

**14-5173. Justifiable homicide; public officer or employee.<sup>1</sup>**

An issue you must consider in this case is whether the killing of \_\_\_\_\_ (*name of victim*) was justifiable homicide by a public officer or employee.

The killing was justifiable homicide by a public officer or public employee if

1. At the time of the killing, the defendant was a public officer or employee;
2. The killing was committed while the defendant was performing the defendant's duties as a public officer or employee;
3. The killing was committed while<sup>2</sup>  
[overcoming the actual resistance of \_\_\_\_\_ (*name of victim*) to the execution of \_\_\_\_\_ ]<sup>3</sup>; or  
[overcoming the actual resistance of \_\_\_\_\_ (*name of victim*) to the discharge of \_\_\_\_\_ ]<sup>4</sup>; or  
[retaking [ \_\_\_\_\_ (*name of victim*)] [a person], who had committed \_\_\_\_\_<sup>5</sup> (*name of felony*) and who had [been rescued]<sup>6</sup> [escaped]]; or  
[arresting [ \_\_\_\_\_ (*name of victim*)] [a person], who had committed \_\_\_\_\_<sup>5</sup> (*name of felony*) and was fleeing from justice]; or  
[attempting to prevent the escape from \_\_\_\_\_<sup>7</sup> by [ \_\_\_\_\_ (*name of victim*)] [a person] who had committed \_\_\_\_\_<sup>5</sup> (*name of felony*)];
4. The defendant believed that \_\_\_\_\_ (*name of victim*) posed a threat of death or great bodily harm to the defendant or another person; and
5. Under the totality of the circumstances, a reasonable officer would have acted as the defendant did. The following factors may be considered in evaluating the totality of the circumstances:  
[the officer's training]  
[the officer's experience]  
[the officer's expertise]  
[the feasibility of giving a warning prior to using deadly force]  
[the feasibility of taking lesser measures than using deadly force]  
[(*other factor(s)*)]<sup>8</sup>

The burden is on the state to prove beyond a reasonable doubt that the killing was not justifiable. If you have a reasonable doubt as to whether the killing was justifiable, you must find the defendant not guilty.

**USE NOTES**

1. For use when the defense is based on NMSA 1978, Section 30-2-6 (1989). If this instruction is given, add to the essential elements instruction for the offense charged, "The killing was not justifiable homicide by a public officer or employee."
2. Use only the applicable bracketed phrase.
3. Insert description of legal process being executed.
4. Insert description of legal duty.
5. Unless the parties stipulate or the court deems naming the felony unfairly prejudicial, insert the name of the felony. If named, the essential elements of the felony must also be given. To instruct on the elements of an uncharged offense, UJI 14-140

NMRA must be used. However, in this context, substitute the name of the victim in place of the words “the defendant” in UJI 14-140 NMRA.

6. Use only the applicable parenthetical alternative.
7. Describe circumstances and place of lawful custody or confinement.
8. Element 5 is not an exhaustive list. Use any applicable bracketed phrase or insert description of factor(s).

[As amended, effective October 1, 1985; January 1, 1997; April 25, 2003; as amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed on or after December 31, 2019; as amended by Supreme Court Order No. 20-8300-004, effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme Court Order No. 22-8300-036, effective for all cases pending or filed on or after December 31, 2022.]