

A defendant has been charged with battery for breaking a man's nose in a bar fight. At trial, the evidence established the following: The defendant was watching a contentious football game with the man when the defendant yelled obscenities about the man's favorite football team. In response to the defendant's remarks, the man yelled obscenities about the defendant. The defendant stood up from his chair, walked over to where the man was sitting, raised his fist and said, "One more word and I'll shut your mouth for you." The man then grabbed the defendant by the shirt and started waving a knife at the defendant in an effort to stab him. The defendant proceeded to punch the man several times until the man released the defendant's shirt.

Should the defendant be convicted of battery?

- A. No, because a person may use any amount of force to repel an attack.
- B. No, because the man attempted to use deadly force against him.
- C. Yes, because the defendant failed to retreat.
- D. Yes, because the defendant was the initial aggressor.

Explanation:

Battery is the unlawful application of force (eg, a punch) to another person that causes offensive contact or bodily harm (eg, a black eye). Therefore, the defendant committed battery. However, an otherwise unlawful use of force may be **justified** if it was done in **self-defense**. This justification generally **does not extend to an initial aggressor**—ie, the person who first uses or threatens physical force. However, an initial aggressor may **gain the right** to act in self-defense **in two circumstances**:

When the initial aggressor's use of nondeadly force is **met with deadly force***

When the initial aggressor, in good faith, **completely withdraws** from the altercation and **communicates** that fact **to the victim**

Although merely using obscenities does not alone make a person an initial aggressor, the defendant assumed this role when he walked over to the man and threatened to strike him. The defendant's nondeadly threat was then met with deadly force when the man grabbed and waved a knife at the defendant in an attempt to stab him. This gave the defendant the right to act in self-defense by using *reasonable* force to prevent imminent unlawful harm to himself **(Choice A)**.

Reasonable force means that a person may only use as much force as is required to repel the attack. Here, the defendant used reasonable force since he punched the man only until the man released the defendant's shirt. As a result, the battery against the man was justified and the defendant should *not* be convicted of this crime **(Choice D)**.

*The initial aggressor may not claim self-defense when he/she initially used deadly force against the victim.

(Choice C) There is no **duty to retreat** before using nondeadly force in self-defense (as seen here), even if there is an opportunity to do so safely.

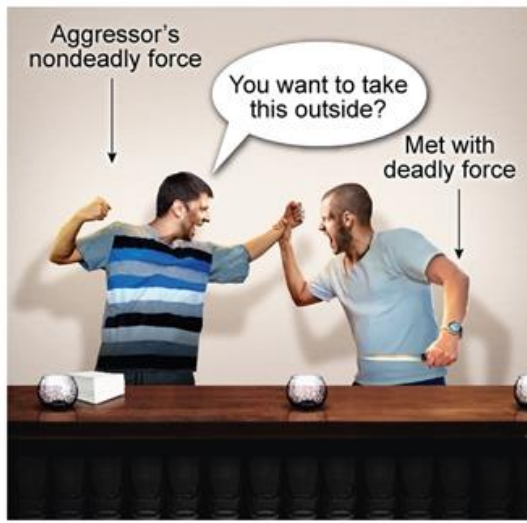
Educational objective:

An initial aggressor can only claim self-defense if (1) the aggressor's use of nondeadly force was met with deadly force or (2) the aggressor, in good faith, completely withdrew from the altercation and communicated that fact to the victim.

References

6 Am. Jur. 2d Assault and Battery § 53 (2020) (explaining when an initial aggressor gains the right to act in self-defense).

When initial aggressor gains the right to self-defense



OR

