Approved 10/17/88

JUSTIFICATION-SELF DEFENSE[1]
Resisting Arrest
(N.J.S.A. 2C:3-4)

The State claims that the defendant illegally resisted an arrest by a law enforcement officer. The defendant, on the other hand, claims that he/she had the right to resist due to the use of unlawful force by the arresting officer. In other words, what the State alleges as illegal resistance the defendant maintains was justifiable self-defense. Always remember that the State must disprove the claim of self-defense beyond a reasonable doubt.

A person may use force to protect himself/herself if four conditions exist:

1. The person reasonably believes that he/she is protecting himself/herself against unlawful force.
2. The person reasonably believes that he/she has the right to use force.
3. The person reasonably believes that the use of force is immediately necessary.
4. The person reasonably believes that he/she is using the force to protect himself/herself.

A person may not, however, resist any arrest he/she knows is being made by an officer in the performance of the officer's duties, whether the arrest is legal or illegal, unless that officer uses unlawful force. Your first task, therefore, is to determine whether the officer used unlawful force to try to arrest the defendant.

Our statutes define unlawful force to be force used against a person without the person's consent, in such a way as to be a civil wrong or criminal offense. An officer may use, to effect an arrest, the amount of force necessary to accomplish the arrest. Therefore, you must determine whether the officer used substantially more force than was necessary to effect the arrest of the defendant. If you find as a matter of fact that the officer used only the amount of force necessary to effect the arrest, then you should reject the defendant's self-defense claim. If you find, on the other hand, that the officer did use excessive force then you must examine the other three factors. Remember, they should all exist if the defendant's claim of self-defense is to be accepted, so if the State disproves even one, the claim fails.

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[1] **Note:** Some members of the Committee were of the opinion that the jury should be charged on the limitation on the use of force in law enforcement as set forth in N.J.S.A. 2C:3-7(b)(1)(a) since an element of N.J.S.A. 2C:12-1(b)(5)(a) is an awareness of the attendant circumstances that the complaining witness was a law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority. See State v. Moll, 206 N.J. Super 257, 260 (App.Div. 1986).

You must examine the defendant's belief that he/she could use force to see whether that belief was reasonable. In other words, you must consider whether or not a person of ordinary prudence and intelligence, in the circumstances of this defendant, would have concluded that he/she had to use the force that this defendant actually is charged with using. Only if you conclude that he/she did act reasonably is the defense available to him/her.

If you find that the defendant reasonably believed he/she could use force, then you must next consider whether it was reasonable for the defendant to believe it immediately necessary to use that force. You can use the same test for reasonableness that I just gave you. Again, only if you conclude that the defendant needed to immediately use the force is the defense available to him/her. The intensity of the force used by the defendant to repel what the defendant reasonably believes to be unlawful force used by the officer must always be proportionate to the type of force he/she is attempting to repel.

If you conclude that the defendant reasonably believed he/she could use force immediately, and it was proportionate, you must then address the last concern: was the force being used to protect the defendant against the unlawful force. You must decide this question using the evidence that has been presented to you. Only if you conclude that the defendant was protecting himself/herself is the defense available to him/her.

As I said earlier, it is the State's burden to disprove self-defense. Because a defendant can claim self-defense only if all four of the criteria I previously described exist, the defense is unavailable if the State disproves any of the elements beyond a reasonable doubt. If the State carries this burden, you should disallow the defense. If the State does not carry this burden, then you must allow the claim and acquit the defendant.