

Justification: Self-Defense - Risk To Innocent Bystanders

If a defender, who is justified in using force against an attacker, instead (or also) accidentally harms (or risks harm to) an innocent bystander, the defender does not lose the justification for harming the aggressor. Is the defender's harming the bystander also justified? Generally, the defendant's harm to the innocent bystander is also justified (*Smith v. State*, 419 S.E.2d 74 (Ga. Ct. App. 1992)). But the defendant may not be justified if he acts carelessly or endangers a large number of bystanders. Under the MPC, recklessly or negligently harming an innocent bystander would not be a justification for an offense in which recklessness or negligence suffices to establish culpability (section 3.09(3)).

The issue becomes more difficult where it is unclear whether the innocent is a bystander or part of the threat. A famous hypothetical supposes that an aggressor is driving a tank, with a baby strapped to the front, at you intending to run over and kill you. Your only defense is to fire an anti-tank gun which you know will kill both the aggressor and the baby (Nozick). While the moral forfeiture theory would not find your killing the baby justifiable because the baby has not forfeited its rights by any culpable wrongdoing, the personal autonomy theory might justify the killing of the baby so as to prevent Wrong triumphing over Right. A utilitarian theory might also find that the killing of two to save one is not justified.

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