

The court corrected and re-issued a decision issued on Aug. 2, 2016, revising the analysis regarding the omission of a no duty to retreat self-defense jury instruction. A new summary for the court's self-defense holding is provided below.

[*State v. Lee*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 2, 2016). In this second-degree murder case, the trial court did not err with respect to its self-defense instruction, where it instructed the jury that the defendant would not be guilty of murder or manslaughter if he acted in self-defense, was not the aggressor, and did not use excessive force. (1) The court rejected the defendant's argument that the trial court committed plain error by omitting a no duty to retreat instruction (specifically, the following sentence from N.C.P.I.—Crim. 206.10: "the defendant has no duty to retreat in a place where the defendant has a lawful right to be" as well as N.C.P.I.—Crim. 308.10 (the instruction for self-defense were retreat is at issue)). The court noted that where a person is attacked in a place that is not his or her own home, motor vehicle, or workplace the degree of force he or she may employ in self-defense is conditioned by the type of force used by the assailant. It continued, noting that the unqualified no duty to retreat defense is limited to a lawful occupant within his or her home, motor vehicle, or workplace. To the extent that the no duty to retreat defense in G.S. 14-51.3(a)(1) applies to "any place" where the defendant has a lawful right to be, it is limited to when the defendant reasonably believes that deadly force is necessary to prevent imminent death or great bodily harm to him or herself or to another. Here, where the defendant was standing in the intersection of a public street several houses down from his residence, no plain error occurred. (2) The trial court did not commit plain error by instructing the jury that the defendant was not entitled to the benefit of self-defense if he was the aggressor with the intent to kill or inflict serious bodily injury upon the deceased. The court rejected the defendant's argument that there was no evidence to support a finding that he was the aggressor. (3) The trial court did not commit plain error by omitting a jury instruction on lawful defense of another. At the time the defendant shot the victim, the defendant was aware that the threat of harm to the third-party had concluded.