

SEQ CHAPTER \h \r 1CR07-121 06/18/03

SELF-DEFENSE, AND DEFENSE OF ANOTHER (USE OF DEADLY FORCE)

Introduction

Evidence has been introduced bearing on the issues of lawful self-defense, and lawful defense of another, as justifications for the killing of (victim) _____. The State bears the burden of proving that the killing was unlawful. A killing committed in self-defense, or in defense of another, is justified by these defenses, and it is not a crime. Here the State must have proven beyond a reasonable doubt that (Def) _____ did not act in self-defense or in defense of another. (Def) _____ has no burden of proof on these issues.

Self-Defense

A person has the right to defend [himself] [herself] when [he] [she] is attacked, or when [he] [she] reasonably believes [he] [she] is in imminent danger of being killed or suffering great bodily harm. A person in that situation has the right to use only such force as is reasonably necessary to repel the attack or the perceived imminent danger.

A killing is justified by self-defense if:

- (1) (Def) _____ reasonably believed that [he] [she] was in imminent danger of being killed or of suffering great bodily harm, and
- (2) [his] [her] use of deadly force was reasonably necessary to repel the perceived threat.

The right of self-defense does not require that a person actually be assaulted, but (Def) _____ must have believed that [he] [she] was in imminent danger, and [his] [her] belief must have been reasonable under the circumstances. (Def) _____'s expectation of harm must have been based upon fact and not on some imaginary fear.

Self-defense requires that (Def) _____ must have had a reasonable fear of imminent harm. In deciding this issue, you may consider what (Def) _____ knew about (victim) _____ at the time. You may consider any previous interactions,

including any aggressive or hostile conduct by (victim)_____, and any other evidence you consider relevant, including who started the confrontation.

When assessing the reasonableness of (Def)_____'s fear, you may consider the individual characteristics of (Def)_____ and (victim)_____, such as their respective size, gender, age, physical condition, strength, stamina, courage, and assertiveness.

Self-defense permits only the amount of force that is reasonably necessary to repel the perceived harm. A person may use the amount of force that reasonably appears to be necessary under all of the circumstances known to [him] [her] at the time. In this case you must decide whether (Def)_____ reasonably believed it was necessary to use the amount of force that [he] [she] did use. When a person has reasonable grounds to believe that an assault is imminent, [he] [she] need not wait until it actually occurs before [he] [she] may resort to self-defense.

Defense of Another

(Def)_____ also claims that [he] [she] acted in defense of (third person)_____. A person may lawfully use deadly force in the just and necessary defense of the life of [his] [her] [wife] [husband] [parent] [child] [brother] [sister] [master] [mistress] [servant] [guardian] [ward]. If the necessary relationship exists, (Def)_____'s actions in defense of (third person)_____ were justified, if (third person)_____ was in danger of being killed, or of receiving great bodily harm, or if (third person)_____ reasonably appeared to be in imminent danger of death or great bodily harm.

Here the killing was justified by defense of another if:

(1) (Third person)_____ was (Def)_____'s [wife] [husband] [parent] [child] [brother] [sister] [master] [mistress] [servant] [guardian] [ward]; and

(2) (Def)_____ reasonably believed that [his] [her] use of force was necessary for the defense of (third person)_____; and

(3) Under the circumstances, as they were reasonably perceived by (Def) _____, (third person) _____ would have had the right to use deadly force to protect [himself] [herself].

As with the issue of self-defense, the State must have proven beyond a reasonable doubt that (Def) _____ was not justified to act as he did in the defense of (third person) _____. (Def) _____ bears no burden of proof on these issues.