

The Limits to Self-Defense Claims in Case of Domestic Violence Homicides

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Abstract : Domestic violence is a serious social issue in which victims are mostly women. Domestic violence develops in cycles, starting with the building of tension, passing through the incident of abuse and ending with reconciliation, also known as honeymoon. As time goes by, the shorter these phases become, and the greater and more severe the attacks, rarely leading to the death of the victim of abuse. Sometimes, the victim stops the abuse by killing the aggressor, usually after the immediate aggression has taken place. This poses an important obstacle to the claim of self-defense by the victim of domestic violence pending trial for the homicide of her long-time abuser. The main problem with self-defense claims in such cases is that the law requires the act of aggression to be present or imminent (imminent threat or immediate danger) so that it permits the victim to take her defense into her own hands. If the episode of aggression has already taken place, this general requirement for the admissibility of self-defense is not satisfied. This paper sheds new light on the concept of the actuality of the aggression, understanding that, since domestic violence is a permanent offense, for as long as the victim stays under the domain of the aggressor, imminent threat will be present, allowing the self-defense claim of a woman who kills her abuser in such circumstances to be admissible. An actualist interpretation of the requirement of the necessity of the means used in self-defense will be satisfied when evaluated from the subjective perspective of the intimate partner victim. Necessity will be satisfied if it is reasonable for the victim to perceive the use of lethal force as the only means to release herself from the abuser.

Keywords : domestic violence, homicide, self-defense, imminent threat, necessity of lethal force

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