3.6(f) JUSTIFIABLE [USE] [OR] [THREATENED USE] OF DEADLY FORCE

Trial judges must use great caution in deciding which statutes apply and which sections of this instruction should and should not be given. For example, § 782.02, Fla. Stat., and many statutes within Chapter 776 address the justifiable use or threatened use of deadly force; however, § 782.02, Fla. Stat., does not address the concept of stand-your-ground/no duty to retreat. Additionally, § 776.013(1), Fla. Stat., covers the situation where the defendant was in a dwelling and had the right to be there while §§ 776.012(1), and 776.031(2), Fla. Stats., cover other situations.

It is a defense to the crime[s] of (name[s] of relevant crime[s], including lesser-included offenses) **if the actions of** (defendant) **constituted the justifiable [use] [or] [threatened use] of deadly force.**

"Deadly force" means force likely to cause death or great bodily harm. "Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm.

(Defendant) **does not have the burden of proving that [he] [she] was justified in [using] [or] [threatening to use] deadly force. Instead, for you to find the defendant guilty, the State must prove beyond a reasonable doubt the defendant was not justified in [using] [or] [threatening to use] deadly force.**

The law on the justifiable [use] [or] [threatened use] of deadly force is as follows:

Give if defendant is relying on § 776.012(2) or § 776.031(2), but is not relying on § 776.013(1) Fla. Stat.

If applicable, give the elements of the forcible felony listed in § 776.08, Fla. Stat., that defendant alleges victim was about to commit but omit any reference to a burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011). The instruction may need to be modified in the event the forcible felony at issue is not a crime against a person.

(Defendant) **was justified in [using] [or] [threatening to use] deadly force if [he] [she] reasonably believed that such [force] [or] [threat of force] was necessary to prevent**

Give a. or b. or both.

a. **imminent death or great bodily harm to [himself] [herself] [or] [another]**

   [or]

b. **the imminent commission of** (applicable forcible felony) **against [himself] [herself] [or] [another].**

The judge must give one, and only one, of the following two paragraphs to instruct on Florida law regarding the duty to retreat.

If it is undisputed by the parties that the defendant had no duty to retreat, give the following sentence.

(Defendant) **had no duty to retreat before [using] [or] [threatening to use] deadly force.**

If the parties dispute whether the defendant had a duty to retreat, give the following paragraph.

If (defendant) **was not committing any crime other than the alleged** (insert the charged crime(s) and any lesser included crimes for which the defendant is claiming self-defense or defense of others) **for which the defendant is claiming [self-defense] [or] [defense of others], and if [he] [she] was in a place where [he] [she] had a right to be, then the defendant had no duty to retreat before [using] [or] [threatening to use] deadly force. On the other hand, 1) if at the time** (defendant) **[used] [or] [threatened to use] deadly force, [he] [she] was committing a[n]** (insert the defendant's criminal activity, but that criminal activity cannot be the charged crime(s) for which the defendant is claiming self-defense or defense of others)**; or, 2) if at the time** (defendant) **[used] [or] [threatened to use] deadly force, [he] [she] was not in a place where [he] [she] had a right to be, then the defendant had a duty to retreat. The duty to retreat means the defendant had the legal obligation to use every reasonable means to avoid any danger before [using] [or] [threatening to use] deadly force. The law does not require the defendant to retreat if [he] [she] was placed in [imminent danger of death or great bodily harm] [or] [imminent danger of the commission of** (applicable forcible felony) **against [himself] [herself] and it would have increased [his] [her] own danger to retreat, or if retreat would have been futile. But if the defendant had a duty to retreat and if [he] [she] could have safely retreated, but did not do so, then [his] [her] [use] [or] [threatened use] of deadly force was not justifiable.**

Give if defendant is relying on § 776.013(1), Fla. Stat.

Before the existing Chapter 776 statutes became effective, case law such as De La Hoz v. State, 997 So. 2d 1198 (Fla. 3d DCA 2008) extended the Castle Doctrine to people in their place of employment while lawfully engaged in their occupations. If this extension of the Castle Doctrine is still good law, a person in his or her place of employment while lawfully engaged in his or her occupation has no duty to retreat before using or threatening to use deadly force, even if he or she were otherwise engaged in criminal activity. The paragraph below can be modified to include a person in his or her place of employment while lawfully engaged in his or her occupation.

Give the elements of the applicable forcible felony that defendant alleges victim was about to commit but omit any reference to a burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011). The instruction may need to be modified in the event that the forcible felony at issue is not a crime against a person.

If (defendant) **was in a [dwelling] [residence] in which [he] [she] had a right to be, [he] [she] had no duty to retreat and had the right to stand [his] [her] ground and [use] [or] [threaten to use] force, including deadly force if [he] [she] reasonably believed that such conduct was necessary to prevent**

Give a. or b. or both.

a. **imminent death or great bodily harm to [himself] [herself] [or] [another]**

[or]

b. **the imminent commission of** (applicable forcible felony) **against [himself] [herself] [or] [another].**

Give if defendant is relying on § 782.02, Fla. Stat.

If necessary, give the elements of the felony that defendant alleges victim attempted to commit but omit any reference to a burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011).

The use of deadly force is justifiable if (defendant) **reasonably believed that the force was necessary to prevent imminent death or great bodily harm to [himself] [herself] while resisting any attempt to**

Give a. or b. or c. or any combination.

a. **murder [him] [her].**

b. **commit** (applicable felony) **upon [him] [her].**

c. **commit** (applicable felony) **upon or in any dwelling house in which [he] [she] was present.**

Give if applicable. Force in resisting a law enforcement officer. § 776.051(1), Fla. Stat.

A person is not justified in [using force] [or] [threatening to use force] to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

However, if an officer uses excessive force to make an arrest, then a person is justified in the [use] [or] [threatened use] of reasonable force to defend [himself] [herself] (or another)**, but only to the extent [he] [she] reasonably believes such [force] [or] [threat of force] is necessary.** *See § 776.012, Fla. Stat.; Ivester v. State, 398 So. 2d 926 (Fla. 1st DCA 1981); Jackson v. State, 463 So. 2d 372 (Fla. 5th DCA 1985).*

Give in all cases.

In deciding whether (defendant) **was justified in the [use] [or] [threatened use] of deadly force, you must consider the circumstances at the time the [force] [or] [threat of force] was used. The danger need not have been actual; however, to justify the [use] [or] [threatened use] of deadly force, the appearance of imminent danger must have been so real that the defendant actually believed the [use] [or] [threatened use] of deadly force was necessary. Moreover, to justify the [use] [or] [threatened use] of deadly force, a reasonably cautious and prudent person under**

the same circumstances would have believed the [use] [or] [threatened use] of deadly force was necessary.

Presumption of fear (unlawful and forcible entry into dwelling, residence, or occupied vehicle). Give if applicable. § 776.013(2), Fla. Stat.

(Defendant) **is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to [himself] [herself] [another] when [using] [or] [threatening to use] defensive force that was intended or likely to cause death or great bodily harm to another if:**

a. The person against whom the defensive force was [used] [or] [threatened to be used] was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle;

and

b. (Defendant) **knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.**

Exceptions to Presumption of Fear. § 776.013(3)(a)-(3)(d), Fla. Stat. Give as applicable.

The presumption of reasonable fear of imminent death or great bodily harm does not apply if:

a. the person against whom the defensive force is [used] [or] [threatened to be used] has the right to be in [or is a lawful resident of the [dwelling] [residence]] [vehicle], such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

b. the person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is [used] [or] [threatened to be used]; or

c. the person who [uses] [or] [threatens to use] defensive force is engaged in a criminal activity or is using the [dwelling] [residence] [occupied vehicle] to further a criminal activity; or

d. the person against whom the defensive force is [used] [or] [threatened to be used] is a law enforcement officer, who enters or attempts to enter a [dwelling] [residence] [vehicle] in the performance of [his] [her] official duties and the officer identified

[himself] [herself] in accordance with any applicable law or the person [using] [or] [threatening to use] the force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer. *If requested, give definition of "law enforcement officer" from § 943.10(14), Fla. Stat.*

§ 776.013(4), Fla. Stat. § 776.013(5), Fla. Stat. Give if applicable.

A person who unlawfully and by force enters or attempts to enter another's [dwelling] [residence] [occupied vehicle] is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

"Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent or mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

"Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

"Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Aggressor. § 776.041(1), Fla. Stat. Give if applicable and only in cases where the defendant is charged with either: a) an independent forcible felony, Martinez v. State, 981 So. 2d 449 (Fla. 2008); or b) felony murder, if the underlying felony is an independent forcible felony, Cook v. State, 192 So. 3d 681 (Fla. 2d DCA 2016).

Give the elements of the applicable forcible felony but omit any reference to a burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011). The instruction may need to be modified in the event the forcible felony at issue is not a crime against a person.

The paragraph below should not be given if the defendant is claiming justifiable use of force for every crime charged. Woodsmall v. State, 164 So. 3d 696 (Fla. 5th DCA 2015).

However, the [use] [or] [threatened use] of deadly force is not justified if you find that (defendant) **was attempting to commit, committing, or escaping after the commission of** (applicable forcible felony listed in § 776.08, Fla. Stat.)**.**

Aggressor. § 776.041(2), Fla. Stat. Give if applicable.
Gibbs v. State, 789 So. 2d 443 (Fla. 4th DCA 2001).

However, the [use] [or] [threatened use] of deadly force is not justified if you find that (defendant) **used [force] [or] [the threat of force] to initially provoke the [use] [or] [threatened use] of force against [himself] [herself], unless:**

1. **the [force] [or] [threat of force] asserted toward the defendant was so great that [he] [she] reasonably believed that [he] [she] was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than [using] [or] [threatening to use] deadly force on** (victim)**.**

[or]

2. **in good faith,** (defendant) **withdrew from physical contact with** (victim) **and clearly indicated to** (victim) **that [he] [she] wanted to withdraw and stop the [use] [or] [threatened use] of deadly force, but** (victim) **continued or resumed the [use] [or] [threatened use] of force.**

Prior threats. Give only if there is evidence of prior threats or difficulties.

If you find that (defendant)**, who because of prior threats or difficulties with** (victim)**, had reasonable grounds to believe that [he] [she] was in danger of death or great bodily harm at the hands of** (victim)**, you may consider this fact in determining whether the actions of** (defendant) **were those of a reasonable person.**

Specific act of victim known by defendant. Give if applicable.

If you find that at the time of the alleged (name[s] of relevant crime[s])**,** (defendant) **knew that** (victim) **had committed an act [or acts] of violence, you may consider that fact in determining whether** (defendant) **reasonably believed it was necessary for [him] [her] to [use] [or] [threaten to use] deadly force.**

Reputation of victim known by defendant. Give if applicable.

If you find that (victim) **had a reputation of being a violent and dangerous person and that [his] [her] reputation was known to** (defendant)**, you may consider this fact in determining whether the actions of** (defendant) **were those of a reasonable person in dealing with an individual of that reputation.**

Reputation of victim not necessarily known by defendant (to show victim acted in conformity with victim's character). Give if applicable.

If you find that (victim) **had a reputation of being a violent and dangerous person, you may consider this fact in determining whether [he] [she] was the initial aggressor.**

Physical abilities. Read in all cases.

In considering the issue of [self-defense] [defense of another], you may take into account the relative physical abilities and capacities of (defendant) **and** (victim)**.**

Unless the evidence establishes the force or threat of force was deadly or non-deadly as a matter of law or unless there is a stipulation that the use or threatened use of force was only deadly, instruction 3.6(g) must be given.The discharge of a firearm, whether accidental or not, has been deemed to be the use of deadly force as a matter of law. Hosnedl v. State, 126 So. 3d 400 (Fla. 4th DCA 2013).

Comments

A defendant may have knowledge of a victim's prior specific acts of violence because he or she was present during the occurrence of the specific acts or because

the defendant heard of the specific acts prior to the date of the alleged act of self-defense. *See Smith v. State*, 606 So. 2d 641 (Fla. 1st DCA 1992).

This instruction was adopted in 1981 and was amended in 1985 [477 So. 2d 985], 1999 [732 So. 2d 1044], 2000 [789 So. 2d 954], 2006 [930 So. 2d 612], 2008 [976 So. 2d 1081], 2010 [27 So. 3d 640], 2016 [191 So. 3d 411], 2018 [257 So. 3d 908], 2019 [285 So. 3d 1248], on May 5, 2023, and on May 21, 2024.