

**JUSTIFICATION - SELF DEFENSE
USE OF FORCE IN DEFENSE OF PERSONAL PROPERTY
(N.J.S.A. 2C:3-6c)**

The State claims that the defendant illegally used force against the victim in this case. The defendant, on the other hand, claims that he/she had a justifiable right to use the level of force he/she did use to protect his/her personal property. Personal property is defined as tangible items other than real estate consisting of things that are moveable, temporary or consumable in nature, commonly known in the law as chattels.

In other words what the State alleges as an illegal assault, the defense characterizes as a justifiable legal defense of defendants personal property or personalty.

The law recognizes that a person cannot use deadly force to protect personal property, but can only use a non-deadly level of force upon another person when he/she reasonably believes it necessary to prevent that other person from attempting to commit a theft criminal mischief or other criminal interference with personal property in the defendant's possession or in the possession of another for whose protection the defendant reasonably believes he/she is acting.

Remember that deadly force cannot be used by a person protecting his/her own personal property or that of another (unless justified for some other lawful purposes other than the protection of personal property such as self-protection of his/her physical well-being or protection of another person, or the protection of his/her premises).

Our law defines deadly force as force used with the purpose of causing death or serious bodily harm or which the user knows can create a substantial risk of death or serious bodily harm. Serious bodily harm is an injury which creates a substantial risk of death, or which causes serious, permanent disfigurement, or which causes the protracted loss or impairment of the function of any part of the body. Shooting a firearm at somebody, or even at a place where the shooter believes somebody to be, is deadly force. However, pointing or otherwise brandishing a weapon is not deadly force, so long as there is no actual purpose to use the weapon.

The other level of force which a defendant may be entitled to use with limitations about which I shall instruct you is called non-deadly force. To understand this term you should think of this force as any violence, compulsion or constraint executed against a person short of force that poses a threat of causing death or serious bodily harm. It will be your function to decide

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what level of force was used. If deadly force was used, then this defense fails. If non-deadly force was employed, then you must determine if it was used properly so as to justify the acts of the defendant.

A person has the right to use non-deadly force to protect personal property if three conditions exist:

1. The person is in possession or control of personal property lawfully belonging to him/her or if his/her personal property is in possession of another, he/she is acting to protect that person's lawful possessions, and
2. The person reasonably believes he/she has to use force. [A belief is reasonable if a person of ordinary prudence and intelligence, in the circumstances of this defendant, would hold it.], and
3. The force has to be used and he/she must reasonably believe it is used to prevent or end the commission or attempted commission of a theft, criminal mischief or other criminal interference with personal property.

Therefore, when you consider the defendant's right to use non-deadly force, you must first determine if these three conditions existed. If they did not, you should go no further, because the defendant had no legal right to resort to any force. If you find that these conditions did exist, the use of force in defense of one's personal property is limited.

One limitation requires that the defendant request the actor to desist. This limitation requires the user of force first to ask the target of the force to stop or end his/her criminal activity.

The user of force does not have to make this request, however, if he/she reasonably believes:

1. The request would be useless, or
2. Making the request would be dangerous to the would-be requester or anybody else, or
3. Before the request can be effectively made, substantial harm will

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be done to the physical condition of the personal property.

It is up to you to decide whether or not this limitation on the use of force to protect personal property, the request to desist, applies. If you find that it does and the defendant failed to make such a request, then the defense fails.

[USE THE FOLLOWING IF THE FACTS APPLY]

If, however, you find that this limitation does not apply, then you must examine another limitation.

To protect personalty, the defendant user of force cannot use that force to eject a trespasser, if defendant knows that the trespasser, when ejected, will be exposed to a substantial danger of serious bodily harm.

If you conclude that no limitation applies to restrict this defendant's use of force, then you should find the defendant not guilty. If on the other hand, you have found beyond a reasonable doubt that a limitation does apply to the facts of this case, then the defense fails.

Always remember that the State maintains the burden of proving beyond a reasonable doubt that this defense is not justified under the facts of this case.