

M Crim JI 7.15 Use of Deadly Force in Self-Defense

(1) The defendant claims that [he / she] acted in lawful self-defense. A person has the right to use force or even take a life to defend [himself / herself] under certain circumstances. If a person acts in lawful self-defense, that person's actions are justified and [he / she] is not guilty of [state crime].

(2) You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful self-defense. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, at the time [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] was in danger of being [killed / seriously injured / sexually assaulted]. If the defendant's belief was honest and reasonable, [he / she] could act immediately to defend [himself / herself] even if it turned out later that [he / she] was wrong about how much danger [he / she] was in. In deciding if the defendant's belief was honest and reasonable, you should consider all the circumstances as they appeared to the defendant at the time.

(4) Second, a person may not kill or seriously injure another person just to protect [himself / herself] against what seems like a threat of only minor injury. The defendant must have been afraid of [death / serious physical injury / sexual assault]. When you decide if the defendant was afraid of one or more of these, you should consider all the circumstances: [the condition of the people involved, including their relative strength / whether the other person was armed with a dangerous weapon or had some other means of injuring the defendant / the nature of the other person's attack or threat / whether the defendant knew about any previous violent acts or threats made by the other person].

(5) Third, at the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. Under the law, a person may only use as much force as [he / she] thinks is necessary at the time to protect [himself / herself]. When you decide whether the amount of force used seemed to be necessary, you may consider whether the defendant knew about any other ways of protecting [himself / herself], but you may also consider how the excitement of the moment affected the choice the defendant made.

Use Note

Use when requested where some evidence of self-defense has been introduced or elicited.

History

M Crim JI 7.15 was CJI 7:9:01; amended June, 1990; June, 1991; September, 2005, September, 2007.

M Crim JI 7.16 Duty to Retreat to Avoid Using Deadly Force

(1) A person can use deadly force in self-defense only where it is necessary to do so. If the defendant could have safely retreated but did not do so, you may consider that fact in deciding whether the defendant honestly and reasonably believed [he / she] needed to use deadly force in self-defense.*

(2) However, a person is never required to retreat if attacked in [his / her] own home, nor if the person reasonably believes that an attacker is about to use a deadly weapon, nor if the person is subject to a sudden, fierce, and violent attack.(3) Further, a person is not required to retreat if the person:

(a) has not or is not engaged in the commission of a crime at the time the deadly force is used, and

(b) has a legal right to be where the person is at that time, and

(c) has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent [death / great bodily harm / sexual assault] of the person or another.

Use Note

*Paragraph (1) should not be given if the duty to retreat is not in dispute. *People v Richardson*, 490 Mich 115, 803 NW2d 302 (2011).

History

M Crim JI 7.16 was CJI 7:9:02; amended October, 2002, September, 2007.

M Crim JI 7.17 No Duty to Retreat While in Own Dwelling [deleted]

Note. This instruction was deleted by the committee in September, 2008, because the current requirements regarding the duty to retreat before using deadly force are found at M Crim JI 7.16.

M Crim JI 7.18 Deadly Aggressor-Withdrawal

A person who started an assault on someone else [with deadly force / with a dangerous or deadly weapon] cannot claim that [he / she] acted in self-defense unless [he / she] genuinely stopped [fighting / (his / her) assault] and clearly let the other person know that [he / she] wanted to make peace. Then, if the other person kept on fighting or started fighting again later, the defendant had the same right to defend [himself / herself] as anyone else and could use force to save [himself / herself] from immediate physical harm.

Use Note

If supported by the facts, failure to give this instruction *sua sponte* is reversible error.

History

M Crim JI 7.18 was CJI 7:9:04.

M Crim JI 7.19 Nondeadly Aggressor Assaulted with Deadly Force

A defendant who [assaults someone else with fists or a weapon that is not deadly / insults someone with words / trespasses on someone else's property / tries to take someone else's property in a nonviolent way] does not lose all right to self-defense. If someone else assaults [him / her] with deadly force, the defendant may act in self-defense, but only if [he / she] retreats if it is safe to do so.

History

M Crim JI 7.19 was CJI 7:9:05 and was last amended by the committee in October, 2002.

M Crim JI 7.20 Burden of Proof-Self-Defense

The defendant does not have to prove that [he / she] acted in self-defense. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant did not act in self-defense.

Use Note

This instruction should be given where there is some evidence of self-defense. If there is no evidence of self-defense, no instructions on self-defense should be given.

History

M Crim JI 7.20 was CJI 7:9:06.

M Crim JI 7.21 Defense of Others-Deadly Force

(1) The defendant claims that [he / she] acted lawfully to defend _____. A person has the right to use force or even take a life to defend someone else under certain circumstances. If a person acts in lawful defense of another, [his / her] actions are justified and [he / she] is not guilty of [state crime].

(2) You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful defense of another. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, at the time [he / she] acted, the defendant must not have been engaged in the commission of a crime.

(4) Second, when [he / she] acted, the defendant must have honestly and reasonably believed that _____ was in danger of being [killed / seriously injured / sexually assaulted]. If [his / her] belief was honest and reasonable, [he / she] could act at once to defend _____, even if it turns out later that the defendant was wrong about how much danger _____ was in.

(5) Third, if the defendant was only afraid that _____ would receive a minor injury, then [he / she] was not justified in killing or seriously injuring the attacker. The defendant must have been afraid that _____ would be [killed / seriously injured / sexually assaulted]. When you decide if [he / she] was so afraid, you should consider all the circumstances: [the conditions of the people involved, including their relative strength / whether the other person was armed with a dangerous weapon or had some other means of injuring _____ / the nature of the other person's attack or threat / whether the defendant knew about any previous violent acts or threats made by the attacker].

(6) Fourth, at the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. Under the law, a person may only use as much force as [he / she] thinks is needed at the time to protect the other person. When you decide whether the force used appeared to be necessary, you may consider whether the defendant knew about any other ways of protecting _____, but you may also consider how the excitement of the moment affected the choice the defendant made.

(7) The defendant does not have to prove that [he / she] acted in defense of _____. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant did not act in defense of _____.

History

M Crim JI 7.21 was CJI 7:9:07-7:9:08; amended September, 1990; June, 1991; September, 2005, September, 2007.

M Crim JI 7.22 Use of Nondeadly Force in Self-Defense or Defense of Others

(1) The defendant claims that [he / she] acted in lawful [self-defense / defense of _____]. A person has the right to use force to defend [himself / herself / another person] under certain circumstances. If a person acts in lawful [self-defense / defense of others], [his / her] actions are justified and [he / she] is not guilty of [state crime].

(2) You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful [self-defense / defense of _____]. Remember to judge the defendant's conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, at the time [he / she] acted, the defendant must not have been engaged in the commission of a crime.

(4) Second, when [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] had to use force to protect [himself / herself / _____] from the imminent unlawful use of force by another. If [his / her] belief was honest and reasonable, [he / she] could act at once to defend [himself / herself / _____], even if it turns out later that [he / she] was wrong about how much danger [he / she / _____] was in.

(5) Third, a person is only justified in using the degree of force that seems necessary at the time to protect [himself / herself / the other person] from danger. The defendant must have used the kind of force that was appropriate to the attack made and the circumstances as [he / she] saw them. When you decide whether the force used was what seemed necessary, you should consider whether the defendant knew about any other ways of protecting [himself / herself / _____], but you may also consider how the excitement of the moment affected the choice the defendant made.

(6) Fourth, the right to defend [oneself / another person] only lasts as long as it seems necessary for the purpose of protection.

(7) Fifth, the person claiming self-defense must not have acted wrongfully and brought on the assault. [However, if the defendant only used words, that does not prevent (him / her) from claiming self-defense if (he / she) was attacked.]

History

M Crim JI 7.22 was CJI 7:9:09; amended September 1990; September, 2005, September 2007.

M Crim JI 7.23 Past Violence by Complainant or Decedent [Specific Acts]

(1) There has been evidence that the [complainant / decedent] may have committed violent acts in the past and that the defendant knew about these acts. You may consider this evidence when you decide whether the defendant honestly and reasonably feared for [his / her] safety. [General Reputation]

(2) There has been evidence that the [complainant / decedent] may have had a reputation for cruelty or violence. You may consider this evidence when you decide whether it was likely that the [complainant / decedent] threatened to hurt the defendant physically, and whether the defendant honestly and reasonably feared for [his / her] safety.

History

M Crim JI 7.23 was CJI 7:9:10; amended September, 1990.

M Crim JI 7.24 Self-Defense Against Persons Acting in Concert

A defendant who is attacked by more than one person [or by one person and others helping and encouraging the attacker] has the right to act in self-defense against all of them. [However, before using deadly force against one of the attackers, the defendant must honestly and reasonably believe that (he / she) is in imminent danger of (death / great bodily harm / sexual assault) by that particular person.]

Use Note

Use the second sentence only where the defendant used deadly force.

History

M Crim JI 7.24 was CJI 7:9:11; amended September, 1990; June, 1991, September, 2007.