



The “Stand Your Ground” Law — A Tool to Defend Civil Cases

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Stand your ground law can be and has been used to successfully defend civil cases alleging negligence, wrongful death, assault and battery, and intentional infliction of emotional distress claims.

See NRS 200. Crimes Against the Person; see also *Adams v. Ayers*, Case No. A-17-755583-C, Order entered by district court (homeowner shot intruder/burglar during a home invasion and burglary); *Banks v. Maynulet*, Case No. A-13-679793-C, Order entered by district court (store manager shot armed robber). In both *Adams* and *Banks*, no criminal charges were brought against the defendants. On the right facts, you should consider whether Chapter 200 supports the defense of your case.

Nevada’s self-defense statutory framework has existed for more than 100 years. NRS 200.120, 200.130, 200.160, and 200.200. Justifiable homicide is defined by NRS 200.120 through NRS 200.190. *Newell v. State*, 131 Nev. 974, 977 (2015). NRS 200.120 (“Justifiable homicide”) – Nevada’s “stand your ground” law – provides:

1. Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of an occupied habitation, an occupied motor vehicle or a person, against one who manifestly intends or endeavors to commit a crime of violence, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the occupied habitation or occupied motor vehicle, of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.
2. A person is not required to retreat before using deadly force as provided in subsection 1 if the person:
 - (a) Is not the original aggressor;
 - (b) Has a right to be present at the location where deadly force is used; and
 - (c) Is not actively engaged in conduct in furtherance of criminal activity at the time deadly force is used.
3. As used in this section:
 - (a) “Crime of violence” means any felony for which there is a substantial risk that force or violence may be used against the

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person or property of another in the commission of the felony.

- (b) Motor vehicle” means every vehicle which is self-propelled.

NRS 200.130 provides:

1. A bare fear of any of the offenses mentioned in NRS 200.120, to prevent which the homicide is alleged to have been committed, is not sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person and that the person killing really acted under the influence of those fears and not in a spirit of revenge.
2. There is a rebuttable presumption that the circumstances were sufficient to excite the fears of a reasonable person and that the person killing really acted under the influence of those fears and not in a spirit of revenge if the person killing:
 - (a) Knew or reasonably believed that the person who was killed was entering unlawfully and with force, or attempting to enter unlawfully and with force, the occupied habitation or occupied motor vehicle, of another;
 - (b) Knew or reasonably believed that the person who was killed was committing or attempting to commit a crime of violence; and
 - (c) Did not provoke the person who was killed.

The plain language of the statutes does not differentiate between the types of felonies from which a person may defend themselves. *Davis v. State*, 130 Nev. 136 (2014). However, both NRS 200.120 and 200.130 require that in order for homicide to be justified, the defendant’s belief in the necessity of using force in self-defense must be reasonable. *Hill v. State*, 98 Nev. 295, 296 (1982).

If the facts support these defenses, a discovery plan should be established, including what you need to support the defenses and, perhaps, allow an early motion for summary judgment. The discovery can include a deposition of the detective/officer investigating the shooting; obtaining police and coroner documents, photos, statements and other evidence; and written discovery to the plaintiff.

In *Adams*, the decedent broke into the defendant’s home by throwing a brick through a window and unlawfully entered the home. The decedent had no legitimate or legal reason to be in the defendant’s home at the time he was shot because the decedent did not own it, he never lived there, and he was not a guest or invitee of the defendant. The decedent was committing felonies at the time he was shot, *i.e.*, home

invasion and burglary of the defendant’s home. The defendant was in his bedroom when he heard the glass breaking and left his bedroom to investigate. The defendant did a “quick walk” downstairs to make sure there wasn’t anyone else in his home, but did not check the rooms underneath the staircase, including a half bathroom, the laundry room that leads to the garage, or the garage itself. Finding no one, the defendant went upstairs to get his phone to call 911. When the defendant

came back out of his bedroom, the decedent was running up his staircase toward him wearing a black/gray hooded jacket with the hood pulled up over his head and tied underneath his chin to disguise his appearance. The defendant feared for his life and shot the decedent.

A few days before this incident, the defendant was advised by ADT security about a series of break-ins in the neighborhood, including one that occurred across the street a few weeks before. Defendant called 911 and reported the incident. The physical evidence included shell casings along the top balcony/walkway outside the defendant’s bedroom door and onward, down the stairs and on the stairway wall showing the defendant’s and/or decedent’s path. Police and the district attorney determined the defendant’s shooting of the decedent was justifiable homicide and brought no charges against him. Based on all of the case facts, summary judgment was entered.

On the right facts, consider whether you could get summary judgment, what you need to establish the defense(s), do the necessary discovery, and file the motion. While you may not get summary judgment on your first attempt, that might assist you in figuring out what else you need for a subsequent motion for summary judgment, whether that be before or at the close of discovery.



“Crime of violence” means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.



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