

DEFENSE OF PROPERTY
(N.J.S.A. 2C:3-6)

As a part of (his/her) denial of guilt, the defendant contends that (his/her) acts were justified because they were committed in defense of (his/her) (premises) (personal property).

DEFENSE OF PREMISES (N.J.S.A. 2C:3-6a. and b.)

A section of our criminal law provides that
the use of force upon or toward the person of another is justifiable when the actor is in possession or control of premises or is licensed or privileged to be thereon and he reasonably believes such force necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of a criminal trespass by such other person in or upon such premises.¹

A reasonable belief is one that is not recklessly or negligently held²; it is a belief that would be held by a person of ordinary prudence and intelligence situated as defendant was. As the statute indicates, the defense of property exonerates a person who uses force in the reasonable belief that such action was necessary to prevent or terminate the commission or attempted commission of a criminal trespass, even though (his/her) belief was later proven mistaken. Accordingly, the law requires only a reasonable, not necessarily a correct, judgment.³

A person commits a criminal trespass if, knowing that (he/she) is not licensed or privileged to do so, (he/she) enters or surreptitiously remains in any research facility, structure, or separately secured or occupied portion thereof.⁴

¹ N.J.S.A. 2C:3-6a. and c. provide that the justification for the use of force in defense either of premises or personal property is “subject to the provisions of this section and of section 2C:3-9.” If any issues arise pursuant to N.J.S.A. 2C:3-9a. or c. in a given case, the model jury charges for those subsections should be given after the other “provisions of this section” are explained but before the jury is instructed on the burden of proof.

² N.J.S.A. 2C:1-14 (j). The definitions of reckless and negligent states of mind contained in N.J.S.A. 2C: 2-2 (b) (3) and (4) should be included at this point if they have not been charged previously in connection with the offense(s) charged.

³ State v. Kelly, 97 N.J. 178, 198 (1984).

⁴ N.J.S.A. 2C:18-3a.

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Our criminal law further provides that, in defense of premises, the use of force is justifiable.....only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor reasonably believes that (a) such request would be useless; (b) it would be dangerous to himself or another person to make the request or (c) substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.

The use of force to defend premises is not justifiable if the actor knows that the exclusion of the trespasser will expose (him/her) to substantial danger of serious bodily harm.

Serious bodily harm is defined as:

bodily harm which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ [WHERE APPLICABLE: or which results from aggravated sexual assault or sexual assault].⁵

[USE OF DEADLY FORCE]

The use of deadly force is not justifiable in the defense of premises unless the actor reasonably believes that [CHOOSE APPLICABLE PROVISION]:

- (a) The person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession. A dwelling means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging....⁶ [If applicable, insert Model Jury Charge on Claim of Right, pursuant to N.J.S.A. 2C:20-2c.]

OR

- (b) The person against whom the force is used is attempting to commit or consummate [CHOOSE: arson, burglary, robbery or other criminal theft or property destruction.] [At this point, instruct the jury on applicable offense, along

⁵ N.J.S.A. 2C:3-11 d.

⁶ N.J.S.A. 2C:3-11c.

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with proper instruction on attempt].

Deadly force is defined as force which the actor uses with the purpose of causing or which (he/she) knew created a substantial risk of causing death or serious bodily harm.⁷

[CHARGE WHERE APPROPRIATE: Purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be constitutes deadly force.⁸]

[CHARGE WHERE APPROPRIATE: A threat to cause death or serious bodily harm by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he/she will use deadly force if necessary, does not constitute deadly force.⁹]

However, even in the instance(s) just mentioned, the use of deadly force is not justified unless the actor reasonably believes that [CHOOSE APPLICABLE PROVISION]:

(i) the person against whom it is employed has employed or threatened deadly force against or in the presence of the actor.

OR

(ii) the use of force other than deadly force to prevent the commission or the consummation of the crime would expose the actor or another in his presence to substantial danger of bodily harm. “Bodily harm” means physical pain, or temporary disfigurement, or impairment of physical condition.¹⁰

If an actor is within a dwelling at the time that he/she used deadly force to prevent the commission or consummation of [crime about which the jury has been instructed], this fact alone is sufficient to establish that he/she reasonably believed that he/she was in substantial danger of bodily harm. In other words, if defendant was within a dwelling when he/she used deadly force against [name of alleged victim], you must find that he/she reasonably believed that he/she was in substantial danger of bodily injury unless the State disproves that finding beyond a reasonable

⁷ N.J.S.A. 2C: 3-11b.

⁸ Ibid.

⁹ Ibid. Note, however, that this portion of N.J.S.A. 2C:3-11b is not applicable if a weapon is actually used (e.g., a brandished firearm is actually fired). State v. Moore, 158 N.J. 292, 305-308 (1999).

¹⁰ N.J.S.A. 2C:3-11e.

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doubt.¹¹ I have already defined the term “dwelling” for you.

[IN ALL CASES INVOLVING USE OF DEADLY FORCE]: I have already defined “deadly force” and “reasonable belief” for you.

DEFENSE OF PERSONAL PROPERTY (N.J.S.A. 2C: 3-6c. and d.)

A section of our criminal law provides that.....

the use of force upon or toward the person of another is justifiable when the actor reasonably believes it necessary to prevent what he reasonably believes to be an attempt by such other person to commit [CHOOSE APPLICABLE CRIME: theft, criminal mischief or other criminal interference with personal property in his possession or in the possession of another for whose protection he acts].

[Define offense or offenses by the "victim" which may be involved, as well as the appropriate instructions for attempt, if applicable.]

Our criminal law further provides that in the defense of personal property.....

the use of force is justifiable only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor reasonably believes that (a) such request would be useless; (b) it would be dangerous to himself or another to make the request of (c) substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.

[Define reasonable belief as in the preceding section.]

The use of force to defend personal property is not justifiable if the actor knows that the exclusion of the person attempting to commit [crime alleged] will expose (him/her) to substantial danger of serious bodily harm.

Serious bodily harm is defined as:

¹¹ N.J.S.A. 2C:3-6b(3)(c)(ii) and 1-13e; N.J.R.E. 301. Although the provisions of N.J.R.E. 303 apply only to presumptions against the accused in criminal cases, this portion of the charge avoids the use of the term “presumption” or “presumed” contained in this subsection.

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bodily harm which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ [WHERE APPLICABLE: or which results from aggravated sexual assault or sexual assault].¹²

[USE OF DEADLY FORCE]

[N.J.S.A. 2C:3-6d(2) provides that “[t]he use of deadly force in defense of personal property is not justified unless justified under another provision of this chapter.” If defendant claims that his use of deadly force was justified under any provision of N.J.S.A. 2C:3-3 to 3-8, the jury should be instructed regarding that provision at this point. Also, define "deadly force" as in the preceding section.]

BURDEN OF PROOF [ALL CASES]

The burden of proof is upon the State to prove beyond a reasonable doubt that the use of force by the defendant was not justified. Thus, if you find that the State has proven beyond a reasonable doubt that the defendant committed _____ [the crime[s] charged in the indictment] and has also proven beyond a reasonable doubt that the defendant was not justified in using force, then your verdict must be guilty. But if you have a reasonable doubt whether (his/her) use of force was justified, then your verdict must be not guilty.

¹² N.J.S.A. 2C:3-11 d.