

5.10 Self-Defense

The defendant has offered evidence of having acted in self-defense. Use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of unlawful force. However, a person must use no more force than appears reasonably necessary under the circumstances.

Force likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm.

The government must prove beyond a reasonable doubt, with all of you agreeing, that the defendant did not act in reasonable self-defense.

Comment

The Ninth Circuit has found that the first two paragraphs of this instruction adequately inform the jury of defendant's defense where "[t]he court also instructed the jury that the prosecution bore the burden of proving beyond a reasonable doubt that the defendant had not acted in reasonable self-defense." *United States v. Keiser*, 57 F.3d 847, 850-52 (9th Cir. 1995). *See also United States v. Morsette*, 622 F.3d 1200, 1202 (9th Cir. 2010) ("[t]he model jury instruction remains correct").

Failure of the trial court to instruct the jury that the government has the burden of disproving self-defense is reversible error. *United States v. Pierre*, 254 F.3d 872, 876 (9th Cir. 2001). When there is evidence of self-defense, an additional element should be added to the instruction on the substantive offense: for example, "Fourth, the defendant did not act in reasonable self-defense."

A defendant is entitled to a self-defense instruction when "there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent or of doubtful credibility." *United States v. Sanchez-Lima*, 161 F.3d 545, 549 (9th Cir. 1998) (quotation marks and citation omitted) ; *United States v. Ehmer*, 87 F.4th 1073, 1131 (9th Cir. 2023) (holding that defendant is not entitled to a self-defense instruction unless confronted with an immediate use of force, even if it was "reasonable" to believe that defendant faced an in-the-future "immediate use of unlawful force").

The jury must unanimously reject the defendant's self-defense theory to find the defendant guilty. *United States v. Ramirez*, 537 F.3d 1075, 1083 (9th Cir. 2008).

This instruction is not appropriate when the defendant is charged with violating the Endangered Species Act. *See United States v. Wallen*, 874 F.3d 620, 628-29 (9th Cir. 2017) (holding that it was error to apply standard self-defense instruction to defense based on defendant's 'good faith belief'); *see also United States v. Charette*, 893 F.3d 1169, 1175-76 (9th Cir. 2018) (same).

See also Comment to Instruction 3.5 (Character of Victim) for a discussion of the admissibility of the victim's character where self-defense is claimed.

For self-defense claims involving excessive force, *see United States v. Ornelas*, 906 F.3d

1138, 1147-48 (9th Cir. 2018).

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