

Instruction 3.15

SELF-DEFENSE - DISTINCTION BETWEEN DEADLY AND NON-DEADLY FORCE

The distinction between deadly and non-deadly force depends on the defendant's mental state. If the defendant had the purpose to cause death or serious bodily injury or if the defendant knew he was creating a substantial risk of causing death or serious bodily injury, then you should find that the defendant used deadly force. Serious bodily injury means harm to the body which causes severe, permanent or protected loss of or impairment to the health or function of any part of the body.

If you find that the defendant purposely fired a firearm capable of causing serious bodily injury or death in the direction of another person [or at a vehicle in which the defendant believed there was another person] , then you should find that the defendant used deadly force.

Any other assault, confinement or other action by the defendant is non-deadly force. Thus, if the defendant did not act with the purpose to cause death or serious bodily injury; and, the defendant did not know he was creating a substantial risk of causing death or serious bodily injury, then you should find that the defendant used non-deadly force.

R.S.A. 627:9

R.S.A. 625:11

Instruction 3.16

ISSUES IN THE CASE*

By way of summary, you must decide whether the State has proven beyond a reasonable doubt:

1. That the defendant acted purposely; and,
2. That the defendant caused serious bodily injury to another person; and,
3. That the defendant did not act in self-defense.

*An example of summarizing instruction when defendant charged with first degree assault and defense is self-defense.

JURY NULLIFICATION

Even if you find that the State has proven each and every element of the offense charged beyond a reasonable doubt, you may still find the defendant not guilty if you have a conscientious feeling that a not guilty verdict would be a fair result in this case.

State v. Maloney, _____ N.H. _____ (decided March 18, 1985)

State v. Mayo, No. 83-473 (N.H. July 3, 1984)

State v. Preston, 122 N.H. 153 (1982)

State v. Weitzman, 121 N.H. 83 (1981)

The jury in a criminal case has the undisputed power to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence. This power of jury nullification is a historical prerogative of the jury inherent in the use of the general verdict in criminal cases.

However, the existence of the jury nullification power does not mean that a jury must be informed by the judge of that power. Jury nullification is neither a right of the defendant nor a legal defense. An instruction on jury nullification may be one best given only when it is requested by a defendant or when the nature of a particular case otherwise warrants it. The trial court is vested with discretion to determine whether or not the facts of a particular case warrant such an instruction when it has been requested by a party.