

While walking home one evening, an off-duty police officer was accosted by a stranger. The stranger had been drinking and mistakenly thought the officer was a man who was having an affair with his wife. Intending to frighten the officer but not to harm him, the stranger pulled out a knife, screamed obscenities, and told the officer he was going to kill him. Frightened and reasonably believing the stranger was going to kill him and that using deadly force was his only salvation, the officer took out his service revolver and shot and killed the stranger.

The officer is charged with murder. At trial, he claims that he acted in self-defense.

Was the officer justified in using deadly force in self-defense?

- A. No, because the officer was not defending his home and had an obligation to retreat or to repel with less than deadly force.
- B. No, because the stranger did not in fact intend to harm the officer and the officer was incorrect in believing that he did.
- C. Yes, because the killing was in hot blood upon sufficient provocation.
- D. Yes, because the officer reasonably believed the stranger was planning to kill him and that deadly force was required.

Explanation:

The use of **deadly force in self-defense** is justified and a **defense to murder**—an unlawful killing of another with **malice aforethought** (eg, intent to inflict serious bodily harm)—when the defendant:

actually and reasonably believed that deadly force was **necessary to prevent** imminent serious bodily harm or **death** *and*

was **not the initial aggressor**—ie, did not engage in physical force first or intentionally provoke the altercation.

Here, the officer intentionally shot and killed the stranger. But the officer actually and reasonably believed that deadly force was necessary to prevent his imminent death because the stranger had pulled out a knife and threatened to kill the officer. And since the officer was not the initial aggressor, he justifiably used deadly force in self-defense.

(Choice A) In most jurisdictions, a person has no duty to retreat or repel an attack before using deadly force in self-defense—even when the person is outside his/her home (as seen here). But in a minority of jurisdictions, a person who is *outside* his/her home must retreat before using deadly force if he/she can safely do so.

(Choice B) To use deadly force in self-defense, the person's actual belief that serious bodily harm or death is imminent need only be reasonable—not correct. Therefore, the officer's incorrect belief that the stranger intended to harm him does not negate this defense.

(Choice C) Proof that the defendant intentionally killed in hot blood upon sufficient provocation—ie, an action that would cause a reasonable person to lose control—*reduces* murder to voluntary manslaughter. But it does not *justify* the use of deadly force in self-defense.

Educational objective:

A defendant may justifiably use deadly force in self-defense when he/she (1) actually and reasonably believes that deadly force is necessary to prevent serious bodily harm or death and (2) is not the initial aggressor.

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Deadly force in self-defense

