

**USE OF FORCE IN LAW ENFORCEMENT
(N.J.S.A. 2C:3-7a)**

The defendant contends that (he/she) is not guilty of the crime of _____
_____ because the force (he/she) used was for the purpose of effecting an arrest.

Our statute N.J.S.A. 2C:3-7a provides in pertinent part:

.....the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor reasonably believes that such force is immediately necessary to effect a lawful arrest.

In determining whether the defendant's (name) actions in this case meet the requirements of the statute, you must decide the following issues:

- (1) Was defendant making or assisting in making an arrest when (he/she) used force against the person of another?
- (2) Did the defendant (name) reasonably believe that the force (he/she) used in making or assisting in making the arrest was immediately necessary to make the arrest?
- (3) Was the arrest lawful?

To answer these questions you must determine from the evidence of this case whether from the totality of the circumstances the defendant's beliefs were reasonable. A reasonable belief is one which a reasonable person of ordinary intelligence and prudence in the position of the defendant would have under the circumstances existing at the time of the alleged offense. Thus, a reasonable belief is one which the ordinary person would have when confronted with the same circumstances with which the defendant was faced in this case. The use of force is not justified by reason of this defense unless a reasonable person would have reacted with the same amount or level of force as used by the defendant herein, operating under the belief that the force was immediately necessary to effect a lawful arrest. If a defendant's belief is reasonable, (he/she) cannot be found to have acted in a reckless or criminally negligent manner.

The fact that defendant's belief may have been erroneous does not deprive the defendant of (his/her) privilege to use force to effect a lawful arrest if you find that a reasonable person would have held the same belief under the circumstances with which the defendant was faced at the time of (his/her) actions. Therefore, your determination of whether the defendant reasonably believed that the amount of force used was immediately necessary and not excessive under the circumstances must be made from the standpoint of the defendant at the time of (his/her) acts and

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not from your viewpoint as jurors now looking at (his/her) acts.

The statute requires that the force used was necessary to effect a "lawful arrest." An arrest, as that term is used in criminal law, signifies the apprehension or detention of the person of another in order that (he/she) may be forthcoming to answer for an alleged or supposed crime. In order for the arrest to be lawful, there must exist within the arresting officer's knowledge facts sufficient to warrant a prudent person in believing that the person arrested had committed or was committing a criminal offense. In other words, there must at least be a well-grounded suspicion that a criminal offense has been or is being committed.

The burden is upon the State to prove beyond a reasonable doubt that the defense of justifiable conduct is untrue, and hence there must be an acquittal if there is a reasonable doubt as to whether the defendant did act justifiably within the definition of that defense as just instructed.