Killing in Self-Defense

by Lisa Riordan Seville

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The right of self-defense is on the books in every state, but it's rarely used as a courtroom defense. A recent Supreme Court ruling, however, may have given self-defense advocates more ammunition.

Even now, Ziad Tayeh has a hard time explaining how a late-night stop for a bite to eat ended in a fight for his life.

Early one October morning in 2006, Ziad Tayeh, then a 23-year-old community college student in Brooklyn, New York, hopped in his Lexus SUV and drove into midtown Manhattan to grab a plate of chicken and rice at a popular late-night food cart on Fifth Avenue and 53rd Street.

He had just finished ordering when, according to Tayeh, three youths, including Tyrone Noel Gibbons, a 19-year-old from New Jersey, tried to cut in line. Angry words were exchanged. The dispute moved from the cart to their cars. The men spilled back onto the street two blocks later when Tayeh says Gibbon's Toyota Yaris boxed him in. The men demanded he get out. He did. "I pulled a knife out and I told them to back up," Tayeh told *The Crime Report.* "They called my bluff."

One of the three men came at Tayeh with a knife, and held it to his neck. Tayeh swung his arm, the knife still in his hand. In the ensuing melee, Tayeh struck Tyrone in the torso. Then Tayeh jumped in his car and drove away. An officer picked him up 30 blocks later.

Grilled by investigators, then the district attorney, Tayeh claimed he had fought back in self-defense. He learned only after hours at the precinct that Gibbons had died. Tayeh was charged with second-degree murder. "No one understood how scared I was," he remembered. Three years later, a jury accepted his self-defense argument and found him not guilty of manslaughter.

Tayeh was fortunate. While all 50 states have laws that protect the right of self-defense, this right appears nowhere in the U.S. Constitution. And the difficulty of applying the laws to specific places, circumstances and weapons has made such a defense a risky, and therefore rarely used, tactic in courts across the nation. Even more rare is a case in which a claim of self-defense leads to a not-guilty verdict.

Supremes Weigh In

Last month, however, advocates of the self-defense argument received a boost from none other than the U.S. Supreme Court. Writing for the majority in a landmark ruling on gun rights, U.S. Supreme Court Justice Samuel Alito declared that self-defense is "a basic right, recognized by many legal systems from ancient times to the present."

The 5-4 Court ruling, in *McDonald v. City of Chicago,* ruled unconstitutional Chicago's 1982 ordinance prohibiting citizens from possessing handguns for private use, even in their homes. Since handguns are the weapons "most preferred" by citizens trying to defend themselves in their homes, banning handguns in the home fetters the right of self-defense, the court reasoned.

Though the Supreme Court's ruling is unlikely to directly impact the laws of self defense, it lays the groundwork for subsequent lawsuits that seek to define, and likely widen, the laws of use and carry, says Ilya Shapiro, a senior fellow at the Cato Institute, a libertarian think tank based in Washington D.C.

These cases, Shapiro says, may in turn shape reshape the boundaries of the kind of force individuals can use to defend themselves.

"In evaluating future gun regulation, self-defense will be a very important part. That's what the right to keep and bear arms is about," says Shapiro. "It's about protecting life, liberty, property. It will be up to the government to justify restrictions to those rights."

But while the government sets the laws in courts, it is law-enforcement, prosecutors, judges and juries who ultimately decide when using force is justified, and when it is criminal.

That's one reason why the *McDonald* decision may not necessarily make it easier to litigate self-defense cases, argues Lisa J. Steele, a defense attorney who has written a brief on building a self-defense case for the National Association of Criminal Defense Lawyers. Such cases remain "a big gamble for the defendant," she explains. "You're saying 'I did this, I meant to do this, and I was justified in doing it.'"

Justifiable Homicide

No one knows exactly how often Americans use guns or other weapons in self-defense. A 1995 phone survey by the U.S. Department of Justice estimated 1.5 million people may use guns in a defensive manner each year. The results were similar to a study done the previous year by Gary Kleck, a criminologist at Florida State University.

Only rarely does self-defense of any kind result in a homicide. The Federal Bureau of Investigation reported 245 "justifiable homicides" committed by civilians in the 14,180 murders recorded in 2008, the most recent year for which statistics are available. These numbers, reported by local law enforcement to the FBI, include only homicides that take place at the same time as a felony, like a store clerk who kills while a robbery is in progress, or a burglar who is shot while breaking into someone's home.

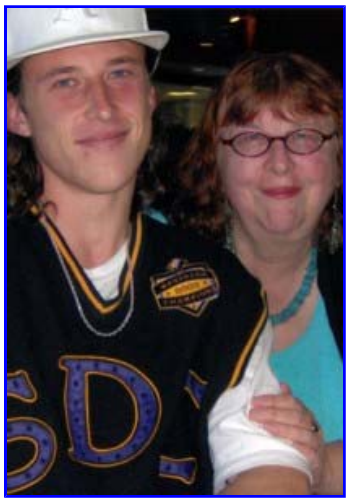
The specific nature of that category may leave hundreds of homicides committed in self-defense, like the case of Ziad Tayeh, uncounted. "There could be three times as many total defensive homicides as the FBI numbers show," says Professor Kleck, who researches crime and gun control. He bases his estimate on local studies with more detailed breakdown of the defensive homicide category.

Few such self-defense homicides make it into court. Police dispatch straightforward cases early by not pressing charges. District attorneys and grand juries may filter cases by choosing not to indict. This discretionary power makes it difficult to count how many self-defense cases arise each year. "It's really the difficult, borderline cases that go to trial," says Kleck.

But using the self-defense doctrine, a defense to a homicide charge is considered a high-stakes bet. Those who choose to claim they killed in self-defense could walk out vindicated, or could face decades in prison for manslaughter or murder.

Self-defense cases are also a trial of character. To decide if the homicide was justified, a jury passes judgment not only on the defendant, who claims he was a victim, but also on the deceased, who the defense argues was in fact the aggressor.

Dangling in the Wind



Andrew Hoeft Edenfield, who was convicted of manslaughter which he said was in self-defense. Photo courtesy of Hoeft Edenfield family

If the court or jury does not agree, notes defense attorney Lisa Steele, "you're dangling in the wind."

That's how, in May 2008, Andrew Hoeft-Edenfield, then a 20-year-old community college student was left after a birthday party at an apartment just east of U.C. Berkeley's frat row ended in the fatal stabbing of Christopher Wootton, a 21-year-old Berkeley student weeks away from graduating with a degree in nuclear engineering.

At the trial, Hoeft-Edenfield's lawyer, Yolanda Huang, argued this was a case of self-defense. She claimed that Wootton and a group of his frat brothers from Sigma Pi had ganged up on her client and his friend, outnumbering them in a fight. "It was in the dark, very late, in an enclosed area, and people were pummeling him," Huang said, adding that Hoeft-Edenfield had pulled a

knife in self-defense.

Prosecutor Connie Campbell painted it differently. She told the jury that Hoeft-Edenfield, was into the "thug life," charging that he had gone out looking for a fight that night. The trial centered on the characters of two young men: a U.C. Berkeley star that the defense said had a history of violence versus a community college kid the prosecution said killed intentionally and without remorse.

On May 13, 2010, they found Hoeft-Edenfield guilty of second-degree murder. He has been sentenced to 16 years to life, and currently being held at San Quentin Reception Center just outside San Francisco. His lawyer says he will appeal.

Not surprisingly, his family feels he was given a bum rap. "I feel like my son was really defending himself," said Ellen Hoeft-Edenfield, 62, who points out her son and his friend were outnumbered three to one. "He was put in a situation where he really didn't have any other choice."

But Wootton's fraternity brother Ryan Rudnitsky, 24, disagrees, "What do you have a knife for?" he wonders. "In some small inkling way, [Hoeft-Edenfield] had intention to use it."

Stand Your Ground

Had Hoeft-Edenfield been tried in Florida, things may have turned out differently. While the right of self defense is fairly standard across the states, some recent laws offer individuals the right to use force more freely inside and outside the home.

In order to use force in any state, the threat to life or limb must be imminent. There must be no other choice but to resort to using force. That force, when used, can be no more than absolutely necessary.

The law seems simple, but each facet presents hard questions. How imminent was that danger? What is necessary force? Was there really no other choice but violence?

Self-defense laws have always allowed people to "meet force with force" if confronted with danger in their homes. Many jurisdictions once had a "duty to retreat" clause for incidents outside the home that required those who faced danger to try to get out of the situation before resorting to violence.

In 2005, a Florida law eliminated the "duty to retreat," allowing Floridians to "meet force with force" anywhere they have a "legal right to be." Unlike California, which also has no duty to retreat, Floridians may use lethal force in and outside their homes. Thirty states now have "stand your ground" legislation that eliminates to the duty to retreat.

The legislation has been supported by the National Rifle Association (NRA) and other gun-rights activists who advocate for broader Second Amendment rights, often basing their arguments on the doctrine of self-defense.

"I see it as kind of a moral victory for the people who defend themselves," says Massad Ayoob, a police captain in New Hampshire who has worked as a firearms trainer for police and civilians. To Ayoob, the right to bear arms, including guns, "brings parity" to life threatening situations.

"If the criminal has a gun and the victim does not, that's about as bad as it can get," he says.

But Ayoob also admits that the race, class or circumstances in which the victim finds himself may effect the outcome of a self-defense claim in court. He pointed to the case of Ronnie Barlow, a young black man from Arizona who was in 1990 convicted of second-degree murder for what he said was the self-defense shooting. He said he was attacked by 21-year-old Robert Lockwood, a white man with a long criminal history and the son of a local judge, but the jury didn't buy it. The judge, however, saw it differently and reduced the jury verdict to manslaughter. Two years later, Barlow was released.

Race and Self-Defense

In legal circles, one of the most talked about components of the *McDonald* case was Justice Clarence Thomas' opinion in the case. While he voted with the majority, he offered a controversial 56-page interpretation that framed Second Amendment protection in terms of racial history.

In the Reconstruction Era following the Civil War, black citizens in the South "were tortured and killed for a wide array of alleged crimes, without even the slightest hint of due process," Thomas writes.

"The use of firearms for self-defense was often the only way black citizens could protect themselves from mob violence."

The argument led to comparisons to Malcolm X in the Washington Post, and a general sense that the opinion was, legally and rhetorically, a bold step for the oft-silent justice. But it also implied that while the right to self-defense is "ancient," our perceptions of the proper use of force in self-defense can be a product of our historical moment.

To defense attorney Lisa Steele, there's no question about that. "There's class issues built into this. There's race issues built into this. It gets really complicated really quickly," she says.

That's because there's a tricky question at the heart of any determination of self-defense: what would a reasonable person have done?

The "reasonable man" —or now, "reasonable person" doctrine—is the cornerstone of a self-defense case, explains Cynthia Lee, a law professor at George Washington University. Juries must decide if the sequence of events was reasonable not only in the defendant's mind, but from an outside perspective.

"The reasonableness requirement is imposed to lend an air of objectivity to the defense," says Lee, author of Murder and the Reasonable Man, a study of how beliefs and social norms play out in criminal cases, including self-defense trials.

"The problem is of course that reasonableness is in the eye of the beholder," she says. "What's reasonable to one person is not reasonable to another."

In recent years, the courts and state legislatures have opened up more room for questions as to what constitutes an "imminent" threat, and if a reasonable person must try to flee before using force.

Increased legal acceptance of the "battered person's syndrome" in the early 1990s allowed juries to hear how an abused person—often, a woman—might feel she has no choice but to kill to save her life. This challenged the longstanding notion that the threat to one's life had to be imminent. A battered person may, some believe, kill because they perceive the abuse to be life-threatening even if it isn't happening right then.

Like "stand your ground laws," battered person defenses, show how societal views can come into play in the longstanding right to self-defense, but nothing may indicate that better than the juries themselves.

Self-defense cases offer a jury a lot of leeway to decide what they believe is reasonable and just, regardless of the law. "What the law on the books requires and what happens in action may be two different things," says Lee. "Prosecutors, cops, jury members. We're all people," says Lee "and stereotypes about certain groups affect us all."

The *McDonald* decision means that courts throughout the country will grapple for years with interpretations of the Second Amendment and the right of self-defense. But when the cases make it in to court, justice may depend less on the letter of state law than on the state of mind of the 12 people seated in that jury box.

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