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FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES
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PART ONE: GENERAL INSTRUCTIONS
3. FINAL CHARGE TO THE JURY

FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES § 3.6(g)

3.6(g) JUSTIFIABLE USE OF NON-DEADLY FORCE

Because there are many defenses applicable to self-defense, give only those parts of the instructions that are required by the evidence.

Read in all cases.

An issue in this case is whether the defendant acted in self-defense. It is a defense to the offense with which (defendant) is charged if the [death of] [injury to] (victim) resulted from the justifiable use of non-deadly force.

Definition.

"Non-deadly" force means force not likely to cause death or great bodily harm.

In defense of person. § 776.012, Fla.Stat. Give if applicable.

(Defendant) would be justified in using non-deadly force against (victim) if the following two facts are proved:

- 1. (Defendant) must have reasonably believed that such conduct was necessary to defend [himself] [herself] [another] against (victim's) imminent use of unlawful force against the [defendant] [another person].**
- 2. The use of unlawful force by (victim) must have appeared to (defendant) to be ready to take place.**

In defense of property. § 776.031, Fla.Stat. Give if applicable.

(Defendant) would be justified in using non-deadly force against (victim) if the following three facts are proved:

- 1. (Victim) must have been trespassing or otherwise wrongfully interfering with land or personal property.**
- 2. The land or personal property must have lawfully been in (defendant's) possession, or in the possession of a member of [his] [her] immediate family or household, or in the possession of some person whose property [he] [she] was under a legal duty to protect.**

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3. (Defendant) must have reasonably believed that [his] [her] use of force was necessary to prevent or terminate (victim's) wrongful behavior.

No duty to retreat (dwelling, residence, or occupied vehicle). Give if applicable.

If the defendant is in [his] [her] [dwelling] [residence] [occupied vehicle] [he] [she] is presumed to have held a reasonable fear of imminent peril of death or bodily injury to [himself] [herself] [another] if (victim) has [unlawfully and forcibly entered] [has removed or attempted to remove another person against that person's will from] that [dwelling] [residence] [occupied vehicle] and the defendant had reason to believe that had occurred. The defendant had no duty to retreat under such circumstances.

A person who unlawfully and by force enters or attempts to enter another's [dwelling] [residence] [occupied vehicle] is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

No duty to retreat (location other than dwelling, residence, or occupied vehicle). Give if applicable. See Novak v. State 974 So.2d 520 (Fla. 4th DCA 2008) regarding unlawful activity. There is no duty to retreat where the defendant was not engaged in any unlawful activity other than the crime(s) for which the defendant asserts the justification.

If the defendant [was not engaged in an unlawful activity and] was attacked in any place where [he] [she] had a right to be, [he] [she] had no duty to retreat and had the right to stand [his] [her] ground and meet force with force, including deadly force, if [he] [she] reasonably believed that it was necessary to do so to prevent death or great bodily harm to [himself] [herself] [another] or to prevent the commission of a forcible felony.

Definitions.

As used with regard to self defense,

"Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent or mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

"Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

"Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Define applicable forcible felony that defendant alleges victim was about to commit.

Give in all cases.

A person does not have a duty to retreat if the person is in a place where [he] [she] has a right to be.

Aggressor. § 776.041, Fla.Stat.

The use of non-deadly force is not justifiable if you find:

Give only if the defendant is charged with an independent forcible felony. See Giles v. State, 831 So.2d 1263 (Fla. 4th DCA 2002).

1. (Defendant) was attempting to commit, committing, or escaping after the commission of a (applicable forcible felony).

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Define applicable forcible felony.

2. (Defendant) initially provoked the use of force against [himself] [herself], unless:

a. The force asserted toward the defendant was so great that [he] [she] reasonably believed that [he] [she] was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than using non-deadly force on (assailant).

b. In good faith, the defendant withdrew from physical contact with (assailant) and indicated clearly to (assailant) that [he] [she] wanted to withdraw and stop the use of non-deadly force, but (assailant) continued or resumed the use of force.

Force in resisting a law enforcement officer. § 776.051(1), Fla.Stat.

A person is not justified in using force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

Give the following instruction if applicable.

However, if an officer uses excessive force to make an arrest, then a person is justified in the use of reasonable force to defend [himself] [herself] [another], but only to the extent [he] [she] reasonably believes such force is necessary. See § 776.012, Fla.Stat.; *Ivester v. State*, 398 So.2d 926 (Fla. 1st DCA 1981); *Jackson v. State*, 463 So.2d 372 (Fla. 5th DCA 1985).

In some instances, the instructions applicable to §§ 776.012, 776.031, or 776.041, Fla.Stat., may need to be given in connection with this instruction.

Read in all cases.

In deciding whether the defendant was justified in the use of non-deadly force, you must judge [him] [her] by the circumstances by which [he] [she] was surrounded at the time the force was used. The danger facing the defendant need not have been actual; however, to justify the use of non-deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.

Reputation of victim. Give if applicable.

If you find that (victim) had a reputation of being a violent and dangerous person and that [his] [her] reputation was known to the defendant, you may consider this fact in determining whether the actions of the defendant were those of a reasonable person in dealing with an individual of that reputation.

Physical abilities. Read in all cases.

In considering the issue of self-defense, you may take into account the relative physical abilities and capacities of the defendant and (victim).

Read in all cases.

If in your consideration of the issue of self-defense you have a reasonable doubt on the question of whether the defendant was justified in the use of non-deadly force, you should find the defendant not guilty.

However, if from the evidence you are convinced that the defendant was not justified in the use of non-deadly force, then you should find [him] [her] guilty if all the elements of the charge have been proved.

Comment

This instruction was adopted in 1981 and was amended in 1985 [477 So.2d 985], 1992 [603 So.2d 1175], 2006 [930 So.2d 612], 2007 [947 So.2d 1159], 2008 [976 So.2d 1081], and 2010 [27 So.3d 640].