

**JUSTIFICATION - USE OF FORCE
IN PROTECTION OF OTHERS
(N.J.S.A. 2C:3-5)**

The defendant contends he/she should be found not guilty because he/she acted in defense of a third person. Our statute N.J.S.A. 2C:3-5 insofar as pertinent to this matter provides:

... the use of force upon or toward that person of another is justifiable to protect a third person when:

- (1) The actor would be justified ... in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect and
- (2) Under the circumstances as the actor reasonably believes them to be, the person whom he seeks to protect would be justified in using such protective force; and
- (3) The actor reasonably believes that his intervention is necessary for the protection of such other person.

You must first determine whether the force used by (defendant) to protect (name), the third person, would have been justified if (defendant) had used such force to protect himself/herself under the guidelines of the law pertaining to self-defense that I have just given you.

Second, you must determine whether (defendant) reasonably believed that person whom he/she sought to protect would have been justified in using such force in self-defense. In applying this test you are instructed to disregard any finding that the person in whose behalf (defendant) intervened was in fact the aggressor or that no defensive measures on his/her behalf were actually necessary, but you may consider everything defendant knew when he/she acted, including these same factors if you find that he/she knew them.

Finally, you must determine whether (defendant) reasonably believed these actions were necessary to protect that person.

In making these determinations, keep in mind the following:

When using deadly force to protect a third person, the defendant is not

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obligated to retreat or to surrender possession of a thing to one claiming a right thereto or to comply with any demands being made of him/her unless he/she knows that by doing so it would secure the complete safety of the third person.

But, if the third person, whom the actor is seeking to protect is under a duty to retreat, then the defendant is obligated to try to cause (him/her) to do so before using force in (his/her) protection if the defendant knows that he/she can obtain complete safety in that way.

Finally, neither the defendant nor the person whom he/she seeks to protect is required to retreat when in the third person's dwelling to any greater extent than in his/her own.

Always remember -- the State has the burden of disproving the defense of protection of a third person beyond a reasonable doubt. Unless the State has convinced you beyond a reasonable doubt that the defendant was not justified, then you must find the defendant not guilty. If, on the other hand, you are convinced beyond a reasonable doubt that the defendant did not have the right to resort to force or deadly force to protect a third person, then this particular defense fails.