

310.14 JUSTIFICATION

NOTE WELL: The Supreme Court of North Carolina in State v. Mercer, 373 N.C. 459, 463, 838 S.E.2d 359, 363 (2020) has recognized justification may be available as an affirmative defense "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. The North Carolina appellate courts have not yet applied this defense to other charges.

*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 justification set out in this instruction below; (3) the jury should be instructed on the mandate for justification as set out below in this instruction; and (4) the jury should then be instructed on the mandate of the charged offense. **The failure to charge on all of these matters constitutes reversible error.***

The defendant claims that the defendant was justified in committing the crime of [crime charged]. Justification is a defense to that charge. Here, unlike the other matters I have discussed with you, the burden of proving justification is on the defendant.¹ It need not be proved beyond a reasonable doubt, but only to your satisfaction. The defendant would not be guilty of [crime charged] if the defendant proves to your satisfaction the following four things:

First, that the defendant was under unlawful and present, imminent, and impending threat² of death or serious bodily injury.³

Second, that the defendant did not negligently or recklessly place [himself][herself] in a situation where the defendant would be forced to engage in criminal conduct.

Third, that the defendant had no reasonable legal alternative to violating the law.

And Fourth, that there was a direct causal relationship between the criminal action and the avoidance of the threatened harm.⁴

The defendant's assertion of justification serves only as a legal excuse⁵ for the criminal act of [crime charged]. The burden remains on the State to prove the defendant's guilt beyond a reasonable doubt.

JUSTIFICATION MANDATE

If the defendant has proven to your satisfaction that the defendant was justified in committing [crime charged], then you will not consider this charge further and it would be your duty to return a verdict of not guilty.

However, if you do not so find that the defendant was justified in committing [crime charged], then you must decide if the defendant is guilty of that offense. If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant (*give final mandate for offense charged*).

1. *State v. Sanders*, 280 N.C. 81, 85, 185 S.E.2d 158, 161 (1971).

2. *State v. Swindell*, 2021-NCCOA-408, ¶ 12 (noting that precedent cases have emphasized "the timing of a defendant's possession of the firearm"). *See, e.g., State v. Napier*, 149 N.C. App. 462, 560 S.E.2d 867 (2002) (holding justification defense was inapplicable to a defendant who voluntarily armed himself several hours before the threat occurred).

3. Use N.C.P.I.—Crim. 120.11 to define "serious bodily injury" if necessary.

4. *United States v. Deleveaux*, 205 F.3d 1292, 1297-98 (11th Cir. 2000); *see also Mercer*, 373 N.C. 459, 463-64, 838 S.E.2d 359, 363 (2020) (finding that the *Deleveaux* factors are "helpful and appropriate as a rubric for defendants to establish that they are entitled to an instruction on justification as a defense to a charge under N.C.G.S. § 14-415.1 [possession of firearm by felon]").

5. *State v. Mercer*, 373 N.C. 459, 463, 838 S.E.2d 359, 363 (2020) (noting "justification is an affirmative defense and does not negate any element of N.C.G.S. § 14-415.1 [possession of firearm by felon]. The justification defense 'serves only as a legal excuse for the criminal act and is based on additional facts and circumstances that are distinct from the conduct constituting the underlying offense.'" (internal citations omitted)).