Minnesota Supreme Court "Created" Duty to Retreat From Threat of Deadly Force


Tomasz Krzysztofek/iStock/Getty Images Plus

On appeal, the Minnesota State Supreme Court on Wednesday upheld lower courts' rulings that a man, threatened by an attacker holding a knife and declaring he wants to "slice his throat," had a "duty to retreat if reasonably possible." The courts state that Earley Romero Blevins, the potential victim, failed to retreat. Therefore, he has now become the criminal, facing 39 months in jail.

"Judicially Created"

The high court admitted that this "duty to retreat" is "a judicially created element of self-defense." It says that it therefore applies to anyone who claims he or she was acting in self-defense by pulling out a weapon instead of running from the scene.

Said the majority in the 4-2 ruling:

> [A lower court] concluded that Blevin's actions in threatening others with his machete were not authorized under [state law] because he had reasonable opportunity to retreat and failed to do so.

It concluded:

> Accordingly, we hold that a person claiming self-defense has a duty to retreat when reasonably possible before committing the felony offense of second-degree assault-fear with a dangerous weapon, specifically, a device designed as a weapon and capable of producing death or great bodily harm.
>
> We also conclude that, when viewed in a light most favorable to the verdict, the direct evidence from the security videos presented at trial disproves beyond a reasonable doubt Blevins's claim that it was not reasonably possible for him to retreat.
>
> We therefore affirm the decision of the court of appeals.

More than 150 years ago (in 1865), the state's high court ruled on the duty to retreat. A hundred years later the state's Legislature codified it into law. The current majority admitted:

> Because it is a judicially created element, we [therefore claim we have the power to] determine the circumstances under which the duty to retreat when reasonably possible applies. … Our judicial construction of a statute … is as much a part thereof as if it had been

> written into it originally.

Duty to Retreat

After reviewing the videos of the incident taking place at a train station in 2021, the majority ruled that "Blevins had room behind him to retreat and could have walked at an angle, keeping on eye [on those threatening him] while he retreated." Since he had the opportunity to retreat but didn't, he is guilty under the statute.

This is crazy, and Justice Paul Thissen said so in a blistering dissent:

> Today, the court takes the law of self-defense into uncharted waters.
>
> This new rule is not only unprecedented in this state—as far as I am aware, the rule has never been adopted anywhere in the United States.
>
> Until now, the collective wisdom of judges nationwide over hundreds of years has never imposed a duty to retreat before making threats to deter an aggressor….
>
> The State does not claim on appeal that Blevins was the aggressor; the man who instigated the confrontation by threatening him with a knife was the aggressor.
>
> The State also does not dispute that the assailant's conduct—approaching Blevins with a drawn knife and telling him to move out of view of the camera so that he could slice Blevins's throat—created in Blevins an actual, honest, and reasonable fear of imminent death or great bodily harm.
>
> And no one claims that Blevins physically harmed his attackers.

Minnesota is an "outlier," claimed Thissen:

> Minnesota has a per se rule that it is always unreasonable to harm an attacker using even non-lethal force when there is a reasonable opportunity to retreat.
>
> In that sense, Minnesota is an outlier.

Indeed, Iowa, Massachusetts, and North Carolina once had laws similar to Minnesota's. However, common sense prevailed and they now have "stand your ground" laws in place.

Thissen posed a scenario that illustrated the nonsense behind such a judicially created "duty":

> Consider a scenario in which a woman is at a train station and a man approaches and threatens to stab her.
>
> Assume that, like Blevins, she has a reasonable opportunity to retreat by walking away. She actually, honestly, and reasonably believes that she is in danger of imminent death or great bodily harm.
>
> She has a can of pepper spray in her purse and brandishes it to ward off just such aggression; in response the man is afraid and backs off.
>
> She gets on the next train and is later arrested for assaulting the man by causing fear of bodily harm. See Minn. Stat. § 609.222, subd. 1 (2022) (defining second-degree assault as

> assault "with a dangerous weapon"); Minn. Stat. § 609.02, subd. 10(1) (2022) (defining assault as "an act done with intent to cause fear in another of immediate bodily harm or death).
>
> Under the court's rule, the woman is not entitled to a self-defense instruction because she had a duty to retreat before she could pull out the pepper spray.
>
> This result flies in the face of human nature and experience; yet it is the precise outcome demanded by the court's holding today.

He concluded:

> Notably, the legal issue before us is not about the level of force or threatened force that Blevins used.
>
> But the court's broad holding today would apply equally well to someone who wards off a potential attacker by brandishing a knife, a lawfully possessed firearm, or a can of pepper spray.
>
> Not all threats in self-defense are equally likely to escalate (or deescalate) a situation, which is why the question is best left to a fact-finder in considering the reasonableness of the threat.
>
> For the foregoing reasons, I respectfully dissent.

For the record, 38 states are "stand-your-ground" states wherein "there is no duty to retreat from an attacker in any place in which one is lawfully present." Eleven states — Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, and Rhode Island — have adopted some form of "duty to retreat" law. Washington, D.C., and Wisconsin have adopted a form of "middle ground." They take into consideration whether the potential victim believed that force was necessary to fend off an attacker.