

EXAMINERS' ANALYSIS OF QUESTION NO. 11

Neither of David's defenses have much chance of success.

One charged with a crime certainly may defend against such a charge by claiming self-defense. To be lawful self-defense, the evidence must show that (1) a defendant honestly and reasonably believed that he was in imminent danger; (2) the feared danger was death or serious bodily harm; (3) the action taken appeared at the time to be immediately necessary; and (4) generally speaking, the defendant was not the initial aggressor. See *People v Guajardo*, 300 Mich App 26 (2013) and *People v Riddle*, 467 Mich 116 (2002). Moreover, under Michigan statutory self-defense, an accused may not be "engaged in the commission of a crime." See MCL 780.972(1) (2).

Statutory Self-Defense

Taking the statutory defense first, it is clear David was engaged in the commission of a crime when - as a convicted felon - he armed himself with a pistol and was armed on Mel's doorstep. Moreover, he entered Mel's home through force and without permission, thereby committing home invasion in some degree. The statutory defense on its face, therefore, is not open to David.

Common Law Self-Defense

David fares no better on the common law defense based on the elements stated above. Indeed on virtually every element, his defense fails. First, no evidence exists supporting David's belief that he could have honestly and reasonably believed he was in imminent danger. At the doorstep, Mel did not threaten David, nor was he armed. When David bull-rushed his way in, he was not afraid; he was angry. Fear controls self-defense, not anger. Second, even assuming some fear of danger, it hardly amounted to fear of death or great bodily harm. Mel was quickly subdued and was taking a beating. Relatedly, when David shot at Mel, Mel was fleeing his own home trying desperately to get away (he was shot in the back). This hardly bespeaks David needing to take the action he did (shooting an unarmed man as he ran

away) to avoid being harmed himself. Fourth, it is clear that David was the first aggressor.

Claim of Right

One accused of a theft or theft-related crime may defend through a claim of right or entitlement to the property in question. This defense is not open to David. Neither home invasion nor assault with intent to murder necessarily involve larceny. Claim of right is grounded in negation of the intent to steal integral to theft offenses. *People v Shaunding*, 268 Mich 218 (1934) and *People v Cain*, 238 Mich App 95 (1999).

David's defense fails for many reasons, principle of which is that he was not charged with a property-theft crime and he did not forcibly retrieve the cell phone from Mel. Indeed, he didn't even broach the topic. Accordingly, not charged with a property crime, a claim of right defense does not obtain and the attendant facts undercut such a defense. See Michigan Criminal Jury Instructions 7.5.

In sum, David's defenses have no merit.