

1 **14-5174. Justifiable homicide; aiding public official.<sup>1</sup>**

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 while<sup>2</sup>  
8 [overcoming the actual resistance of \_\_\_\_\_ (*victim*) to the  
9 execution of \_\_\_\_\_<sup>3</sup>]  
10 [overcoming the actual resistance of \_\_\_\_\_ (*victim*) to the  
11 discharge of \_\_\_\_\_<sup>4</sup>]  
12 [retaking [\_\_\_\_\_ (*name of victim*)] [a person], who  
13 committed \_\_\_\_\_<sup>5</sup> and who had [been rescued]<sup>5</sup> [escaped]]  
14 [arresting [\_\_\_\_\_ (*name of victim*)] [a person] who  
15 committed \_\_\_\_\_<sup>6</sup> and was fleeing from justice]  
16 [attempting to prevent the escape from \_\_\_\_\_<sup>7</sup> of  
17 [\_\_\_\_\_ (*name of victim*)] [a person], who  
18 committed \_\_\_\_\_<sup>6</sup>]; and

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

1           The burden is on the state to prove beyond a reasonable doubt that the killing was not  
2 justifiable. If you have a reasonable doubt as to whether the killing was justifiable, you must find  
3 the defendant not guilty.

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USE NOTES

6           1.       For use when the defense is based on Section 30-2-6 NMSA 1978. If this instruction  
7 is given, add to the essential elements instruction for the offense charged, “The killing was not  
8 justifiable homicide by a person aiding a public officer or employee.”

9           2.       Use only the applicable bracketed phrase.

10          3.       Insert description of legal process being executed.

11          4.       Insert description of legal duty.

12          5.       Use only applicable parenthetical alternative.

13          6.       Insert name of felony. The essential elements of the felony must also be given. To  
14 instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used. However, in  
15 this context, substitute the name of the victim in place of the words “the defendant” in UJI 14-140  
16 NMRA.

17          7.       Describe circumstances and place of lawful custody or confinement.

18 [As amended, effective October 1, 1985; January 1, 1997; April 15, 2003; as amended by Supreme  
19 Court Order No. 19-8300-016, effective for all cases pending or filed on or after December 31,  
20 2019; as amended by Supreme Court Order No. 20-8300-004, effective for all cases pending or  
21 filed on or after December 31, 2020.]

22           **Committee commentary.** — The elements of this instruction are similar to the instruction  
23 for a killing by the public officer. *See* commentary to UJI 14-5173. As a matter of law, the person

1 who aids a public officer stands in the same position as the officer and has no more rights than the  
2 officer. *State v. Gabaldon*, 43 N.M. 525, 533, 96 P.2d 293 (1939). For example, the person fleeing  
3 must actually be a felon. The defendant is not entitled to kill a misdemeanor even if under the  
4 circumstances the latter appears to be a felon. *State v. Gabaldon, supra*. In this respect, this defense  
5 is unlike the defense of another, where the defendant may act on an appearance of danger to  
6 another. *See* commentary to UJI 14-5172. For the reasons for omitting the defense of “acting in  
7 obedience to a judgment of the court,” *see* commentary to UJI 14-5173.

8           Section 30-2-7C NMSA 1978 contains a justifiable homicide provision for one who, on his  
9 own initiative, kills a fleeing felon or kills to suppress a riot or to keep and preserve the peace. The  
10 committee was of the opinion that, not only was the defense rarely available, it had an uncertain  
11 common-law basis. *See generally* Perkins, Criminal Law 989 (2d ed. 1969). The committee further  
12 believed that the public policy behind the statute should be the subject of legislative review. For  
13 these reasons, no instruction interpreting the statute was included. A special instruction must be  
14 drafted under the guidelines of the General Use Note in the event that the evidence justifies giving  
15 an instruction based on the statute.