

14-5170. Justifiable homicide; defense of habitation.¹

An issue you must consider in this case is whether the defendant killed _____ (name of victim) while attempting to prevent a _____² in the defendant's _____.³

A killing in defense of _____³ is justified if:

1. The _____³ was being used as the defendant's dwelling; and
2. It appeared to the defendant that the commission of _____² was immediately at hand and that it was necessary to kill the intruder to prevent the commission of _____;² and
3. A reasonable person in the same circumstances as the defendant would have acted as the defendant did.

The burden is on the state to prove beyond a reasonable doubt that the defendant did not kill in defense of _____.³ If you have a reasonable doubt as to whether the defendant killed in defense of _____,³ you must find the defendant not guilty.

USE NOTES

1. If this instruction is given, add to the essential elements instruction for the offense charged, "The defendant did not kill in defense of _____."³

2. Describe the violent felony being committed or attempted. The essential elements of the violent felony being committed or attempted 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.

3. Identify the place where the killing occurred.
[As amended, effective October 1, 1985; January 1, 1997; 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.]