

1973 WL 26688 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 2, 1973

\*1 Mr. Keith L. Cannon

Route 3

Box 134

Clinton, S. C. 29325

Dear Mr. Cannon:

In response to your inquiry of March 18 concerning the questions you raise with respect to how far a person can go with respect to the use of firearms when a housebreaking takes place while the occupant is at home, I am setting for the general principles of applicable South Carolina law.

The general rule is as follows:

‘The owner or occupant of a dwelling may lawfully repel force by force in defense of his habitation against one who attempts to enter in a forcible or violent manner for the apparent purpose of committing a felony therein or inflicting great bodily harm or offering physical violence to an inmate; and, if in making such defense, he endangers the life of the felonious aggressor, his act is justifiable. So the owner has the right, even if necessary to the extent of the taking of life, to protect his dwelling against a peace-disturbing, profane intruder. These rules, however, are not applicable where the assault was unwarranted under the circumstances, or was not necessary to prevent an invasion of accused's habitation, or it was made on a person who, although in accused's habitation, was peacefully leaving it at accused's direction.’ 40 C.J.S. *Homicide* at 954-955. See also [State v. Osborne](#), 200 S.C. 504, 21 S.E.2d 178; [State v. Starnes](#), 213 S.C. 304, 49 S.E.2d 209; [State v. Martin](#), 216 S.C. 129, 57 S.E.2d 55.

The South Carolina Supreme Court has held that, although the right to take life in the defense of one's dwelling includes any place where a person lives and which is his only home and place of abode ([State v. Bradley](#), 126 S.C. 528, 120 S.E. 240) it does not extend beyond the limits of the dwelling and the customary outbuildings. [State v. Faulkner](#), 151 S.C. 379, 149 S.E. 108; [State v. Bradley](#), *supra*; [State v. Brooks](#), 79 S.C. 144, 60 S.E. 518.

Moreover, the South Carolina Supreme Court has stated that in the protection of one's dwelling, only such force may be used as is necessary, or apparently necessary to a reasonably prudent man, and any greater force is unjustifiable, and hence punishable. [State v. Hibler](#), 79 S.C. 170, 60 S.E. 438.

With respect to legal proceedings which result when a homeowner kills a person who is attempting to break in, I advise that the procedure would normally be his indictment and trial, as in other cases, probably preceded by an arrest and coroner's inquest.

The general rule is:

‘—the law holds one who admits the killing of another to a very strict account, and it requires of him very satisfactory evidence that it was necessary; that is, apparently necessary.’

Very truly yours,

Daniel R. McLeod

Attorney General

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