

IN GENERAL

1. The defendant has raised the issue of whether [he] [she] acted in defense of another when [he] [she] [*describe defendant's conduct*]. Such a defense is called "justification" in the law of Pennsylvania. If the defendant's actions were "justified," you cannot find [him] [her] guilty beyond a reasonable doubt. The issue having been raised, it is the Commonwealth's burden to prove beyond a reasonable doubt that the defendant did not act in justifiable defense of another.

RULES WHEN ISSUE RAISED AS TO USE OF DEADLY FORCE

1. The first matter that you must consider in deciding whether the Commonwealth has met its burden in this regard is what kind of force the defendant used in this instance. There are two kinds, deadly and non-deadly. The Commonwealth claims here that deadly force was used by the defendant and it must prove that claim beyond a reasonable doubt.

2. Deadly force is force that, under the circumstances in which it is used, is readily capable of causing death or serious bodily injury. "Serious bodily injury" is bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. According to this definition, force is not deadly force simply because it happens to kill or seriously injure. For example, a slap in the face that freakishly and unexpectedly leads to death is not deadly force. A defendant uses deadly force when he or she knows that his or her actions, under the circumstances in which he or she commits them, are *readily capable* of causing death or serious bodily injury.

RULES FOR JUSTIFICATION WHEN DEADLY FORCE WAS USED

1. If the Commonwealth proves to you beyond a reasonable doubt that the defendant used deadly force, then to prove that such force was not justifiable in this case, it must prove one of the following elements beyond a reasonable doubt [*give only those supported by facts of record*]:

[a. That the defendant did not reasonably believe that another was in immediate danger of death or serious bodily injury [or kidnapping or sexual intercourse compelled by force or threat] from [*name of alleged victim*] at the time the defendant used the force and that, therefore, the defendant's belief that it was necessary for [him] [her] to use deadly force against [*name of alleged victim*] to protect another was unreasonable. Put another way, the Commonwealth must prove either: (i) that the defendant did not actually believe another person was in danger of death or serious

bodily injury such that [he] [she] needed to use deadly force to defend them at that moment; or, (ii) that while the defendant actually believed [he] [she] needed to use such force, [his] [her] belief was unreasonable in light of all the circumstances known to [him] [her].

Keep this in mind: a person is justified in using deadly force against another not only when another person is in actual danger of unlawful attack but also when the defendant mistakenly, but reasonably, believes that they are. A defendant is entitled to estimate the necessity for the force she or he employs under the circumstances as he or she reasonably believes them to be at the time. In the heat of conflict, a person who witnesses an attack on another ordinarily has neither time nor composure to evaluate carefully the danger and make nice judgments about exactly how much force is needed to protect them. Consider the realities of the situation faced by the defendant here when you assess whether the Commonwealth has proved beyond a reasonable doubt either that [he] [she] did not believe that another was actually in danger of death or serious bodily injury to justify [his] [her] use of such force in their defense, or that, while [he] [she] did believe that, [his] [her] belief was unreasonable.]

[b. That, (i) in the same encounter with *[name of alleged victim]*, the defendant engaged in conduct that demonstrated [his] [her] intent to cause death or serious bodily injury, and, (ii) by that conduct, [he] [she] provoked the use of force against the person [he] [she] then contends [he] [she] sought to protect. The conduct by the defendant that provoked the alleged victim's actions must be of such a nature that it shows it was the defendant's conscious object to cause death or serious bodily injury to the alleged victim. Conduct that is not of such a nature does not constitute the kind of provocation upon which the Commonwealth may rely to prove its case. If you find beyond a reasonable doubt that it is of such a nature, you must then ask whether it provoked the similar use of force against the person [he] [she] then sought to protect. In this assessment, the conduct by the defendant may be the initial provocation of the fight, or it may be an act that continues or escalates it. However, even if the defendant was the initial aggressor, or was the person who escalated the incident to one involving the use of deadly force, if [he] [she] thereafter withdraws in good faith, making it clear that [his] [her] further intentions are peaceable, and the alleged victim pursues the other person and renews the fight, the defendant does not forfeit [his] [her] right to claim justifiable defense of another. If, on the other hand, you find beyond a reasonable doubt that the defendant provoked the use of force against another by engaging in conduct that showed that [he] [she] intended to cause death or serious bodily injury to the alleged victim, you should find that [his] [her] conduct was not justified.]

[c. That the defendant knew that [he] [she] could avoid the necessity of using deadly force with complete safety by *[give only those supported by facts of record]*]:

[(1) [retreating [himself] [herself]] [trying to cause the person [he] [she] sought to protect to retreat], and failing to do so. [However, neither the defendant nor the person [he] [she] seeks to protect is obligated to retreat from [his] [her] own dwelling, that is, any building or structure though movable or temporary, or a portion thereof, including the doorway, that is, at least for the time being, their home or place of lodging, unless the defendant was the initial aggressor in the incident.] *[or]* [However, neither the defendant nor the person [he] [she] seeks to protect is obligated to retreat from their place of work unless they are attacked there by someone the defendant knows also works in the same place.]; *[or]*

(2) [surrendering possession of a thing to a person asserting a claim of right to it] *[or]* [trying to cause the person [he] [she] seeks to protect to surrender possession of a thing to a person asserting a claim of right to it], and failing to do so; *[or]*

(3) [complying with a demand that [he] [she] abstain from any action [he] [she] had no duty to make] *[or]* [trying to cause the person [he] [she] seeks to protect to comply with a demand that they abstain from any action they had no duty to make], and failing to do so.]]

[The following exception to the third element should be given only where supported by facts of record:

[However, if the defendant is:

(a) a public officer using force to perform his or her duties; *[or]*

(b) someone justified in using force to assist a public officer; *[or]*

(c) a person justified in using force to make an arrest or prevent an escape,

[he] [she] is not obligated to stop those efforts because of actual or threatened resistance by or on behalf of the person against whom [he] [she] is directing [his] [her] lawful duty.]

2. If the Commonwealth proves one of these elements beyond a reasonable doubt, the actions of the defendant in using deadly force are not justified. If the Commonwealth fails to prove these

elements, the defendant's action was justified and you must find [him] [her] not guilty of the crime of [crime].

RULES FOR JUSTIFICATION WHEN NON-DEADLY FORCE WAS USED

1. If the defendant only used non-deadly force during the incident in question, the Commonwealth may prove that this use of force was not justified if it can show, beyond a reasonable doubt, any of the following elements [*give only those supported by facts of record*]:

[a. That the defendant did not reasonably believe that it was immediately necessary for [him] [her] to use force to protect another against the unlawful use of force by [*name of alleged victim*]. The Commonwealth must prove either: (i) that the defendant did not actually believe another was in danger of becoming the victim of unlawful force such that the defendant needed to use force to defend them at the moment [he] [she] used it; or (ii) that while the defendant actually believed [he] [she] needed to use such force, [his] [her] belief was unreasonable in light of all the circumstances known to [him] [her].

Keep this in mind: a person is justified in using force against someone not only when he or she believes another is in actual danger of unlawful attack but also when the defendant mistakenly, but reasonably, believes that they are. A person is entitled to estimate the necessity for the force he or she employs under the circumstances as he or she reasonably believes them to be at the time. In the heat of conflict, a person who sees another attacked ordinarily has neither time nor composure to evaluate carefully the danger and make nice judgments about exactly how much force is needed to protect the other person. Consider the realities of the situation faced by the defendant here when you assess whether the Commonwealth has proved beyond a reasonable doubt either that [he] [she] did not believe another was actually in danger of unlawful force to the extent that [he] [she] needed to use such force in their defense, or that, while [he] [she] did believe that, [his] [her] belief was unreasonable. Unlawful force means any form of force, including confinement, that is employed without the consent of the person against whom it is directed where its use would constitute an offense or actionable tort.]

[b. That, (i) in the same encounter with [*name of alleged victim*], the defendant engaged in conduct that demonstrated [his] [her] intent to use unlawful force against the alleged victim, and, (ii) by that conduct, [he] [she] provoked the use of force against the person [he] [she] contends [he] [she] sought to protect. The Commonwealth must show that the defendant used unlawful force to provoke the response. If you find beyond a reasonable doubt that it is of such a nature, you must then ask whether it provoked the similar use of force against the

other person. In this assessment, the conduct by the defendant may be the initial provocation of the fight, or it may be an act that continues or escalates it. However, even if the defendant was the initial aggressor, or was the person who escalated the incident to one involving the use of unlawful force, if [he] [she] thereafter withdraws in good faith, making it clear that [his] [her] further intentions are peaceable, and the alleged victim pursues [him] [her] and renews the fight, [he] [she] does not forfeit [his] [her] right to claim justifiable defense of another. If, on the other hand, you find beyond a reasonable doubt that the defendant provoked the use of force against [himself] [herself] by engaging in conduct that showed that [he] [she] intended to cause unlawful force to the alleged victim, you may find that [his] [her] conduct was not justified.]

Note that a defendant who has used only non-deadly force has no duty to [retreat from the incident] [or] [surrender possession of a thing] [do or not do any act he or she has no legal duty to do or refrain from doing] or to try to cause the person he or she sought to protect to do so, as long as he or she has not provoked the unlawful use of force, as I have explained that matter above.

2. Unless the Commonwealth proves one of these two elements, the use of non-deadly force by the defendant is justified and you must find [him] [her] not guilty of the offense of [offense]. If the Commonwealth does prove one of the elements beyond a reasonable doubt, the actions of the defendant are not justified.

RULES REGARDING USE OF FORCE IN SPECIFIC SITUATIONS

[To be used only where made applicable by facts of record]

1. The Commonwealth may also prove that the use of force by the defendant was not justified if it proves the following beyond a reasonable doubt *[give only those supported by facts of record]*:

[a. That the defendant used force to resist an arrest of another when the defendant knows that the arrest is being made by a peace officer, whether or not the arrest is lawful. However, a defendant does not forfeit his or her right to claim that his or her actions were justified if he or she reasonably believed that he or she was protecting another against unlawful and deadly force by the officer. To prove this element, then, the Commonwealth must prove beyond a reasonable doubt that the defendant did not believe that the arresting officer was using unlawful and deadly force against another or, if the defendant did believe that, [his] [her] belief was unreasonable.]

[b. That the defendant used force to resist force used by the occupier or possessor of property [or their agent] against another, where the defendant knew that the person [he] [she] was protecting was resisting someone who was acting under a claim of right to the property, and that [his] [her] resistance was not authorized by law. A defendant is authorized to use force in such a circumstance if (i) he or she is a public officer [or a person assisting a public officer] performing his or her duties, or a person making or assisting in a lawful arrest; (ii) the person he or she sought to protect has been unlawfully dispossessed of the property and is making a justified re-entry of it under the law; or (iii) he or she reasonably believes that such force is necessary to protect another from deadly force by another.]

SPECIAL RULE REGARDING CONFINEMENT AS JUSTIFIED FORCE

[To be used only where made applicable by facts of record]

There is one other way in which the Commonwealth may seek to prove that the defendant's use of confinement was not a justified use of force in this case. The Commonwealth would have to prove, beyond a reasonable doubt, that the defendant failed to take all reasonable measures to end the alleged victim's confinement as soon as the defendant knew [he] [she] could do so in complete safety. Of course, if the alleged victim had been arrested for some offense and confined according to law, the defendant would not be responsible for such period of confinement.