

308.90 JUSTIFICATION FOR DEFENSIVE FORCE NOT AVAILABLE—  
DEFENDANT ATTEMPTING TO COMMIT, COMMITTING, OR ESCAPING AFTER  
THE COMMISSION OF A FELONY.

*NOTE WELL: Instructing the jury on the following causal nexus requirement should only be used if there is some evidence presented that the defendant acted in self-defense while attempting to commit, committing, or escaping after the commission of a felony. See N.C.G.S. § 14-51.4(1). See also State v. McLymore, 2022-NCSC-12. If no such evidence is presented, this instruction would not be given. In addition, the remainder of the substantive instruction, including the mandate, would need to be edited accordingly.*

The defendant would not be justified, and is therefore not entitled to the benefit of using defensive force, if [he] [she] was [attempting to commit] [committing] [escaping after the commission of] the felony of (*name felony offense alleged*), and that felony offense was immediately causally connected to the circumstances giving rise to the defensive force used.<sup>1</sup> As such, for the defendant to be disqualified from the benefit of using defensive force, the State must prove beyond a reasonable doubt, among other things, that the defendant, while acting in self-defense, was [attempting to commit] [committing] [escaping after the commission of] the felony of (*name felony offense alleged*), and there was an immediate causal connection between the defendant's use of such defensive force and [his] [her] felonious conduct. In other words, the State must prove that but for the defendant [attempting to commit] [committing] [escaping after the commission of] the felony of (*name felony offense alleged*),<sup>2</sup> the confrontation resulting in [injury to] [the death of] the victim would not have occurred.<sup>3</sup>

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1. The Supreme Court of North Carolina has held that N.C.G.S. § 14-51.4(1) requires the State to prove "the existence of an immediate causal nexus between the defendant's disqualifying conduct and the confrontation during which the defendant used force," overruling *State v. Crump*, 259 N.C. App. 144 (2018) and subsequent decisions relying on *Crump's* holding. *State v. McLymore*, 2022-NCSC-12, ¶ 30. The trial judge is reminded that

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this instruction must be inserted within the applicable substantive instruction when the evidence presented supports the use of this additional language. *Id.* at ¶ 35.

2. The Supreme Court of North Carolina has recognized the affirmative defense of justification may be available “in narrow and extraordinary circumstances” to the charge of possession of a firearm by a convicted felon pursuant to N.C.G.S. § 14-415.1. *State v. Mercer*, 373 N.C. 459, 463, 838 S.E.2d 359, 363 (2020). The Court has also noted that failing to properly instruct the jury on the causal nexus requirement of N.C.G.S. § 14-51.4 denies a defendant the opportunity to assert such an affirmative defense to dispute the existence of a causal nexus between their violation of N.C.G.S. § 14-415.1 and the use of force. *See State v. McLymore*, 2022-NCSC-12, ¶ 2 (stating that the Court “does not interpret N.C.G.S. § 14-51.4(1) to categorically prohibit individuals with a prior felony conviction from ever using a firearm in self-defense[.]”). *See also* N.C.P.I.—Crim. 310.14 (Justification).

3. *See State v. McLymore*, 2022-NCSC-12, ¶ 30.