DEFENSE OF [HABITATION] [WORKPLACE] [MOTOR VEHICLE]—HOMICIDE AND ASSAULT.

NOTE WELL: The use of force, including deadly force, is justified when the defendant is acting to prevent a forcible entry into the defendant's home, other place of residence, workplace, or motor vehicle, or to terminate an intruder's unlawful entry. See G.S. 14-51.1. This instruction is designed to be used instead of, or together with, the self-defense instructions which are incorporated in the murder charges (N.C.P.I.—Crim. 206.10, 206.11, 206.30), and those in N.C.P.I.--Crim. 308.40 or 308.45.

NOTE WELL: The trial judge is reminded that this instruction must be combined with the substantive offense instruction in the following manner: (1) the jury should be instructed on the elements of the charged offense; (2) the jury should then be instructed on the definition of defense of habitation set out in this instruction below; (3) the jury should then be instructed on the mandate of the charged offense; and (4) the jury should be instructed on the mandate for self-defense as set out below in this instruction. ***THE FAILURE TO CHARGE ON ALL OF THESE MATTERS CONSTITUTES REVERSIBLE ERROR.***

If the defendant [killed] [assaulted] the victim to prevent a forcible entry into the defendant's [home][1] [place of residence][2] [workplace][3] [motor vehicle][4], or to terminate the intruder's unlawful entry, the defendant's actions are excused and the defendant is not guilty. The State has the burden of proving from the evidence beyond a reasonable doubt that the defendant did not act in the lawful defense of the defendant's [home] [place of residence] [workplace] [motor vehicle].

The defendant was justified in using (deadly) force[5] if:

(1) such force was being used to [prevent a forcible entry] [terminate the intruder's unlawful entry] into the defendant's [home] [place of residence] [workplace] [motor vehicle];

(2) the defendant reasonably believed that the intruder [would kill or inflict serious bodily harm to the defendant or others in the [home] [place of residence] [workplace] [motor vehicle]][6] [intended to commit a felony in the [home] [place of residence] [workplace] [motor vehicle]]; and

(3) The defendant reasonably believed that the degree of force the defendant used was necessary to [prevent a forcible entry] [terminate the intruder's unlawful entry] into the defendant's [home] [place of residence] [workplace] [motor vehicle].[7]

A lawful occupant within a [home] [place of residence] [workplace] [motor vehicle] does not have a duty to retreat from an intruder in these circumstances.[8] Furthermore, a "person who unlawfully and by force enters or attempts to enter a person's [home] [place of residence] [workplace] [motor vehicle] is presumed to be doing so with the intent to commit an unlawful act involving force or violence."[9] In addition, (absent evidence to the contrary)[10], the lawful occupant of a [home] [place of residence] [workplace] [motor vehicle] is presumed to have held a reasonable fear of imminent death or serious bodily harm to [himself] [herself] or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a [home] [place of residence] [workplace] [motor vehicle], or if that person had removed or was attempting to remove another against that person's will from the [home] [place of residence] [workplace] [motor vehicle]; and

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.[11]

It is for you, the jury, to determine the reasonableness of the defendant's belief from the circumstances as they appeared to the defendant at the time.

NOTE WELL: The following self-defense mandate must be given after the mandate on the substantive offense(s).

***INCLUDING THE SELF-DEFENSE MANDATE IS REQUIRED BY STATE V. WOODSON**, 31 N.C. APP. 400 (1976). Cf. State v. Dooley, 285 N.C. 158 (1974).*

DEFENSE OF HABITATION MANDATE

If you find beyond a reasonable doubt that the defendant [killed] [assaulted] the victim you may return a verdict of guilty only if the State has satisfied you beyond a reasonable doubt that the defendant did not act in the lawful defense of the defendant's [home] [place of residence] [workplace] [motor vehicle], that is,

(1) that the defendant did not use such force to [prevent a forcible entry] [terminate the intruder's unlawful entry] into the defendant's [home] [place of residence] [workplace] [motor vehicle];

(2) that the defendant did not reasonably believe that the intruder [would kill or inflict serious bodily harm to the defendant or others in the [home] [place of residence] [workplace] [motor vehicle]] [intended to commit a felony in the [home] [place of residence] [workplace] [motor vehicle]]; and

(3) that the defendant did not reasonably believe that the degree of force the defendant used was necessary to [prevent a forcible entry] [terminate the intruder's unlawful entry] into the defendant's [home] [place of residence] [workplace] [motor vehicle].[12]

If you do not so find, or have a reasonable doubt that the State has proved any one or more of these things, then the defendant would be justified in defending the [home] [place of residence] [workplace] [motor vehicle], and it would be your duty to return a verdict of not guilty.

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1. G.S. 14-51.2(b), (defense of habitation applies when the person against whom defensive force is used is "in the process of unlawfully and forcefully entering a home"); G.S. 14-51.2(a)(1) ("home" is defined to "include its curtilage"). See also *State v. Dilworth*, __ N.C. App. __, 851 S.E.2d 406 (2020) (holding that a defendant is entitled to a defense of habitation instruction where the person against whom defensive force is used is in the process of entering the home through its curtilage).

2. *See State v. Blue*, 356 N.C. 79, 565 S.E.2d 133 (2002) (concluding that defense of habitation can be applicable to the porch of a dwelling under certain circumstances and that the question of whether a porch, garage, or other appurtenance attached to a dwelling is within the home or residence for purposes of G.S. 14-51.1 is a question best left to the jury).

3. G.S. 14-51.2 (a) (4) states that a workplace is a "building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes."

4. G.S. 14-51.2 (a) (3); G.S. 20-4.01 (23) defines "motor vehicle" as "Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in G.S. 20-4.01(27)d1."

5. *See* G.S. 14-51.4. The justification described in G.S. 14-51.2 and 14-51.3 is not available to a person who used defensive force and who: "(1) Was attempting to commit, committing, or escaping after the commission of a felony; or (2) Initially provokes the use of force against himself or herself. However, the person who initially provokes the use of force against himself or herself will be justified in using defensive force if either of the following occur: a. The force used by the person who was provoked is so serious that the person using defensive force reasonably believes that he or she was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force which is likely to cause death or serious bodily harm to the person who was provoked was the only way to escape the danger. b. The person who used defensive force withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that he or she desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force."

If evidence is presented to show the preceding, then this instruction should be modified accordingly.

6. G.S. 14-51.3 (a) (1).

7. G.S. 14-51.2 (e) states that a person is not justified in using (deadly) force where the "person against whom force was used is a law enforcement officer or bail bondsman who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties." If the defendant instigated or provoked an intrusion, [he] [she] cannot rely on the defense that the degree of force used by [him] [her] was reasonably necessary.

8. G.S. 14-51.2 (f) states "a lawful occupant within his or her home, motor vehicle, or workplace does not have a duty to retreat from an intruder in the circumstances described in this section." The defendant can stand the defendant's ground and repel force with force regardless of the character of the assault being made upon the defendant. (N.C.P.I. Crim. 308.10).

9. G.S. 14-51.2 (d).

10. This parenthetical should be used where there is evidence presented to rebut the presumption.

11. G.S. 14-51.2 (b). Pursuant to G.S. 14-51.2(c), the presumption in (b) does not apply in any of the following circumstances: "(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person. (2) The person sought to be removed from the home, motor vehicle, or workplace 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. (3) The person who uses defensive force is engaged in, attempting to escape from, or suing the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual. (4) The person against whom the defensive force is used is a law enforcement officer or bail bondsman who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties. (5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace." If the State presents evidence to rebut this presumption, then this instruction should be edited accordingly. For instance, language like the following could be added: If you find that the defendant was (describe rebuttal evidence presented by State), then this presumption would not apply.

12. *See also* G.S. 14-51.3 (b), which provides that a person who uses force as permitted by the statute is justified in using such force and is immune from civil or criminal liability, unless the person against whom force was used is a law enforcement officer or bail bondsman "who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any

applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties."