

A defendant was charged with battery in a jurisdiction that follows the "retreat" doctrine, and he pleaded self-defense. At his trial, the evidence established the following: A man and his wife were enjoying a drink at a tavern when the defendant entered and stood near the door. The wife whispered to her husband that the defendant was the man who had insulted her on the street the day before. The husband approached the defendant and said, "Get out of here, or I'll break your nose." The defendant said, "Don't come any closer, or I'll hurt you." When the husband raised his fists menacingly, the defendant pulled a can of pepper spray from his pocket, aimed it at the husband's face, and sprayed. The husband fell to the floor, writhing in pain.

Should the defendant be convicted?

- A. No, because he had no obligation to retreat before resorting to nondeadly force in self-defense.
- B. No, because there is no obligation to retreat when one is in an occupied structure.
- C. Yes, because he failed to retreat even though there was an opportunity available.
- D. Yes, because the husband did not threaten to use deadly force against him.

Explanation:

Self-defense

(justification for criminal conduct)

	General requirements	Duty to retreat
Nondeadly force	Actual & reasonable belief of imminent <i>unlawful</i> harm Force reasonably necessary to prevent harm Not initial aggressor	No duty to retreat
Deadly force	Actual & reasonable belief of imminent <i>serious harm</i> or <i>death</i> Deadly force necessary to prevent harm Not initial aggressor	Majority rule: No duty to retreat Minority rule: Duty when safe retreat available <i>unless</i> inside one's home

Battery occurs when a person inflicts harmful or offensive contact on another. But a battery committed in **self-defense** is justified—and not subject to criminal liability—if the person:

actually and reasonably believed that force was necessary to protect against imminent unlawful harm

used reasonable force (ie, no more than necessary) to prevent such harm *and* was not the initial aggressor—ie, did not provoke the altercation.

There is **no duty to retreat** before using **nondeadlyforce** in self-defense—even when one could do so safely (**Choice C**). But in the few jurisdictions that follow the **retreat doctrine** (as seen here), a person **must retreat** before using **deadlyforce** when that person is outside his/her home and can retreat with reasonable safety.

Here, the wife provoked the altercation when she told her husband that the defendant had insulted her the day before. The husband then approached the defendant, threatened to break his nose, and raised his fists menacingly. This caused the defendant to actually and reasonably believe that he was in danger of imminent unlawful harm, so he sprayed the husband's face with pepper spray. And since the defendant had *no duty to retreat* before using such nondeadly force in self-defense, he should not be convicted of battery.

(Choice B) There is no obligation to retreat before using nondeadly force in self-defense—no matter the location. And under the castle doctrine (minority rule), there is no obligation to retreat before using deadly force while in one's home—not any occupied structure (eg, the tavern).

(Choice D) The fact that the husband did not threaten to use deadly force means that the defendant could not have used *deadly* force in self-defense. But since he used *nondeadly* force (pepper spray), his actions were justified.

Educational objective:

Under the retreat doctrine (minority rule), a person must retreat before using *deadly* force in self-defense if that person is outside his/her home and can do so with reasonable safety. But there is no duty to retreat before using *nondeadly* force in self-defense.

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