

Insert and [**9] define applicable forcible felony that defendant alleges victim was about to commit. Forcible felonies are listed in § 776.08, Fla. Stat.

Aggressor. § 776.041, Fla. Stat.

However, the use of 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 (applicable forcible felony); or

Define applicable forcible felony. Define after paragraph 2 if both paragraphs 1 and 2 are given. Forcible felonies are listed in § 776.08, Fla. Stat.

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 deadly force on (assailant).

b. In good faith, the defendant withdrew from physical contact with (assailant) and clearly indicated to (assailant) that [he] [she] wanted to withdraw and stop the use of deadly force, but (assailant) continued [10] or resumed the use of force.**

[EDITOR'S NOTE: TEXT WITHIN THESE SYMBOLS [O> <O] IS OVERSTRUCK IN THE SOURCE.]

Force in resisting a law enforcement officer [O>arrest<O]. § 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 [O>who<O] is known [O>to be<O], or reasonably appears, to be a law enforcement officer.

Give 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] (or 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 defendant was justified in the use of deadly force, you must judge [him] [her] by the circumstances [11] 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 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.**

*No duty to retreat. § 776.013(3), Fla. Stat. See *Novak v. State* 974 So. 2d 520 [*644] (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 [12] felony.**

Define applicable forcible felony from list in § 776.08, Fla. Stat. that defendant alleges victim was about to commit.

Presumption of Fear (dwelling, residence, or occupied vehicle). Give if applicable. § 776.013(2)(a)-(d), Fla. Stat. [O>See exceptions in § 776.013(2), Fla. Stat., which may negate the giving of this instruction<O].

If the defendant was in a(n)[dwelling] [residence] [occupied vehicle] where [he] [she] had a right to be, [he] [she] is presumed to have had a reasonable fear of imminent death or great bodily harm to [himself] [herself] [another] if (victim) had [unlawfully and forcibly entered] [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.

Exceptions to Presumption of Fear. § 776.013(2)(a)-(d), Fla. Stat. Give as applicable.

The presumption of reasonable fear of imminent death or great bodily harm does not apply if:

*a. the person against whom the defensive force is used has the right to be in [or is a lawful resident of the [dwelling] [residence]] [the vehicle], such [**13] as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or*

b. the person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or

c. the person who uses defensive force is engaged in an unlawful activity or is using the [dwelling] [residence] [occupied vehicle] to further an unlawful activity; or

d. the person against whom the defensive force is used is a law enforcement officer, who enters or attempts to enter a [dwelling] [residence] [vehicle] in the performance of [his] [her] official duties and the officer identified [himself] [herself] in accordance with any applicable law or the person using the force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

If requested, give definition of "law enforcement officer" from § 943.10(14), Fla. Stat.,

§ 776.013(4), Fla. Stat.

A person who unlawfully and by force enters or attempts to enter another's [dwelling] [residence] [occupied [**14] vehicle] is presumed to be doing so with the [*645] intent to commit an unlawful act involving force or violence.

Definitions. Give if applicable. § 776.013(5), Fla. Stat.

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,