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Use of Deadly Force (Response to Vogt Report)

From: nclayton@ix.netcom.com
Date: Thu, 17 Jul 1997 17:50:46 -0800

The signs at the military border of Groom Lake mention that the use of deadly force is authorized. This certainly invites further inquiry. I have a permit which allows me to carry a loaded, concealed firearm in certain western states (not, unfortunately, including Nevada). I've undergone approximately 60 hours of formal training in defensive pistolcraft, primarily under the tutelage of off-duty police officers. A significant portion of this training has been devoted to the issue of when it is and isn't legal to brandish a weapon, point it at someone, or shoot someone with it. Sadly, most people (including many gun owners) have a very poor understanding of proper gun use, from both a practical standpoint (i.e. how to safely handle a gun and how to use it effectively) and a legal standpoint (as discussed in the previous sentence). This is because most people's exposure to these issues comes solely in the form of Hollywood-produced movies and TV shows, which are terribly inaccurate in their representation of such matters. Thus, while I am shocked by the alleged actions of the Cammo Dudes as represented in Kevin Vogt's testimonial (see <http://www.ufomind.com/area51/testimonials/vogt.txt>), I am not particularly surprised that nobody seems to have thought through the bizarre implications of those actions, if they indeed occurred as described by Mr. Vogt.

Basically, Mr. Vogt claims to have been ambushed by two Cammo Dudes while he was just outside the military border, having previously spent some time inadvertently wandering around inside the border at night after his car broke down. He states that they immediately pointed their guns at him, threatened to shoot him if he deviated in the slightest from obeying their instructions, and held him at gunpoint for quite some time until the Sheriff's deputy arrived. This brings up some interesting legal questions, and I would very much like to know if anyone else has had guns pointed at them by Cammo Dudes outside the border, or, for that matter, inside the border.

Although I am not totally familiar with Nevada's laws regarding the use or threatened use of deadly force, we can safely assume that they differ little from those of surrounding states when it comes to defining the narrow set of circumstances under which a civilian may legally point a gun at another human being. Laws don't vary a whole lot on this issue from one state to the next, except that some states are more lenient than others when it comes to using a gun against someone who has broken into your home.

NOTE: BEFORE YOU READ FURTHER, PLEASE REFER TO THE IMPORTANT DISCLAIMER AT THE END OF THE FOLLOWING PARAGRAPH.

Basically, if you are not a deputized law enforcement officer and you are not inside your home, the only time you may legally fire a gun at someone or even deliberately brandish or point a gun at someone is if that individual initiates an immediate, believable, and deliberate threat to your life or the life of another innocent person. The threat must be deadly (specifically, a reasonable person in your shoes would have to believe that if the assailant were to carry through with his threat, it would likely result in death or great bodily injury to you or another innocent person). A person threatening to throw a ping-pong ball at you is not posing a deadly threat. On the other hand, someone pointing a firearm at you definitely poses a deadly threat. We should especially point out, in this context, that simple trespassing does not constitute a deadly threat. The classic hillbilly approach of brandishing a shotgun at someone who has wandered onto your property might not only land you in jail, but it could, quite possibly, entitle the trespasser to legally shoot you in self-defense. In addition to being deadly, the threat must be immediate (i.e. it has to be happening NOW). Note that an unarmed individual who verbally threatens to go fetch a gun so he can come back and shoot you is NOT posing an immediate threat. The threat must also be credible; you have to believe that your assailant has the means, the ability, and the intention to follow through with the threat. When it comes to credibility, deception intended to make you believe that your assailant is armed can count. Thus, for example, a thug who confronts you on the street with his hand placed in his coat pocket with a finger extended (so as to convincingly create the outward appearance of a concealed gun being pointed at you) and who then demands your wallet, is, in fact, creating a believable deadly threat, even though he isn't actually armed. On the other hand, if your best friend comes up to you during a backyard barbecue, slaps you on the back in a good-natured fashion, and says, "Hey, Bob, I'm gonna kick your ass for taking the last beer that was in the cooler," he is not posing a credible deadly threat and, therefore, you are not entitled to shoot him. Furthermore, the threat must be deliberate (i.e. you should have good reason to believe that you assailant's threatening actions are intentional rather than inadvertent). If a little old lady is backing her Cadillac out of the driveway, oblivious to the toddler playing on the sidewalk directly behind her, you are not entitled to shoot her. Finally, the threat must have been initiated by your assailant in the absence of any such threat from you.

IMPORTANT DISCLAIMER: I AM NOT AN ATTORNEY. YOU SHOULD CONTACT YOUR STATE ATTORNEY GENERAL'S OFFICE TO OBTAIN A COPY OF ALL THE LAWS IN YOUR STATE REGARDING SELF-DEFENSE. IN PARTICULAR, YOU SHOULD NOTE THAT LAWS REGARDING SELF-DEFENSE AGAINST AN INTRUDER WHO HAS ILLEGALLY BORKEN INTO YOUR HOME VARY WIDELY FROM ONE STATE TO THE NEXT. THE LAWS REGARDING SELF-DEFENSE OUTSIDE YOUR HOME VARY LESS DRAMATICALLY FROM STATE TO STATE, BUT YOU SHOULD STILL LEARN THE DETAILS OF THOSE LAWS AND ABIDE BY THEM. I DO NOT ADVOCATE BREAKING ANY LAWS RELATING TO THE USE OR THREATENED USE OF DEADLY FORCE, NOR DO I CLAIM THAT THE ABOVE PARAGRAPH CONSTITUTES A COMPLETE AND ACCURATE REPRESENTATION OF THE LAWS OF ANY GIVEN STATE.

We should note here that in most states, duly deputized law enforcement officers who are on active duty have broader power to brandish weapons than do civilians. A uniformed cop can point his gun at a suspect to affect an arrest under certain well-defined circumstances (such as during the apprehension of a fleeing bank robbery suspect), even if that suspect is not posing an immediate threat to anyone. Similarly, military police can do the same on military property. However, in these cases, the policeman with the gun in his hand has to make it very clear to the suspect that he is, in fact, a policeman. A peace officer's badge or appropriate military police insignia will generally suffice for this purpose.

Well, now that we've had a very rudimentary primer in the laws regarding the use or threatened use of deadly force, we are prepared to ask a crucial question: What business does a Cammo Dude have pointing a gun at someone who is merely suspected of having trespassed and who is not posing an immediate threat to anyone's physical safety? This question is especially interesting if the encounter occurs on BLM land, as Mr. Vogt claims happened in his case. According to Mr. Vogt's account, even though he tells us that he had a gun in his pack (a fact which he eventually revealed to the Cammo Dudes under questioning from them, even though he was not legally required to do so), he was posing no immediate physical threat to anyone at any time during the encounter. Apparently the Cammo Dudes did not offer any proof that they were either military policemen or deputized law enforcement officers. If Mr. Vogt, instead of raising his hands, had pulled out his pistol and immediately shot both Dudes dead (which, contrary to popular belief, is

quite possible to do even when your assailants are armed with machine guns, although I do not recommend that anyone test this hypothesis on the Cammo Dudes), the criminal justice system would have probably declared his action to be legitimate self-defense (assuming other Cammo Dudes didn't chase him down and shoot him before he could escape, then come up with a false story about how he pulled his gun first). More specifically, if a grand jury or a panel of prosecuting attorneys had been hiding in the bushes watching the whole incident, they would most likely state unanimously that the Cammo Dudes had, in pointing their guns at the lone hiker, committed some flavor of assault with a deadly weapon and that the hiker had fired justifiably in self-defense. If this incident occurred during the brief period when Cammo Dudes were deputized by the Lincoln County Sheriff, this still wouldn't let them off the hook, as it does not appear from Mr. Vogt's account that they showed him their sheriff's badges, and, in any event, a sheriff's deputy is not generally authorized to point a gun at someone merely for trespassing. For all Mr. Vogt knew, these guys could have just been a couple of civilian yahoos in a jeep wearing cammo fatigues and night vision goggles and carrying mean-looking guns. He was under no legal obligation to assume that these individuals had any authority to point their weapons at him or detain him.

I am less familiar with the laws governing the behavior of private security guards on military land. However, I suspect that even had the encounter occurred inside the border, the Cammo Dudes should have been required to show police badges of some sort before detaining a non-violent trespasser at gunpoint. Otherwise they would simply be the equivalent of a bunch of hillbillies pointing shotguns at someone who had wandered onto their land, and would thus be guilty of aggravated assault and could, conceivably, be legally shot by the trespasser. This matter is worth further discussion.

Nelson Clayton
e-mail address: nclayton@ix.netcom.com

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