

**JUSTIFICATION
USE OF FORCE UPON AN INTRUDER
(N.J.S.A. 2C:3-4c)**

The indictment charges that the defendant has committed the crime of _____.

The defendant contends that his/her use of force (or deadly force) upon _____ was justifiable under the circumstances for his/her self-protection (or the protection of others).

Under certain conditions, the law allows a person to use force upon another, and the use of such force does not constitute a criminal offense. The law exonerates a defendant who uses force (or deadly force) upon or toward an intruder who is unlawfully in a dwelling when the defendant reasonably believes that the force is immediately necessary for the purpose of protecting himself/herself or other person(s) in the dwelling against the use of unlawful force by the intruder on the present occasion.¹

The State has the burden to prove beyond a reasonable doubt that the force used by the defendant against another person was not justified.²

If the State fails to sustain this burden of proof beyond a reasonable doubt, the defendant must be found not guilty of the crime(s) charged. Conversely, this defense should be rejected if the State disproves, beyond a reasonable doubt, any of the elements or conditions which constitute this defense of justification.

In this case (recite the factual contentions which raise the issue of justification).³

For the force used by the defendant against another to be justified, the following two conditions must exist:

1. The other person (victim) was an intruder who was unlawfully in a dwelling.

An intruder is an individual who enters, or attempts to enter, a dwelling uninvited. **[CHARGE IF APPROPRIATE:** The term intruder does not extend to an individual who is invited into a dwelling by the resident, and is a guest in that dwelling for a period of time before

¹ N.J.S.A. 2C:3-4c(1).

² Although the burden of disproving this defense is upon the State, there must be enough evidence to support this charge - the record must provide a rational basis upon which the jury could find that the defendant acted justifiably. See State v. Bass, 224 N.J. 285, 323 (2016); State v. Martinez, 229 N.J. Super. 593 (App. Div. 1989).

³ It is important for the court to mold the charge to the facts of the case. State v. Bilek, 308 N.J. Super. 1, 12 (App. Div. 1998).

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the use of force occurs.]⁴

The term “dwelling” means any building or structure though movable or temporary, or a portion thereof, which is used as a person’s home or place of lodging.⁵ **[CHARGE IF APPROPRIATE:** A dwelling includes the entranceway of a building or structure.⁶]

2. The defendant reasonably believed that force (or deadly force) was immediately necessary for the purpose of protecting himself/herself or (an)other person(s) in the dwelling against the use of unlawful force by the intruder on the present occasion.⁷ The level of force need not be proportionate to the unlawful force.⁸ **[CHARGE IF APPROPRIATE:** Pointing of a firearm is the use of force within the meaning of this defense and that such force, even if thought to be excessive, may be used if the intruder(s) was/were the aggressor(s).⁹]

A reasonable belief exists when a defendant, to protect himself/herself or a third person, was in his/her own dwelling at the time of the offense or was privileged to be thereon, and the encounter between the defendant and intruder(s) was/were sudden and unexpected, compelling the defendant to act instantly, and the defendant reasonably believed that the intruder would inflict personal injury upon the defendant or others in the dwelling, or the defendant demanded that the intruder(s) disarm, surrender or withdraw, and the intruder(s) refused to do so.¹⁰ Personal injury means physical pain, or temporary disfigurement, or impairment of physical condition.¹¹

I instruct you that a reasonable belief is different than an honest belief. What is

⁴ State v. Bass, supra, 224 N.J. at 322. See also State v. Bilek, 308 N.J. Super. supra, at 13; State v. Felton, 180 N.J. Super. 361, 365 (App. Div. 1981). The Bass Court left open the question whether a person who secures an invitation into a dwelling by misrepresenting his or her identity or purpose, and then commits or threatens to commit an unlawful act, may be an “intruder” under N.J.S.A. 2C:3-4(c). Bass, supra, 224 N.J. at 322 n.12.

⁵ A dwelling includes a “porch or similar appurtenance.” State v. Martinez, supra, 229 N.J. Super. at 604.

⁶ State v. Bilek, supra, 308 N.J. Super. at 12.

⁷ N.J.S.A. 2C:3-4c(1).

⁸ State v. Bilek, supra, 308 N.J. Super. at 12.

⁹ State v. Bilek, supra, 308 N.J. Super. at 14.

¹⁰ N.J.S.A. 2C:3-4c(1) & -4c(2).

¹¹ N.J.S.A. 2C:3-11e. See State v. Bilek, supra, 308 N.J. Super. at 14. The Committee notes that the Legislature has not actually defined the term “personal injury.” Rather, the Bilek court agreed with the defendant that “‘personal injury’ as referred to in N.J.S.A. 2C:3-4(c)(2)(a) probably should be defined consistently with the related definition of ‘bodily harm’ under N.J.S.A. 2C:3-11e.” Bilek, ibid.

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reasonable is not measured by what a defendant found reasonable but rather by what a jury finds reasonable. Thus, the reasonableness of defendant's belief is based on an objective standard - that is, by how an ordinary reasonable person with a detached viewpoint would view it. A subjective belief, based on the viewpoint of the defendant, is immaterial.¹²

If the defendant did employ protective force, he/she has the right to estimate the necessity of using force without retreating, surrendering position, withdrawing or doing any other act which he/she has no legal duty to do or abstaining from any lawful action.¹³

The State has the burden of proving beyond a reasonable doubt that the force used by the defendant against (an)other person(s) was not justified, that is, the State has the burden of proving beyond a reasonable doubt that any of the elements or conditions of justification do not exist.

If you find that the State has met its burden of proof beyond a reasonable doubt, then there is no justification and you will consider whether the State has otherwise sustained its burden of proving beyond a reasonable doubt each and every element of the offense(s) of _____.

If the State has failed its burden of proof beyond a reasonable doubt on the issue of justification, then the defendant must be found not guilty as to the charge(s) of _____.¹⁴

¹² N.J.S.A. 2C:3-4c(3). See State v. Bass, *supra*, 224 N.J. at 321.

¹³ N.J.S.A. 2C:3-4c(3).

¹⁴ Note: If the State has sustained its burden of proof, the jury may, if the facts so warrant, deal with the issue of "imperfect self-defense." See State v. Bowens (Leon), 108 N.J. 622, 627-30 (1987).