

### 3.6(f) JUSTIFIABLE USE OF 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 deadly force.**

*Definition.*

**“Deadly force” means force likely to cause death or great bodily harm.**

*Give if applicable. § 782.02, Fla. Stat.*

**The use of deadly force is justifiable only if the defendant reasonably believes that the force is necessary to prevent imminent death or great bodily harm to [himself] [herself] while resisting:**

1. **another’s attempt to murder [him] [her], or**
2. **any attempt to commit (applicable felony) upon [him] [her], or**
3. **any attempt to commit (applicable felony) upon or in any dwelling, residence, or vehicle occupied by [him] [her].**

*Insert and define applicable felony that defendant alleges victim attempted to commit.*

*Give if applicable. §§ 776.012, 776.031, Fla. Stat.*

**A person is justified in using deadly force if [he] [she] reasonably believes that such force is necessary to prevent**

1. **imminent death or great bodily harm to [himself] [herself] or another, or**
2. **the imminent commission of (applicable forcible felony) against [himself] [herself] or another.**

*Insert and 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 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 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 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 (Fla. 4<sup>th</sup> 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.**

*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.*

**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 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 vehicle] is presumed to be doing so with the 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, 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.

*Prior threats. Give if applicable.*

If you find that the defendant who because of threats or prior difficulties with (victim) had reasonable grounds to believe that [he] [she] was in danger of death or great bodily harm at the hands of (victim), then the defendant had the right to arm [himself] [herself]. However, the defendant cannot justify the use of deadly force, if after arming [himself] [herself] [he] [she] renewed [his] [her] difficulty with (victim) when [he] [she] could have avoided the difficulty,

**although as previously explained 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.**

*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 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 deadly force, 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], 1999 [732 So. 2d 1044], 2000 [789 So. 2d 984], 2006 [930 So. 2d 612], and 2010.

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Effective: October 1, 2005

West's Florida Statutes Annotated Currentness

Title XLVI. Crimes (Chapters 775-899)

Chapter 776. Justifiable Use of Force (Refs & Annos)

→→ 776. 032. Immunity from criminal prosecution and civil action for justifiable use of force

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

(3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

CREDIT(S)

Added by Laws 2005, c. 2005-27, § 4, eff. Oct. 1, 2005.

Current with chapters in effect from the 2012 Second Regular Session and the Extraordinary Apportionment Session of the Twenty-Second Legislature through June 1, 2012

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