

Crim. J.I. 14.5190 Self defense; assailed person need not retreat.

14-5190. Self defense; assailed person need not retreat.

Statute text

A person who is threatened with an attack need not retreat. In the exercise of his right of self defense, he may stand his ground and defend himself.

Annotations

Committee commentary. - When acting in self-defense, a person may use no more force than is reasonably necessary to avoid the threatened harm. See UJI 14-5171 and 14-5181. A person need not, however, retreat even though he could do so safely. See *State v. Horton*, 57 N.M. 257, 258 P.2d 371 (1953), where it was held that it was erroneous to instruct the jury that the defendant could not kill his assailant if he could yield without being killed. See also LaFave & Scott, *Criminal Law* 395 (1972).

COMPILER'S ANNOTATIONS

Voluntary confrontation of victim. - The second element of the foundational predicate for a self-defense instruction was not established where there was evidence that the defendant voluntarily left his trailer and confronted the victim, engaging in an altercation that left the victim dead; no evidence suggested that the defendant was put in fear of the victim, that the defendant killed the victim because of that fear, or that a reasonable person would have killed the victim under these circumstances. *State v. Gurule*, 2004-NMCA-008, 134 N.M. 804, 82 P.3d 975.

Evidence must raise reasonable doubt on self-defense. - To call for instruction on self-defense, the evidence may not be so slight as to be incapable of raising a reasonable doubt in the jury's mind on whether a defendant accused of a homicide did act in self-defense. *State v. Heisler*, 58 N.M. 446, 272 P.2d 660 (1954).

Evidence sufficient to raise doubt warrants self-defense instruction. - If there is evidence sufficient to raise a reasonable doubt in the jury's mind as to whether the defendant acted in self-defense, an instruction on self-defense must be given. *State v. Montano*, 95 N.M. 233, 620 P.2d 887 (Ct. App. 1980); *State v. Martinez*, 95 N.M. 421, 622 P.2d 1041 (1981).

And instruction proper even where supported only by defendant's own testimony. - Where self-defense is involved in a criminal case and there is any evidence, although slight, to establish the same, it is not only proper

for the court, but its duty as well, to instruct the jury fully and clearly on all phases of the law on that issue that are warranted by the evidence, even though such a defense is supported only by the defendant's own testimony. *State v. Heisler*, 58 N.M. 446, 272 P.2d 660 (1954).

Essential elements necessary before self-defense instruction can be given are: (1) an appearance of immediate danger of death or great bodily harm to the defendant; (2) the defendant was in fact put in such fear; and (3) a reasonable person would have reacted in a similar manner. *State v. Martinez*, 95 N.M. 421, 622 P.2d 1041 (1981).

No conflict with instruction limiting self-defense. - The instruction limiting self-defense when the defendant is the aggressor (UJI 14-5191) does not conflict with the instruction on justifiable homicide (UJI 14-5171) or this instruction. *State v. Velasquez*, 99 N.M. 109, 654 P.2d 562 (Ct. App.), cert. denied, 99 N.M. 148, 655 P.2d 160 (1982).

Use of "must" in instruction not error. - Instructions dealing with the elements of self-defense have consistently referred to elements which "must" exist if self-defense is to be submitted to the jury, and as the instruction did no more than inform the jury of the necessary elements and made no reference to a burden of proof in regard to self-defense, the use of "must" in the instruction was not error. *State v. Harrison*, 81 N.M. 623, 471 P.2d 193 (Ct. App.), cert. denied, 81 N.M. 668, 472 P.2d 382 (1970).

Defendant must show error in refusal to give instruction. - It is the defendant's burden to provide a record sufficient to demonstrate reversible error in refusing self-defense instructions. *State v. Gonzales*, 97 N.M. 607, 642 P.2d 210 (Ct. App. 1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Duty of trial court to instruct on self-defense in absence of request by accused, 56 A.L.R.2d 1170.

Duty to retreat where assailant is social guest on premises, 100 A.L.R.3d 532.