where the person is not unlawfully entering or unlawfully remaining;**
- (2) From private property that is owned or leased by such individual; or**
- (3) If the person is in any other location such person has the right to be.**

WAIT..I CAN CUFF THIS SOB?

4. THE JUSTIFICATION AFFORDED BY THIS SECTION EXTENDS TO THE USE OF PHYSICAL RESTRAINT AS PROTECTIVE FORCE PROVIDED THAT THE ACTOR TAKES ALL REASONABLE MEASURES TO TERMINATE THE RESTRAINT AS SOON AS IT IS REASONABLE TO DO SO.

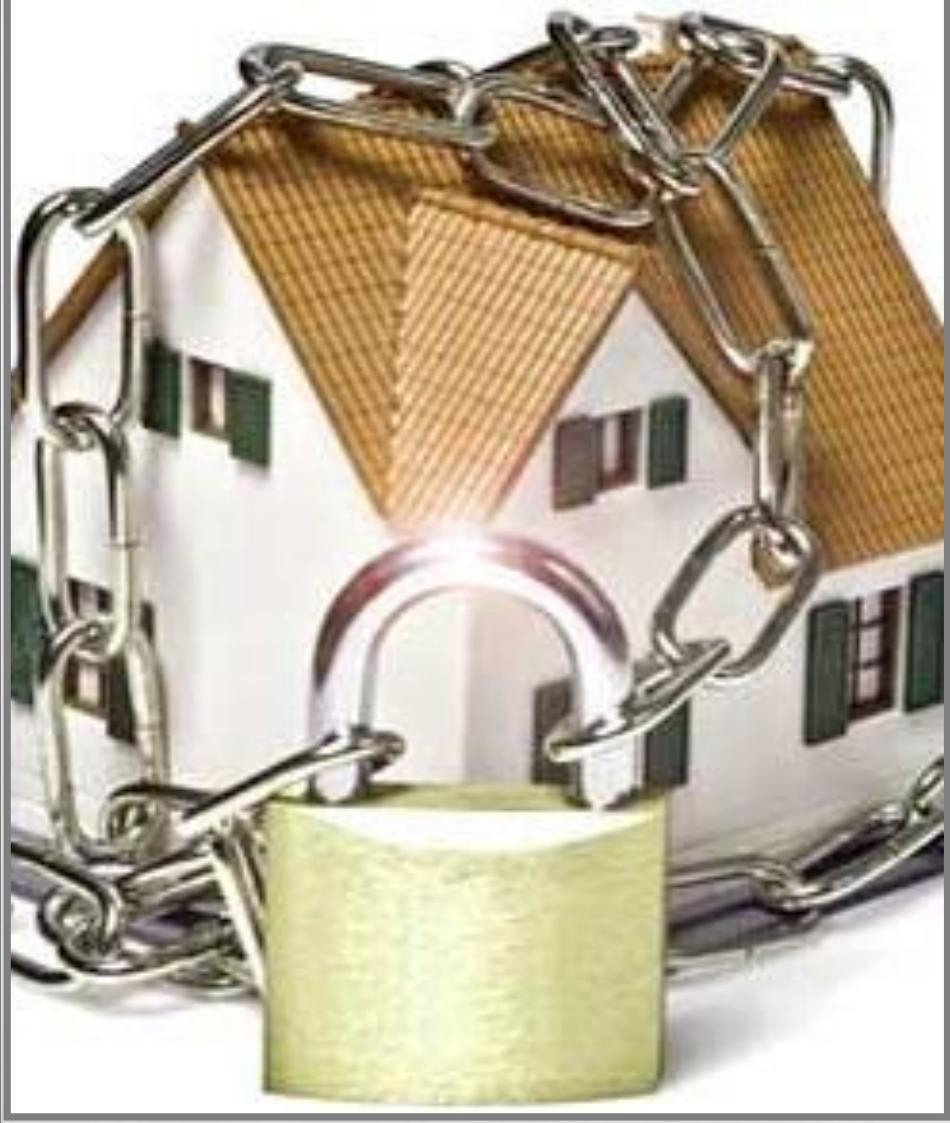


MAKE SURE YOU SAY SOMETHING AT TRIAL

5. THE DEFENDANT SHALL HAVE THE BURDEN OF INJECTING THE ISSUE OF JUSTIFICATION UNDER THIS SECTION. IF A DEFENDANT ASSERTS THAT HIS OR HER USE OF FORCE IS DESCRIBED UNDER SUBDIVISION (2) OF SUBSECTION 2 OF THIS SECTION, THE BURDEN SHALL THEN BE ON THE STATE TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID NOT REASONABLY BELIEVE THAT THE USE OF SUCH FORCE WAS NECESSARY TO DEFEND AGAINST WHAT HE OR SHE REASONABLY BELIEVED WAS THE USE OR IMMINENT USE OF UNLAWFUL FORCE.

- THIS IS A MINIMAL REQUIREMENT -





DEFENSE OF PROPERTY- GO AHEAD

- USE OF PHYSICAL FORCE IN DEFENSE OF PROPERTY.
- **SECTION 563.041.1. OF THE MISSOURI REVISED STATUTES**
ALLOWS FOR THE USE PHYSICAL FORCE UPON ANOTHER PERSON WHEN AND TO THE EXTENT THAT HE OR SHE REASONABLY BELIEVES IT NECESSARY TO PREVENT WHAT HE OR SHE REASONABLY BELIEVES TO BE THE COMMISSION OR ATTEMPTED COMMISSION BY SUCH PERSON OF STEALING, PROPERTY DAMAGE OR TAMPERING IN ANY DEGREE.



SPECIAL NOTE ON THE DEFENSE OF PROPERTY

- **SECTION 563.041.2. ALLOWS THE USE OF DEADLY FORCE ONLY WHEN SUCH USE OF DEADLY FORCE IS AUTHORIZED UNDER OTHER SECTIONS FOUND IN CHAPTER 563 DEFENSE OF JUSTIFICATION –LIKE IN SECTION 563.031.1**
- **SEE OTHER PROVISIONS REGARDING AN ARMED NUCLEAR SECURITY GUARD- HOW OFTEN DOES THAT COME UP**
- **AGAIN- DEFENDANT MUST “INJECT” ISSUE OF JUSTIFICATION**

BATTERED SPOUSE SYNDROME UNDER SECTION 563.033

- EVIDENCE REGARDING BATTERED SPOUSE SYNDROME SHALL BE ADMISSIBLE AS TO WHETHER THE ACTOR LAWFULLY ACTED IN SELF-DEFENSE OR DEFENSE OF ANOTHER
- REQUIRES WRITTEN NOTICE UNLIKE THE OTHER SELF-DEFENSE MATTERS
- UPON MOTION OF PA, COURT WILL REQUIRE MENTAL EXAMINATION

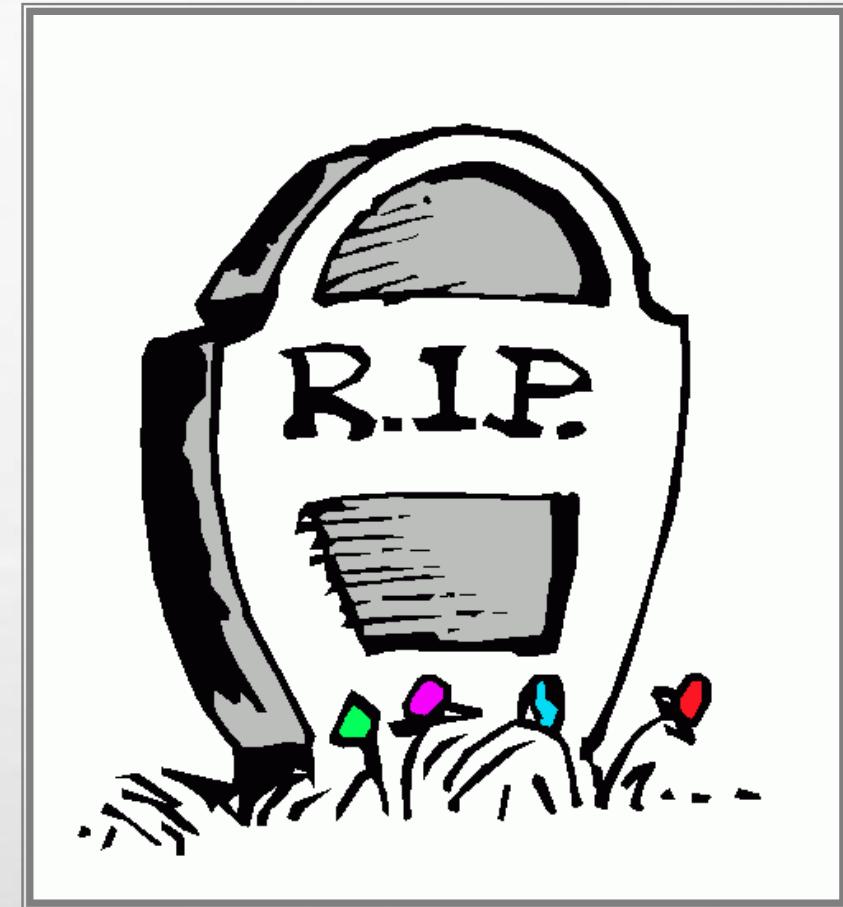


REALLY FAST TALK ABOUT FORCE

- **PHYSICAL FORCE**
 - USED WHEN YOU BELIEVE PHYSICAL FORCE IS NEEDED TO DEFEND YOURSELF OR OTHERS FROM AN ATTACK OF UNLAWFUL FORCE FROM ANOTHER; OR
 - WHEN YOU BELIEVE THAT THE FORCE IS REASONABLY NECESSARY TO PREVENT A STEALING, TAMPERING OR PROPERTY DAMAGE.
- **DEADLY FORCE**
 - REASONABLE BELIEF THAT THE FORCE IS NECESSARY FOR SELF-DEFENSE OR DEFENSE OF ANOTHER (INCLUDING UNBORN CHILDREN) TO PREVENT DEATH, SERIOUS PHYSICAL INJURY, OR A FORCIBLE FELONY
 - THE FORCE IS USED AGAINST A PERSON WHO UNLAWFULLY ENTERS A DWELLING, RESIDENCE

SUMMARY OF MISSOURI LAW AND THE CASTLE DOCTRINE UNDER SECTION 563

- **PROVIDES AMPLE BASIS OR JUSTIFICATION TO USE FORCE, INCLUDING DEADLY FORCE, UNDER CERTAIN SITUATIONS WHERE FEAR OF INJURY OR IMMINENT DEATH IS LEGITIMATE**
- **HOW TO EXPLAIN IT TO YOUR CLIENT AND THE JURY**





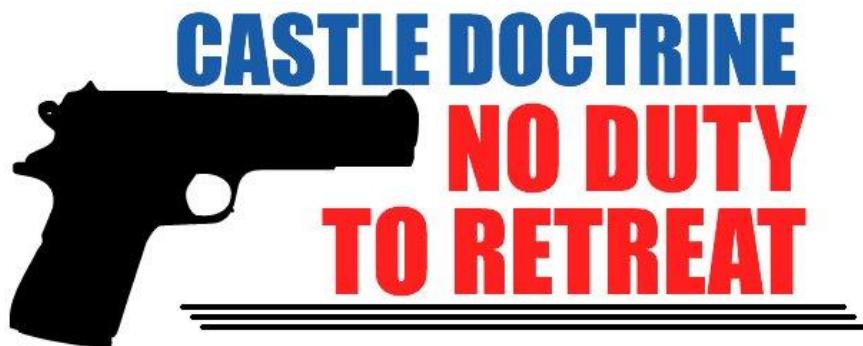
THE CASTLE DOCTRINE (*IN MO*): WHAT HAVE WE LEARNED?

- THE STATE OF MISSOURI TRADITIONALLY RECOGNIZES THE “CASTLE DOCTRINE”
 - ALLOWS A PRIVATE PERSON (RESIDENT) TO USE DEADLY FORCE AGAINST A POSED THREAT, SUCH AS AN INTRUDER IN YOUR HOME, BASED ON THE GENERAL UNDERSTANDING THAT YOUR HOME IS YOUR “CASTLE”
 - SIMILAR TO “STAND YOUR GROUND”
 - THE CASTLE DOCTRINE REALLY IS A CAVEAT
 - “AND I WONT...BACK...DOWN...”
 - USE OF REASONABLE FORCE, INCLUDING DEADLY FORCE, TO DEFEND YOURSELF, ANOTHER PERSON AND/OR PROPERTY.
 - THINK UNDER ATTACK OR IN COMPLETE FEAR FOR YOUR LIFE
 - BEWARE OF EXAGGERATIONS



NOW WHO HAS THE BURDEN

- BURDEN SHIFTS TO PROSECUTION TO PROVE SOMETHING OTHER THAN SELF-DEFENSE , ETC.
- THIS IS A GOOD THING UNDER MOST CIRCUMSTANCES
- USED TO HAVE TO PROVE IT YOURSELF AND WHY YOU DIDN'T RETREAT FIRST (WHICH WAS DUMB)



IN MISSOURI

- ***SEE E.G., STATE V. WHIPPLE, 501 S.W. 3D 507 (MO APP. 2016)***
- ***"EFFECT OF AMENDMENTS TO SECTION 563.031.01 WAS TO CREATE THE SO-CALLED 'CASTLE DOCTRINE' AND TO RELIEVE A DEFENDER OF HIS 'DUTY TO RETREAT' IN CERTAIN CIRCUMSTANCES."***
- ***SEE ALSO, STATE V. CLARK, 486 S.W. 3D 479 (MO APP. 2016)***

BUT- USE YOUR COMMON SENSE

- CANNOT CHASE DOWN AND SHOOT IN THE BACK AN INTRUDER THAT HAS SINCE LEFT YOUR RESIDENCE
- SAME WITH A THIEF THAT JUST STOLE SOMETHING FROM YOUR CAR (IT HAS HAPPENED)
- WHEN THE THREAT IS GONE, SO SHOULD DEADLY FORCE
- FLIP-SIDE- YOU DO NOT HAVE TO SIT AROUND AND EVALUATE WHETHER OR NOT AN INTRUDER OR ASSAILANT IS REALLY GOING TO SHOOT YOU IN THE FACE BEFORE YOU REACT
 - *SEE STATE V. HENDERSON, 311 S.W.3D 411 (MO APP. W.D. 2010)*





BROAD SCOPE OF THE CASTLE DOCTRINE IN MISSOURI

- DEFENSE OF JUSTIFICATION COVERS A CASTLE DOCTRINE SCENARIOS IN HOMES, AND ALSO A DWELLING (OFFICE) A VEHICLE AND ON PRIVATE PROPERTY.
 - SEE SECTION 563.031.3
- CASE SPECIFIC – INFINITE FACT PATTERNS
- MISSOURI LAW ALLOWS YOU TO ACTUALLY ATTACK AN INTRUDER FOR PURPOSES OF PROTECTING NOT ONLY YOURSELF, BUT ALSO ANOTHER PERSON AND ANY PRIVATE PROPERTY YOU OWN
 - THEORETICALLY, YOU CAN USE DEADLY FORCE ON ANYONE ILLEGALLY ENTERING YOUR PROPERTY, INCLUDING YOUR YARD- AND YOU DON'T HAVE TO RUN AWAY FIRST (EVEN WHEN YOU COULD)
- MOST PROPERTY OWNERS AGREE WITH THIS

WHAT EXACTLY DOES DEADLY FORCE MEAN TO ME?



- REASONABLE BELIEF THAT SUCH FORCE IS NEEDED TO DEFEND YOURSELF OR ANOTHER TO PREVENT DEATH, SERIOUS PHYSICAL INJURY AND/OR A FORCIBLE FELONY.
- KEY IS “REASONABLE BELIEF”
 - DOESN’T MEAN THAT IF AN INTRUDER HAS A KNIFE, YOU HAVE TO USE A KNIFE (YOU COULD USE A BAZOOKA)



THE IMPORTANCE OF VOIR DIRE

- DO NOT UNDERESTIMATE THE CRITICAL IMPORT OF ESTABLISHING A RAPPORT WITH YOUR JURY BY WAY OF VOIR DIRE. IT CAN MAKE OR BREAK YOUR CASE!

VOIR DIRE IS THE FOUNDATION FOR SUCCESS

- **EFFECTIVE VOIR DIRE WILL HELP YOU IDENTIFY POTENTIALLY BIASED JURORS BY GETTING THEM INVOLVED IN A CONVERSATION ABOUT YOUR CASE. IT MAKES THEM FEEL INVOLVED- A PSYCHOLOGICAL PHENOMENON COMMON TO ALL PROSPECTIVE JURORS (I.E. FEELING LIKE THEY ARE BEING PRODUCTIVE)**

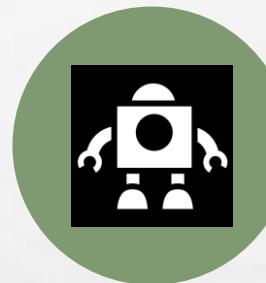
SCRAP THE RIGIDITY OF *TRADITIONAL VOIR DIRE*



Using your default (and boring) voir dire outline is safe and comfortable, but also largely ineffective.



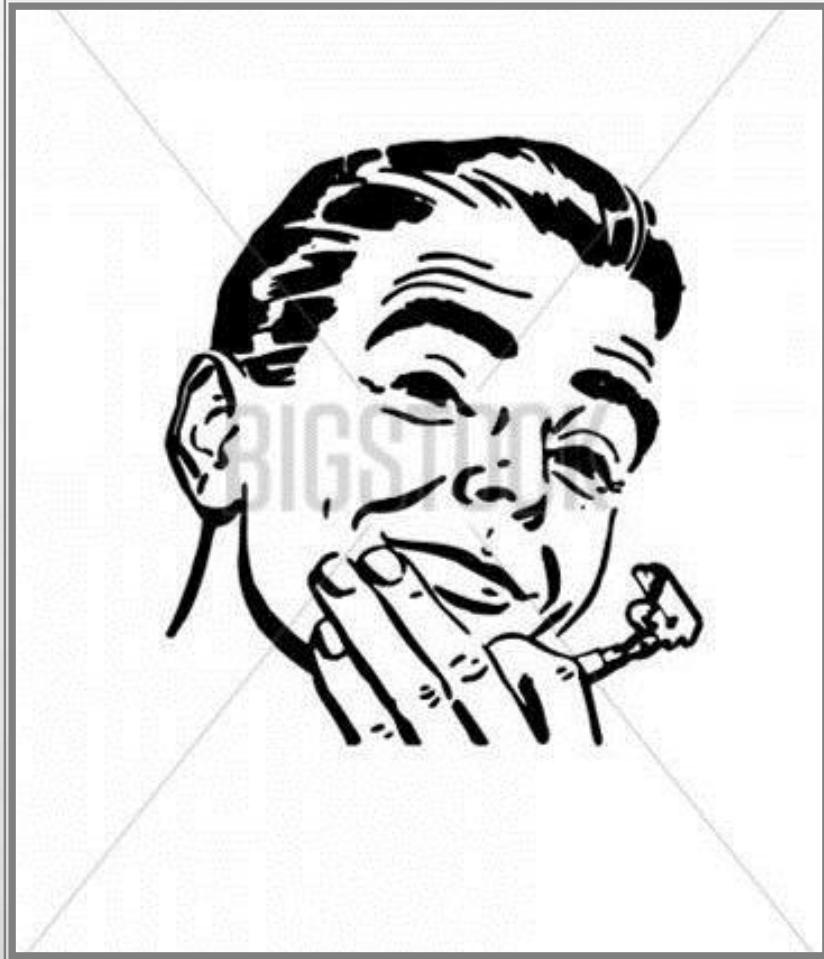
Jurors are bored to death by the time the prosecutor gets done explaining through voir dire why your client is guilty.



Defense attorneys are not automatons- we must adapt & evolve for *every* case.



Time to be unorthodox- time to be yourself- time to talk turkey to real people.



SHOULD I SHAVE?

- **WHAT THE HELL?**
- **BE BOLD OR GO HOME!**
- **GRAB THEIR ATTENTION- IT IS *YOUR* COURTROOM TOO.**
- **CREATIVITY WORKS- LET'S GET PERSONAL.**

TAILORING...

- TO YOUR CASE THROUGH CONVERSATION
- THROUGH STORYTELLING QUESTIONS
- BY HANDLING THE GRUMPY JUROR
- BY KNOWING WHAT YOU ARE TALKING ABOUT





GIVE US SOME RED MEAT

- VOIR DIRE THEMES FOR SELF-DEFENSE, DEFENSE OF ANOTHER AND THE CASTLE DOCTRINE
- SIDE NOTE- DEFENSE COUNSEL HAS A DUTY TO INQUIRE AS TO A POTENTIAL JUROR'S ATTITUDE AND BELIEFS CONCERNING THE ACT OF SELF-DEFENSE, ETC. WHY WOULDN'T THERE BE VOIR QUESTIONS REGARDING SELF-DEFENSE? AT A MINIMUM, IT IS GOING TO HELP BUILD YOUR FOUNDATION FOR CLOSING AND JURY INSTRUCTIONS.

REAL THEMES & QUESTIONS

- ADVOCATES- PRO AND AGAINST GUNS
 - NRA, NWTF, HUNT CLUBS
 - GUN OWNERS
- PROPERTY OWNERS
- RIGHT TO SELF-DEFENSE/DEFENSE OF OTHERS
- RIGHT TO DEFEND PROPERTY
- BEST POSITION TO PERCEIVE THREAT- THROUGH THE EYES OF THE PERSON THREATENED
- CONSCIOUSNESS OF INNOCENCE (CALLED THE POLICE)
- VULNERABILITY OF ANOTHER- DEFEND YOUR CHILD
- SERIOUS SITUATION WITH NO CHOICE BUT TO USE VIOLENCE FOR DEFENSE
- EXPERIENCE WITH THREATS AND FEAR OF HARM
- THINGS DONE OUT OF REAL FEAR OF HARM
- ACTS OF BRAVERY OUT OF FEAR
- SPLIT SECOND DECISIONS



VOIR DIRE THEMES CONT'D

- FEEL IT IS WRONG TO DEFEND YOURSELF IF GENUINELY THREATENED
- THINK YOU SHOULD ALWAYS RUN AWAY FIRST- EVEN IF IT MEANT THERE WAS A GOOD CHANCE YOU COULD GET HURT OR EVEN DIE
 - WHEN CAN YOU DEFEND YOURSELF OR OTHERS
- BELIEF THAT A KNIFE OR GUN IS A DEADLY WEAPON- OR EVEN A BAT OR GOLF CLUB
- CHECK OUT *SEALS V. STATE*, 551 S.W.3D 653 (MO. APP., 2018)
 - MAKE SURE YOU COVER SELF-DEFENSE IN VOIR DIRE AND TRIAL
 - TRIAL COURT SHALL THEN BE REQUIRED TO INCLUDE INSTRUCTION

JURY INSTRUCTIONS- **FIGHT FOR 'EM TIL YOU CAN'T**



INSTRUCTION NO. _____

When you retire to your jury room, you will first select one of your number to act as your foreperson and to preside over your deliberations.

You will then discuss the case with your fellow jurors. Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Your verdict, whether guilty or not guilty, must be agreed to by each juror. Although the verdict must be unanimous, the verdict should be signed by your foreperson alone.

When you have concluded your deliberations, you will complete the applicable form(s) to which you unanimously agree and return (it) (them) with all unused forms and the written instructions of the Court.

MAI-CR 3d 302.05
Submitted by Defendant

THIS RELATES TO THE NOTICE REQUIREMENT OR LACK THEREOF

- ONLY BATTERED SPOUSE SYNDROME REQUIRES THE WRITTEN NOTICE
- LEAVES THE ISSUE OF INJECTING THE ISSUE OF SELF-DEFENSE, DEFENSE OF ANOTHER, OR DEFENSE OF PROPERTY- WHAT EXACTLY CONSTITUTES A PROPER INJECTION FOR PURPOSES OF GETTING THE JURY INSTRUCTION
 - DEFENDANT'S TESTIMONY (IN SELF-DEFENSE CASES, MIGHT BE RARE OCCASION WHERE HE OR SHE MAY WANT TO TELL THEIR SIDE OF THE STORY)
 - TESTIMONY OF ANY OTHER WITNESS
 - JUST THE USE OF THE WORDS "I REALLY BELIEVED MY LIFE WAS THREATENED" OR "I WAS DEFENDING MYSELF" IS SUFFICIENT

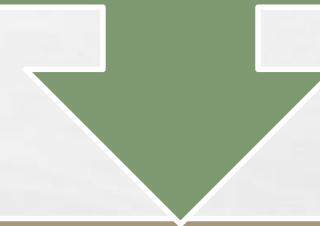
INJECTING SELF-DEFENSE IS LIBERALLY APPLIED, BUT NOT WITHOUT LIMITATION

- ***STATE V. BRUNER*, 541 S.W.3D 529 (MO. 2018)**
 - SPECIFICALLY ADDRESSES WHAT IS REQUIRED AND WHAT IS NOT
 - E.G. CANT SHOOT A PERSON IN THE BACK OF THE HEAD AND THEN SAY "I WAS SOOO SCARED"
 - RECOGNIZES THE FOLLOWING:
 - A TRIAL "...MUST SUBMIT A SELF-DEFENSE INSTRUCTION WHEN 'WHEN SUBSTANTIAL EVIDENCE IS ADDUCED TO SUPPORT IT, EVEN WHEN THAT EVIDENCE IS INCONSISTENT WITH THE DEFENDANT'S TESTIMONY'. *STATE V. WESTFALL*, 75 S.W.3D 278, 281 (MO. BANC 2002).
- **REMEMBER SUA SPONTE**
 - EVEN IN THE ABSENCE OF A REQUEST FOR SUCH AN INSTRUCTION - REFERRING TO *STATE V. ALBANESE*, 920 S.W.2D 917 (MO. APP. 1996)



SOO... WHAT IS SUBSTANTIAL THEN?

ANY “EVIDENCE PUTTING IT IN ISSUE”



“ANY THEORY OF INNOCENCE”, “HOWEVER IMPROBABLE THAT THEORY MAY SEEM, SO LONG AS THE MOST FAVORABLE CONSTRUCTION OF THE EVIDENCE SUPPORTS IT”

***STATE V. MCQUEEN (NOT STEVE), 431
S.W. 2D 445 (MO. 1968)***

THE JURY INSTRUCTIONS ARE GREAT FOR YOUR CASE-MEANING MALLEABLE

SECTION 406- WHETHER REQUESTED OR NOT

406.06 JUSTIFICATION: USE OF FORCE IN SELF-DEFENSE

406.08 JUSTIFICATION: USE OF PHYSICAL FORCE IN DEFENSE OF THIRD PERSONS

406.10 JUSTIFICATION: USE OF FORCE IN SELFDEFENSE WHILE IN A DWELLING, RESIDENCE OR VEHICLE

406.12 JUSTIFICATION: USE OF FORCE IN DEFENSE OF PROPERTY

406.14 JUSTIFICATION: USE OF FORCE BY LAW ENFORCEMENT OFFICER

406.16 JUSTIFICATION: USE OF FORCE BY PRIVATE PERSON IN MAKING ARREST

406.18 JUSTIFICATION: USE OF FORCE TO PREVENT ESCAPE FROM CONFINEMENT

406.20 JUSTIFICATION: USE OF FORCE BY PERSON ENTRUSTED WITH CARE AND SUPERVISION OF MINOR OR INCOMPETENT

406.22 JUSTIFICATION: USE OF FORCE BY PRIVATE PERSON IN RESISTING EXCESSIVE FORCE BY A KNOWN LAW ENFORCEMENT OFFICER MAKING AN ARREST

406.30 JUSTIFICATION: USE OF DEADLY FORCE IN SELF-DEFENSE-BATTERED SPOUSE



BUT SEE *STATE V. CLAY*, SC. 96016 (2017)

- DON'T SCREW IT UP BY COLLABORATING ON YOUR INSTRUCTIONS AND OTHERWISE AGREEING TO THE PA'S VERSION- WON'T GET JUDICIAL REDRESS
- STICK TO THE FORM MAI- THEY ARE ACTUALLY PRETTY GOOD
- OTHERWISE- YOU COULD BE DEEMED TO HAVE WAIVED YOUR SELF-DEFENSE INSTRUCTION
- THAT INCLUDES YOUR DUTY TO RETREAT LANGUAGE PER MAI-CR 306.06 AND FRIENDS
- SIDE NOTE REGARDING A LESSER- UNDERSTAND YOUR LESSER (NO ADDED ELEMENTS)

I AM NOT TALKIN' JAZZ FOLKS



- REAL LIFE CASE APPLICATION
- THE CASE OF THE BERENSTAIN BEARS AND THE UUW CHARGE AGAINST A PROPERTY OWNER AT HOME



NO MORE TALKING- I AM DONE (JUST KIDDING- ANY QUESTIONS???)

- **JOHN M. LYNCH**
- **THE LAW OFFICES OF JOHN M. LYNCH, LLC.**
- **7777 BONHOMME AVENUE, SUITE 1200**
- **CLAYTON, MO 63105**
- **(314) 726-9999**
- **JLYNCH@LYNCHLAWONLINE.COM**

