

1 **14-5171. Justifiable homicide; self-defense.¹**

2 An issue you must consider in this case is whether the defendant killed
3 _____ (*name of victim*) in self-defense.

4 The killing is in self-defense if:

5 1. There was an appearance of immediate danger of death or great bodily harm² to the
6 defendant as a result of _____^{3,4} and

7 2. The defendant was in fact put in fear by the apparent danger of immediate death or
8 great bodily harm and killed _____ (*name of victim*) because of that fear; and

9 3. A reasonable person in the same circumstances as the defendant would have acted
10 as the defendant did.

11 The burden is on the state to prove beyond a reasonable doubt that the defendant did not
12 act in self-defense. If you have a reasonable doubt as to whether the defendant acted in self-defense
13 you must find the defendant not guilty.

14 USE NOTES

15 1. For use when the self-defense theory is based on necessary defense of self against
16 any unlawful action; reasonable grounds to believe a design exists to commit a felony; or
17 reasonable grounds to believe a design exists to do some great bodily harm. If this instruction is
18 given, add to the essential elements instruction for the offense charged, “The defendant did not act
19 in self-defense.”

20 2. The definition of great bodily harm, UJI 14-131 NMRA, must be given if not
21 already given.

1 3. Describe unlawful act, felony, or act which would result in death or some great
2 bodily harm as established by the evidence. Give at least enough detail to put the act in the context
3 of the evidence.

4 4. UJI 14-5190 NMRA (assailed person need not retreat), must be given if at issue. If
5 at issue, UJI 14-5191 NMRA (self-defense; limitations; aggressor) and UJI 14-5191A NMRA
6 (first aggressor; exceptions to the limitation on self-defense) should also be given.

7 [As amended, effective October 1, 1985; January 1, 1997; as amended by Supreme Court Order
8 No. 19-8300-016, effective for all cases pending or filed on or after December 31, 2019; as
9 amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending or
10 filed on or after December 31, 2025.]

11 **Committee commentary.** — New Mexico cases recognize deadly force may be justified to defend
12 against an actual or apparent and imminent threat of harm in three basic circumstances: self-
13 defense, defense of another, and defense of habitation. *See generally State v. Rudolfo*, 2008-
14 NMSC-036, ¶ 27, 144 N.M. 305, 187 P.3d 170 (self-defense); *State v. Jernigan*, 2006-NMSC-003,
15 139 N.M. 1, 127 P.3d 537 (defense of another); *State v. Cardenas*, 2016-NMCA-042, 380 P.3d
16 866 (defense of habitation); UJI 14-5170 NMRA (defense of habitation), UJI 14-5171 [~~NMRA~~]
17 (self-defense); UJI 14-5172 NMRA (defense of another); *see also* NMSA 1978, § 30-2-7 (1963)
18 (recognizing defenses).

19 The threat of harm required for self-defense or defense of another is that of death or great bodily
20 harm. *See, e.g.*[-], *Rudolfo*, 2008-NMSC-036, ¶ 17. For defense of habitation, the justification for
21 use of deadly force arises from a threat of a violent felony by an intruder into the home. *Cardenas*,
22 2016-NMCA-042, ¶ 18. These defenses provide “a complete justification to homicide” based on
23 “the reasonable belief in the necessity of using deadly force.” *State v. Coffin*, 1999-NMSC-038, ¶

1 12, 128 N.M. 192, 991 P.2d 477; *see also* NMSA 1978, § 30-2-8 (1963) (requiring that the
2 defendant be acquitted when the killing is justified or excused). “It is only just that one who is
3 unlawfully attacked by another, and who has no opportunity to resort to the law for . . . defense,
4 should be able to take reasonable steps to defend [against] harm.” Wayne R. LaFave, *Substantive*
5 *Criminal Law*[;] § 10.4(a) (3rd ed.[;] Oct. 2017 Update). Deadly force may not be used solely to
6 defend one’s personal property. *See State v. Baxendale*, 2016-NMCA-048, ¶ 12, 370 P.3d 813
7 ([quoting] citing *Brown v. Martinez*, 1961-NMSC-040, ¶ 22, 68 N.M. 271, 361 P.2d 152).

8 Under New Mexico law, the danger involved may be either real or apparent based on the
9 circumstances known to or perceived by the accused. *Rudolfo*, 2008-NMSC-036, ¶ 17; *State v.*
10 *Chesher*, 1916-NMSC-083, 22 N.M. 319, 161 P. 1108. The apparent danger must be imminent.
11 *Jernigan*, 2006-NMSC-003, ¶ 5; *Territory v. Baker*, 1887-NMSC-021, ¶ 11, 4 N.M. 236, 13 P. 30.

12 The defendant must also believe in the existence of the apparent danger. *State v. Parks*, 1919-
13 NMSC-041, ¶ 6, 25 N.M. 395, 183 P. 433. New Mexico uses a hybrid test, judging the appearance
14 of actual danger and actual apprehension subjectively while judging whether the use of deadly
15 force was reasonable objectively. *Coffin*, 1999-NMSC-038, ¶ 15.

16 The instruction does not require a separate instruction in the event the victim is an innocent
17 bystander, i.e., a person who did not instigate the action which required the defense. Under New
18 Mexico law, if the circumstances would justify the use of deadly force in self-defense, the
19 defendant is not guilty of homicide [~~if he~~] for unintentionally [~~kills~~] killing a third person. *State v.*
20 *Sherwood*, 1935-NMSC-082, 39 N.M. 518, 50 P.2d 968. *See generally*[;] LaFave, *supra*, § 10.4(g);
21 [~~Annot.~~] Ferdinand S. Tinio, Annotation, Unintentional Killing of or Injury to Third Person
22 During Attempted Self-Defense, 55 A.L.R.3d 620 (1974).

1 The third element of “a reasonable [~~man~~] [person] under the same circumstances as the defendant,”
2 includes the principle that the defendant’s right to use force may end when the danger ceases or
3 the adversary is disabled. *See, e.g.* [;], *State v. Benally*, 2001-NMSC-033, ¶ 43, 131 N.M. 258, 34
4 P.3d 1134 (Baca, J., dissenting).
5 Self-defense is not available to an aggressor unless the aggressor first tries to stop the fight or
6 unless it is necessary to defend against an unreasonable force. *See State v. Chavez*, 1983-NMSC-
7 037, ¶ 6, 99 N.M. 609, 661 P.2d 887; UJI 14-5191 [~~NMRA~~]; UJI [~~5191A-NMRA~~] 14-5191A.
8 Homicide requires as an element that the killing was unlawful. *Benally*[;], 2001-NMSC-033, ¶ 10.
9 Because self-defense, defense of another, or defense of habitation justifies the defendant’s actions,
10 when established they negate the element of unlawfulness. *State v. Armijo*, 1999-NMCA-087, ¶
11 14, 127 N.M. 594, 985 P.2d 764. Once sufficient evidence has been presented to create a jury issue
12 on the elements of one of these defenses, unlawfulness becomes an element the state must prove,
13 and therefore it bears the burden to disprove these defenses beyond a reasonable doubt. *State v.*
14 *Parish*, 1994-NMSC-073, ¶¶ 11, 13, 118 N.M. 39, 878 P.2d 988.
15 [As amended by Supreme Court Order No. 19-8300-016[~~, effective for all cases pending or filed~~
16 ~~on or after December 31, 2019~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]