

14-5180. Defense of property.¹

An issue in this case is whether the defendant acted while defending property.

The defendant acted in defense of property if

1. The _____² was property [of the defendant]³ [in the defendant's lawful possession⁴];
2. It appeared to the defendant that _____ (*name of victim*) was about to _____ (*describe act*) and that it was necessary to _____ (*describe defendant's action*) in order to stop _____ (*name of victim*);
3. The defendant used an amount of force that the defendant believed was reasonable and necessary to defend the property;
4. A reasonable person in the same circumstances as the defendant would have acted as the defendant did;
- [5. The force used by the defendant would not ordinarily create a substantial risk of death or great bodily harm.]⁵

The burden is on the state to prove beyond a reasonable doubt that the defendant did not act in defense of _____². If you have a reasonable doubt as to whether the defendant acted in defense of property, you must find the defendant not guilty.

USE NOTES

1. For use when defense is based on defense of property against either felony act or nonfelony act. UJI 14-5170 NMRA is used for justifiable homicide; defense of habitation. UJI 14-5171 NMRA (Justifiable homicide; self-defense) is used if unlawful interference with property is accompanied by threat of death or great bodily harm. If this instruction is given, add to the essential elements instruction for the offense charged, "The defendant did not act in defense of property."
2. Describe the property.
3. Use only the applicable bracketed language.
4. If there is a question of fact as to whether the defendant was in lawful possession of the property, an appropriate instruction must be prepared.
5. Use bracketed material only if the defendant's action resulted in death or great bodily harm. If the bracketed material is used, the definition of "great bodily harm," UJI 14-131 NMRA, must also be given if not already given.
[As amended, effective January 1, 1997; as amended by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed on or after December 31, 2018.]