

EXAMINERS' ANALYSIS OF QUESTION NO. 7

Under Michigan law, similar to the common law, a person may use deadly force - even to the point of taking an attacker's life - if the person reasonably and honestly believes death or great bodily harm is imminent. In order to employ legitimate deadly force, the person may not be engaged in the commission of a crime and must be in a place where he or she has a legitimate right to be. MCL 780.972. The use of legitimate self-defense justifies the killing.

Moreover, a rebuttable presumption exists under Michigan law that an individual who uses deadly force has an honest and reasonable belief that death or great bodily harm is imminent if, among other things, the person against whom deadly force is used, is in the process of a breaking and entering a dwelling or committing a home invasion and is in the dwelling when deadly force is used. MCL 780.951.

Applying these principles to the salient facts produces two very different conclusions. First, Henry's chances of success are high on his self-defense claim regarding the armed intruder. Because that intruder was engaged in the commission of a home invasion or breaking and entering and was in the dwelling at the time Henry shot him, Henry is covered under the presumption. As such, he is presumed to have acted under a reasonable and honest belief of imminent death or great bodily harm. Nothing in the facts undermines or rebuts this presumption. Moreover, Henry was lawfully in his own home and legally possessed a firearm. He was under no obligation to retreat before using deadly force. His claim of self-defense is strong.

As to the unarmed intruder, a different conclusion should be reached. While it is true that this intruder was committing a home invasion or breaking and entering, he was no longer in the house when shot. The presumption is not intact. However, Henry may still hold the requisite mindset - a reasonable and honest belief of imminent death or great bodily harm - without the statutory presumption. Henry was still in his house, lawfully armed, and under statute had no duty to retreat.

But from there, his claim of self-defense disintegrates under both the statute and the common law. An integral part of both is a certain quantum of fear. By the time Henry shot, he was angry and not fearful. Moreover, while originally posing a threat to Henry, the second intruder was in full retreat. Henry actually went after this man, hardly bespeaking fear. Finally, the unarmed man was shot in the back. It is exceedingly difficult to conclude that, when Henry shot this man, Henry had a reasonable and honest belief in imminent death or great bodily harm, a necessary predicate to legitimate use of self-defense.

In sum, Henry's self-defense claim is clearly supported regarding the armed intruder and not supported regarding the unarmed intruder.