

1 **14-5174. Justifiable homicide; aiding public official.¹**

2 An issue you must consider in this case is whether the killing of
3 _____ (*name of victim*) was justifiable homicide by a person aiding a
4 public officer or public employee if:

5 1. At the time of the killing, _____ (*name of defendant*) was
6 acting at the command and in the aid or assistance of a public officer or employee;

7 2. The killing was committed while²
8 [overcoming the actual resistance of _____ (*victim*) to the
9 execution of _____]³

10 [overcoming the actual resistance of _____ (*victim*) to the
11 discharge of _____]⁴

12 [retaking [_____ (*name of victim*)] [a person], who
13 committed _____⁶ and who had [been rescued]⁵ [escaped]]

14 [arresting [_____ (*name of victim*)] [a person] who
15 committed _____⁶ and was fleeing from justice]

16 [attempting to prevent the escape from _____⁷ of
17 [_____ (*name of victim*)] [a person], who committed
18 _____];⁶ and

19 3. A reasonable person in the same circumstances as _____ (*name of*
20 *defendant*) would have reasonably believed that _____ (*name of victim*) posed a
21 threat of death or great bodily harm to _____ (*name of public officer or public*
22 *employee*) or another person.

1 rights than the officer. *State v. Gabaldon*~~[7]~~, 1939-NMSC-060, ¶ 7, 43 N.M. 525, ~~[533,]~~ 96 P.2d
2 293 ~~[(1939)]~~. For example, the person fleeing must actually be a felon. The defendant is not
3 entitled to kill a misdemeanor even if under the circumstances the latter appears to be a felon.
4 ~~[*State v. Gabaldon, supra*]~~ *Id.* ¶¶ 7-8. In this respect, this defense is unlike the defense of another,
5 where the defendant may act on an appearance of danger to another. *See* ~~[commentary to]~~ UJI 14-
6 5172 NMRA comm. cmt. For the reasons for omitting the defense of ~~[“~~“acting in obedience to a
7 judgment of the court,~~”~~“~~see commentary to]”~~ see UJI 14-5173 comm. cmt.
8 NMSA 1978, Section ~~[30-2-7C NMSA 1978]~~ 30-2-7(C) contains a justifiable homicide provision
9 for ~~[one]~~ a person who, on ~~[his]~~ that person’s own initiative, kills a fleeing felon or kills to suppress
10 a riot or to keep and preserve the peace. The ~~[committee]~~ Committee was of the opinion that, not
11 only was the defense rarely available, it had an uncertain common-law basis. *See generally* Rollin
12 M. Perkins, ~~[Criminal Law]~~ Perkins on Criminal Law 989 (2d ed. 1969). The ~~[committee]~~
13 Committee further believed that the public policy behind the statute should be the subject of
14 legislative review. For these reasons, no instruction interpreting the statute was included. A special
15 instruction must be drafted under the guidelines of the ~~[General]~~ Use Note in the event that the
16 evidence justifies giving an instruction based on the statute.
17 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]