

**STATE OF NEW HAMPSHIRE**

**COOS, SS.**

**SUPERIOR COURT**

**State of New Hampshire**

**v.**

**Dustin Duren**

**214-2024-CR-28**

**DEFENDANT’S PROPOSED “PHYSICAL FORCE IN DEFENSE OF A PERSON” JURY INSTRUCTION**

Now comes the Defendant, Dustin Duren, through counsel, and requests that the Court instruct the jury on RSA 627:4 (Physical Force in Defense of a Person). The requested instructions are as follows:

**DEFENSE OF ANOTHER**

The defendant has raised the defense of defense of another with respect to all of the charged offenses. When such a defense is raised, the State must prove beyond a reasonable doubt that the defendant did not act to defend a third person.

There are four circumstances under which a defendant is justified in using deadly force upon another person in defense of himself or a third person.

First, a defendant is justified in using deadly force upon another when he reasonably believes that such other person is about to use unlawful deadly force against him or a third person.

Second, a defendant is also justified in using deadly force upon another if he reasonably believes that such other person is likely to use any unlawful force against a person present while committing or attempting to commit a burglary. A person is guilty of burglary if he or she enters or remains unlawfully in a building or occupied structure, with purpose to commit a crime therein.

Third, a defendant is justified in using deadly force upon another person when he reasonably believes that such other person is committing or about to commit kidnapping.

Fourth, a defendant is also justified in using deadly force upon another if he reasonably believes that the other person is likely to use any unlawful force in the commission of a felony against the defendant in the defendant's dwelling or its curtilage.

"Deadly force" means any assault which the actor commits with the purpose of causing, or which he knows to create a substantial risk of causing death or serious bodily injury. The term "serious bodily injury" means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body.

A person is not justified in using deadly force on another to defend himself or a third person from deadly force by the other if he knows that he and the third person can, with complete safety, retreat from the encounter. However, the person is not required to retreat if he is in his dwelling, its curtilage, or anywhere he has a right to be and was not the initial aggressor.

The person who uses deadly force has no obligation to show that his conduct was reasonable or met the requirements of the law. The burden is entirely on the State to disprove the defense beyond a reasonable doubt. An actor using deadly physical force for lawful defensive purposes must reasonably believe that one of the four circumstances I just described exists. The phrase "reasonably believes" means that the actor need not have been actually confronted with one of those four circumstances, as long as he could reasonably believe those circumstances existed. The law does not require perfection – it requires objective reasonableness. In considering what is objectively reasonable, you should consider all of the circumstances surrounding the incident. You should consider how the defendant acted under the circumstances as they existed, and not necessarily as they appear on detached reflection. A person may be forced to make a split-second judgment in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation. Examination of reasonableness cannot, therefore, be made with the benefit of hindsight, which is afforded by one viewing the circumstances after the fact.

Defense of a Another is a complete defense. This means that, with respect to all charged offenses, the State must prove beyond a reasonable doubt that the defendant was not justified in using deadly force to defend himself or another. You cannot convict the defendant of any of the charged offenses unless you agree unanimously the State has met this burden of proof. If, therefore, during your deliberations, you cannot unanimously agree that the State has disproven self-defense and defense of another beyond a reasonable doubt, you need not consider the remaining elements of the charged offenses and you must find the defendant not guilty.

RSA 627:1; RSA 627:4; E.g. State v .Richard, 160 N.H. 780 (2010); Graham v. Connor, 490 U.S. 386 (1989); Attorney General Office's Report Regarding October 19, 2020 Officer-Involved Shooting Incident in Thornton, New Hampshire; Attorney General's Report Regarding the July 6, 2015 Officer-Involved Shooting in Bath, New Hampshire.

THEREFORE, Mr. Duren respectfully prays the Court:

- A) INSTRUCT the jury as outlined above; or
- B) HOLD a hearing on the motion; and
- C) GRANT any other fair and just relief.

Respectfully submitted,

**/s/ Margaret Kettles**

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**CERTIFICATE OF SERVICE**

I certify that a copy of this has been forwarded to Bethany Durand, Esq. and Joshua Speicher, Esq. of the NH Attorney General's Office on September 3, 2025.

**/s/ Margaret Kettles**

Margaret Kettles, Esq.