

# EAST SUSSEX - COMMANDO KRAV MAGA

## SELF DEFENCE and the LAW

### **Self-defence is available as a defence to crimes committed by use of force.**

*The principles of self-defence are set out in Palmer v R, [1971] A.C 814; see also <Archbold 19-41>.*

"It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but only do, what is reasonably necessary."

"A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large". However, it cannot afford a defence in repelling trespassers by force, unless the trespassers are involved in some form of criminal conduct.

### **'Reasonable Force'**

**A person may use such force as is reasonable in the circumstances for the purposes of:**

- Self-defence
- Defence of another
- Defence of property
- Prevention of crime
- Lawful arrest

**In assessing the reasonableness of the force used, prosecutors will ask the following:**

**Was the use of force justified in the circumstances, i.e. was there a need for any force at all and was the force used excessive in the circumstances?**

*It is important to bear in mind when assessing whether the force used was reasonable the words of Lord Morris in Palmer v R. 1971 A.C. 814;*

"If there has been an attack so that self defence is reasonably necessary, it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his defensive action. If the jury thought that that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought necessary, that would be the most potent evidence that only reasonable defensive action had been taken..."

### **Use of Force-against those committing crime:**

Prosecutors should exercise particular care when assessing the reasonableness of the force used in those cases in which the alleged victim was, or believed by the accused to have been, at the material time, engaged in committing a crime. A witness to violent crime with a continuing threat of violence may well be justified in using extreme force to remove a threat of further violence. In assessing whether it was necessary to use force, prosecutors should bear in mind the period of time in which the person had to decide whether to act against another thought to be committing a crime. The circumstances of each case will need to be considered very carefully.

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### Private Rather than Public Duty:

Prosecutors must exercise special care when reviewing cases involving those, other than police officers, who may have a duty to preserve order and prevent crime. This includes private security guards (including club doormen), public house landlords and public transport employees. The existence of duties that require people, during the course of their employment, to engage in confrontational situations from time to time needs to be considered, along with the usual principles of 'reasonable force'.

### Civilian Powers of Arrest:

The principle civilian powers of arrest fall under two headings:

- The power vested in both police officers and ordinary citizens to arrest in relation to a breach of the peace (see *R v Howell* 73 Cr. App R. 31).
- The power conferred by Section 24 of PACE <Archbold 15-166>:
  - (a) To arrest anyone who is in the act of *committing* an arrestable offence or anyone whom the arrestor has reasonable grounds for suspecting to be committing an arrestable offence (S.24 (4)) and...
  - (b) where an arrestable offence has been committed, anyone who is *guilty of having committed the offence*, or anyone the arrestor has reasonable grounds for suspecting to be guilty of having committed it (S.24(5)).

It follows therefore that if violence occurs when someone purports to arrest, relying on Section 24(5), a person he suspects has committed an offence who has, in fact, not done so:

- Any force used to affect the arrest may be an assault and unlawful.
- Any force used to resist the arrest may be lawful (see *R v Self* 95 Cr. App R. 42).

Bear in mind that members of the public (as well as police officers) may take action, including reasonable force, to prevent a breach of the peace, which would not necessarily, involve exercising the formal powers of arrest.

### Apprehension of Offenders:

As to the apprehension of offenders there are two important, but sometimes contrasting public, interest points. On the one hand, the rule of law and the Queen's Peace must be maintained and violence discouraged. On the other hand, the involvement of citizens in the prevention and investigation of crime is to be encouraged where it is responsible and public-spirited. The law provides a defence for those who act in extenuating circumstances. However, judicial comment has suggested that the courts should take a firm stand against illegitimate summary justice and vigilantism. Prosecutors will need to balance these potentially conflicting public interest considerations very carefully.

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