

Document: C.R.S. 18-1-704

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Colorado Revised Statutes Annotated Title 18. Criminal Code (Arts. 1 — 26) Article 1. Provisions Applicable to Offenses Generally (Pts. 1 — 11) Part 7. Justification and Exemptions from Criminal Responsibility (§§ 18-1-701 — 18-1-714)

18-1-704. Use of physical force in defense of a person - definitions.

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

(a) The actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury; or

(b) The other person is using or reasonably appears about to use physical force against an occupant of a dwelling or business establishment while committing or attempting to commit burglary as defined in sections 18-4-202 to 18-4-204; or

(c) The other person is committing or reasonably appears about to commit kidnapping as defined in section 18-3-301 or 18-3-302, robbery as defined in section 18-4-301 or 18-4-302, sexual assault as set forth in section 18-3-402, or in section 18-3-403 as it existed prior to July 1, 2000, or assault as defined in sections 18-3-202 and 18-3-203.

(3) Notwithstanding the provisions of subsection (1) of this section, a person is not justified in using physical force if:

(a) With intent to cause bodily injury or death to another person, he provokes the use of unlawful physical force by that other person; or

(b) He or she is the initial aggressor; except that his or her use of physical force upon another person under the circumstances is justifiable if he or she withdraws from the encounter and effectively

communicates to the other person his or her intent to do so, but the latter nevertheless continues or threatens the use of unlawful physical force;

(c) The physical force involved is the product of a combat by agreement not specifically authorized by law; or

(d) The use of physical force against another is based on the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including but not limited to under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance toward the defendant. Nothing in this subsection (3)(d) precludes the admission of evidence, which is otherwise admissible, of a victim's or witness's conduct, behavior, or statements.

(4) In a case in which the defendant is not entitled to a jury instruction regarding self-defense as an affirmative defense, the court shall allow the defendant to present evidence, when relevant, that he or she was acting in self-defense. If the defendant presents evidence of self-defense, the court shall instruct the jury with a self-defense law instruction. The court shall instruct the jury that it may consider the evidence of self-defense in determining whether the defendant acted recklessly, with extreme indifference, or in a criminally negligent manner. However, the self-defense law instruction shall not be an affirmative defense instruction and the prosecuting attorney shall not have the burden of disproving self-defense. This section shall not apply to strict liability crimes.

(5) As used in this section, unless the context otherwise requires:

(a) "Gender identity" and "gender expression" have the same meaning as in section 18-1-901 (3)(h.5).

(b) "Intimate relationship" has the same meaning as in section 18-6-800.3.

(c) "Sexual orientation" has the same meaning as in section 18-9-121 (5)(b).

History

Source: L. 71:R&RE, p. 409, § 1. **C.R.S. 1963:**§ 40-1-804. L. 72:P. 274, § 1. L. 75:(2)(c) amended, p. 632, § 4, effective July 1. L. 79:(2)(c) amended, p. 726, § 1, effective July 1. L. 81:(2)(a) and (3)(a) amended, p. 981, § 3, effective May 13. L. 2000:(2)(c) amended, p. 703, § 27, effective July 1. L. 2003:(4) added, p. 795, § 1, effective March 25. L. 2020:(3)(b) and (3)(c) amended and (3)(d) and (5) added,(SB 20-221), ch. 279, p. 1365, § 3, effective July 13.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 18

C.R.S. Title 18, Art. 1

State Notes

ANNOTATION

Law reviews.

For article, "One Year Review of Criminal Law and Procedure", see 38 Dicta 65 (1961). For comment on *Vigil v. People* (143 Colo. 328, 353 P.2d 82 (1960)), see 33 Rocky Mt. L. Rev. 430 (1961). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963). For article, "Homicides Under the Colorado Criminal Code", see 49 Den. L.J. 137 (1972). For note, "True Equality for Battered Women: The Use of Self-Defense in Colorado", see 70 Den. U. L. Rev. 117 (1992). For article, "Self-Defense in Colorado", see 24 Colo. Law. 2717 (1995).

Annotator's note.

Since § 18-1-704 is similar to former § 40-2-15, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Doctrine of retreat is from common law.

There is no statutory provision regarding the duty of a person to retreat before countering the use of force with force. The doctrine derives from the common law. *People v. Watson*, 671 P.2d 973 (Colo. App. 1983).

The common-law doctrine of retreat to the wall has been modified

and is applicable in this jurisdiction only to cases where the defendant voluntarily enters into a fight, or the parties engage in mutual combat, or the defendant, being the assailant, does not endeavor in good faith to decline any further struggle before firing the fatal shot, and possibly to other similar cases. *Harris v. People*, 32 Colo. 211, 75 P. 427 (1904); *Enyart v. People*, 67 Colo. 434, 180 P. 722 (1919).

The defendant, if he did not provoke the assault, is not obliged to retreat or flee to save his life, but may stand his ground, and even, in some circumstances, pursue his assailant until the latter has been disarmed or disabled from carrying into effect his unlawful purpose, and this right of the defendant goes even to the extent, if necessary, of taking human life. *Boykin v. People*, 22 Colo. 496, 45 P. 419 (1896); *Enyart v. People*, 67 Colo. 434, 180 P. 722 (1919).

The "initial aggressor" is the person who initiated the physical conflict by using or threatening the imminent use of unlawful physical force.

Castillo v. People, 2018 CO 62, 421 P.3d 1141.

Trial court erred in giving the initial aggressor instruction

because, in viewing the crime as one episode, there was no evidence that suggested the defendant

initiated the physical conflict by using unlawful physical force. *Castillo v. People*, 2018 CO 62, 421 P.3d 1141.

The error was not harmless because the prosecution extensively relied on the initial aggressor exception instruction and thus transformed that instruction into something that substantially influenced the verdict or, at the very least, affected the fairness of the trial proceedings. *Castillo v. People*, 2018 CO 62, 421 P.3d 1141.

Court was correct in not instructing the jury on the mutual combat limitation.

There must be a definite agreement to fight in place for the court to issue the instruction. *Kaufman v. People*, 202 P.3d 542 (Colo. 2009).

Subsection (2)(a) does not require the innocent victim of an assault to retreat before defending himself or herself.

People v. Willner, 879 P.2d 19 (Colo. 1994).

The right of self-defense is a natural right

and is based on the natural law of self-preservation. *Vigil v. People*, 143 Colo. 328, 353 P.2d 82 (1960).

Self-defense is available as an affirmative defense for crimes against property.

An individual may take only those actions that are reasonably necessary to defend himself or herself, whether the individual's actions are upon the other person directly or indirectly, and which in turn cause property damage, including actions designed to have an impact on that other person, change his or her conduct, or trigger a reaction. *People v. Coahran*, 2019 COA 6, 436 P.3d 617.

Right to kill in self-defense is not limited to cases where assailant intends to commit a felony.

Ritchey v. People, 23 Colo. 314, 47 P. 272 (1896).

The affirmative defense of self-defense requires that "a reasonable person would have believed and acted as the defendant did",

and, in this context, a "reasonable person" means an objectively reasonable individual. *People v. Castillo*, 2014 COA 140M, ___ P.3d ___, rev'd on other grounds, 2018 CO 62, 421 P.3d 1141.

Defendant was entitled to a jury instruction specifying that the defendant was justified in using deadly physical force if she reasonably perceived that the aggressor appeared about to commit a sexual assault upon her

and a degree of force less than deadly physical force was inadequate. This section does not limit the actor's right to use deadly force to those situations in which the aggressor is committing or is about to commit sexual assault on someone other than the actor. *People v. Garcia*, 1 P.3d 214 (Colo. App. 1999), aff'd, 28 P.3d 340 (Colo. 2001).

Right to kill in defense of another.

Where a known felony is attempted upon a person, the party assaulted may repel force by force, and any other person present may interpose for preventing mischief, and if death ensues the party so interposing will be justified. The right thus to assist applies with peculiar force where a relationship exists, such as father, son, brother, or husband. *Bush v. People*, 10 Colo. 566, 16 P. 290 (1887).

Prosecution must prove beyond a reasonable doubt an exception to self-defense for the jury to reject a defendant's claim of self-defense on that basis

Jury to reject a defendant's claim of self-defense on that basis.

People v. Castillo, 2014 COA 140M, ___ P.3d ___, rev'd on other grounds, 2018 CO 62, 421 P.3d 1141.

When a trial court instructs the jury on the affirmative defense of self-defense,

it should instruct the jury on the provocation exception, or any other exception to the affirmative defense, if the exception is supported by some evidence. Galvan v. People, 2020 CO 82, 476 P.3d 746.

Jurors must unanimously agree on how the prosecution disproved affirmative defense of self-defense.

The trial court abused its discretion in permitting the prosecution to prove felony menacing without instructing the jury that it must unanimously agree on which exception to self-defense it relied. People v. Mosely, 2019 COA 143, ___ P.3d ___.

Jurors do not need to unanimously agree on a particular exception to self-defense.

People v. Roberts-Bicking, 2021 COA 12, ___ P.3d ___.

A party who seeks a difficulty cannot avail himself of the doctrine of self-defense.

Bush v. People, 10 Colo. 566, 16 P. 290 (1887).

The one invoking the right of self-defense cannot be the aggressor or assailant. Vigil v. People, 143 Colo. 328, 353 P.2d 82 (1960).

Right of self-defense is not lost if danger develops from mild argument.

The mere fact that one has interjected himself into a crowd or into a mild situation, does not deprive him of the right of self-defense if the situation beginning with only an argument, develops to a point where he is being subjected to or threatened with such physical violence that he might have to resort to justifiable homicide to protect his person. Vigil v. People, 143 Colo. 328, 353 P.2d 82 (1960).

In order to justify theory of self-defense where the defendant used deadly force,

he must have reasonably believed that a lesser degree of force was inadequate and that he or another person was in imminent danger of being killed or of receiving great bodily harm (now great bodily injury). People v. Ferrell, 200 Colo. 128, 613 P.2d 324 (1980).

Apparent necessity may justify application of doctrine of self-defense.

The doctrine applies whether the danger is actual or only apparent; actual danger is not necessary in order to justify one in acting in self-defense. Apparent necessity, if well grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity. Young v. People, 47 Colo. 352, 107 P. 274 (1910).

Person assailed may act on appearances.

When a person has reasonable grounds for believing, and does in fact actually believe, that danger of his being killed or of receiving great bodily harm is imminent, he may act on such appearances and defend himself, even to the extent of taking human life when necessary, although it may turn out that the appearances were false, or although he may have been mistaken as to the extent of the real or actual danger. Young v. People, 47 Colo. 352, 107 P. 274 (1910); People v. La Voie, 155 Colo. 551, 395 P.2d 1001 (1964).

One is entitled to act on appearances in using a deadly weapon to defend himself, but the appearances must be such as, taking into consideration the circumstances at the particular instant, would have caused a reasonable and prudent man to use such weapon for his protection. Henwood v. People, 57 Colo. 544, 143 P. 373, 1916A Ann. Cas. 1111 (1914).

Person coming to the aid of a third party is entitled to assert defense of others even if the

Person coming to the aid of a third party is entitled to assert defense of others even if the third party is not entitled to assert self-defense.

Person must only have a reasonable belief that intervention is necessary to protect the third party whom he or she believed was under attack. *People v. Silva*, 987 P.2d 909 (Colo. App. 1999).

Character of threat or provocation must be shown.

To support the defense of self-defense, it must be shown that the provocation or threat occurred immediately prior to the homicide, and must be of such a character as to place the accused in sudden fear of his life or in fear of great bodily injury. *English v. People*, 178 Colo. 325, 497 P.2d 691 (1972).

Belief that lesser degree of force is inadequate must be reasonable,

and a reckless perception that defendant needed to use the force he did was inconsistent with a reasonable perception, thus, court did not err in ruling that a self-defense instruction was unavailable. *People v. Ellis*, 30 P.3d 774 (Colo. App. 2001).

In construing subsection (3)(b),

according words their plain and ordinary meaning, it is apparent that "initial" means first. *People v. Beasley*, 778 P.2d 304 (Colo. App. 1989).

When an initial aggressor withdraws from an encounter

and effectively communicates his withdrawal to the initial victim, the aggressor becomes a victim entitled to act in self-defense should the initial victim retaliate for the attack. Thus, if the initial victim continues the attack, the victim then becomes the aggressor and is no longer entitled to act in self-defense. *People v. Goedecke*, 730 P.2d 900 (Colo. App. 1986).

When a trial court is presented with some evidence that a defendant used force in self-defense, and some evidence that the defendant is the initial aggressor, the court should instruct the jury on both

self-defense and the initial aggressor exception. *People v. Newell*, 2017 COA 27, 395 P.3d 1203.

It is then the prosecution's burden to prove beyond a reasonable doubt that defendant's conduct was not authorized as self-defense;

the prosecution may meet that burden by proving that the defendant was the initial aggressor. *People v. Newell*, 2017 COA 27, 395 P.3d 1203.

A self-defense instruction should be given when there is any evidence -- including circumstantial evidence -- that a defendant acted in self-defense.

The defendant need not provide direct evidence that he was not the initial aggressor. Instead, the language of the initial aggressor exception should be given in the self-defense instruction when the prosecution points to some evidence that the defendant was the initial aggressor. The jury can then decide if the prosecution met its burden of proof. *People v. Newell*, 2017 COA 27, 395 P.3d 1203.

In determining whether "initial aggressor" jury instruction is appropriate

in case in which hostilities commence among a group of individuals and escalate to a conclusion without interruption, the conduct of the defendant in the context of the developing situation must be the focus of any analysis of defendant's right to self-defense. *People v. Beasley*, 778 P.2d 304 (Colo. App. 1989).

Not error for trial court to instruct jury on the initial aggressor exception to self-defense

once the court determined to give the self-defense instruction requested by the defendant. *People*

v. Montoya, 928 P.2d 781 (Colo. App. 1996); People v. Roadcap, 78 P.3d 1108 (Colo. App. 2003).

Court may give an initial aggressor instruction if there is an inference that defendant initiated the physical conflict by using or threatening the imminent use of unlawful force.

Although defendant's initial confrontation was insufficient to make defendant an initial aggressor, returning to the argument with a gun was sufficient. People v. Griffin, 224 P.3d 292 (Colo. App. 2009).

Court did not err in failing to define initial aggressor.

Although the court may define the term, there is no basis for error in not defining it when it is unlikely the jury would have relied on the wrong event to apply the initial aggressor doctrine. People v. Griffin, 224 P.3d 292 (Colo. App. 2009).

When evidence is sufficient to raise a question of fact concerning defendant's right to come to the defense of another person who might have been the initial aggressor,

it would be proper for the court to instruct the jury concerning the limitation on an initial aggressor's right to assert self-defense, and the right of defendant to act upon a reasonable belief under the circumstances. People v. Silva, 987 P.2d 909 (Colo. App. 1999).

If a participant determines to withdraw from combat

and he effectively communicates that intent to his opponent or opponents, then the requisite intent to commit the crime charged has been abandoned. Under these circumstances, the right of self-defense must be reinstated because there is no requirement in Colorado that one "retreat to the wall" before defending himself. People v. Beasley, 778 P.2d 304 (Colo. App. 1989).

Even if a person is a trespasser, the person does not have to "retreat to the wall" before using deadly force to defend himself, unless the person was the initial aggressor.

People v. Toler, 981 P.2d 1096 (Colo. App. 1998), aff'd, 9 P.3d 341 (Colo. 2000).

The pattern jury instruction, COLJI-Crim No. 7:68-7 (15) (1983), improperly suggests that a person who is not an initial aggressor may not use physical force to defend himself if the person is not "where he had a right to be". People v. Toler, 981 P.2d 1096 (Colo. App. 1998), aff'd, 9 P.3d 341 (Colo. 2000).

But a trespasser who is subjected to lawful physical force by a property owner has no privilege under this section to use physical force in self-defense

because the privilege applies only when the defendant faces unlawful force. Whether a defendant faces unlawful force will depend on whether the defendant entered the property unlawfully. In such a case, it is the better practice for the trial court to give an instruction to the jury indicating that, in determining whether a defendant unlawfully entered a dwelling and whether the defendant reasonably believed that unlawful force was used or imminent, the "make-my-day" provision in § 18-1-704.5 should be considered. People v. Hayward, 55 P.3d 803 (Colo. App. 2002).

Defendant entitled to raise "transferred intent self-defense" as affirmative defense.

Therefore, the trial court erred in rejecting self-defense jury instructions. People v. Koper, 2018 COA 137, ___ P.3d __.

Question for jury.

Evidence held to clearly justify the submission to the jury of the question as to whether or not the deceased was a person who manifestly intended and endeavored in a violent, riotous, or tumultuous manner to enter the habitation of the defendant for the purpose of assaulting or offering personal violence to any person dwelling or being therein. Bailey v. People, 54 Colo. 337, 130 P. 822 (1912).

130 P. 832 (1913).

Use of word "enormous" instead of "great" in instruction is improper.

In an instruction defining the bodily harm to prevent which one may justifiably kill his assailant, the use of the word "enormous" instead of "great" is improper. *Ritchey v. People*, 23 Colo. 314, 47 P. 272 (1896).

Instruction on use of deadly physical force is to be used only if the victim died.

Because no victim died, instruction that defendant was justified in use of physical force if he used that degree of force which he reasonably believed to be necessary was proper. *People v. Silva*, 987 P.2d 909 (Colo. App. 1999).

Defendant entitled to instruction on lesser offense of manslaughter.

Where during the trial for first degree murder defendant presented a plausible case for self-defense, which even if the jury deemed it to be an overreaction, nevertheless would negate the elements of murder, the trial court should have instructed the jury on the lesser offense of manslaughter, as defendant requested. *People v. Miller*, 187 Colo. 239, 529 P.2d 648 (1974).

Defendant entitled to have jury instructed on self-defense.

A person charged with homicide and defending upon the ground of self-defense is entitled, upon request, to have the jury instructed, when there is conflicting testimony upon the evidence of apparent danger and apparent necessity to kill, as well as upon real danger and actual necessity, and in every aspect of the testimony. To refuse the instruction is a determination by the court of matter of fact, and deprives the accused of his constitutional right to a trial by jury. *Young v. People*, 47 Colo. 352, 107 P. 274 (1910).

A defendant is entitled to a self-defense instruction if there is any evidence in the record to support the theory that he acted in self-defense. *People v. Dillon*, 631 P.2d 1153 (Colo. App. 1981), rev'd on other grounds, 655 P.2d 841 (Colo. 1982); *People v. Smith*, 682 P.2d 493 (Colo. App. 1983).

Trial court's rejection of defendant's jury instructions on self-defense as an affirmative defense is not harmless error where the jury instructions that were used did not require the prosecution to disprove self-defense beyond a reasonable doubt. *People v. Koper*, 2018 COA 137, ___ P.3d __.

When there is at least a scintilla of evidence in support of a self-defense instruction, the court must give a self-defense instruction

even if the defendant's claim of accidental shooting is somewhat inconsistent with the claim of self-defense. There was sufficient evidence to require the self-defense instruction, and failure to give the instruction is reversible error. *People v. Wakefield*, 2018 COA 37, 428 P.3d 639.

There is an intent element in the consideration of "deadly" physical force.

Since defendant's testimony created a dispute about whether he intended to produce death by use of force, the defendant is entitled to self-defense instructions related to both ordinary physical force and deadly physical force. *People v. Vasquez*, 148 P.3d 326 (Colo. App. 2006).

Defendant not entitled to jury instruction on self-defense

where defendant did not admit to having engaged in the conduct that led to the charge and then offer self-defense as justification for his action. Also, defendant produced no evidence that he reasonably believed that unlawful force was about to be or was being used against him. *People v. Whatley*, 10 P.3d 668 (Colo. App. 2000).

The prosecution bears no burden in disproving self-defense when self-defense is not an affirmative defense.

Self-defense is not an affirmative defense if the crime's mental state is recklessness, criminal negligence, or extreme indifference; rather, it is an element-negating traverse. The court did not err in instructing the jury that the prosecution did not bear the burden of disproving self-defense in relation to the reckless manslaughter charge. *People v. Pickering*, 276 P.3d 553 (Colo. 2011)

(overruling *People v. Lara*, 224 P.3d 388 (Colo. App. 2009) and *People v. Taylor*, 230 P.3d 1227 (Colo. App. 2009)); *People v. Luna*, 2020 COA 123M, 474 P.3d 230.

Defense of others is an element-changing defense against extreme indifference murder,

rather than a mere circumstance for the jury to consider, and must be portrayed as such in instructions to the jury. *People v. Lara*, 224 P.3d 388 (Colo. App. 2009), overruled on other grounds in *People v. Pickering*, 276 P.3d 553 (Colo. 2011).

Prosecution must disprove that defendant acted in reasonable defense of a person in order to prove the elements of extreme indifference murder when that defense is asserted with credible evidence at trial. *People v. Lara*, 224 P.3d 388 (Colo. App. 2009), overruled in *People v. Pickering*, 276 P.3d 553 (Colo. 2011).

Court violated defendant's due process right

by instructing jurors that prosecution "shall not have the burden of disproving self-defense", when defense of others is asserted with credible evidence at trial. *People v. Lara*, 224 P.3d 388 (Colo. App. 2009), overruled in *People v. Pickering*, 276 P.3d 553 (Colo. 2011).

Self-defense instruction is not necessary in every case

where force or the threat of force is used, but only where there is evidence in the record to support it. *People v. Dillon*, 655 P.2d 841 (Colo. 1982); *People v. Janes*, 962 P.2d 315 (Colo. App. 1998).

The trial court properly refused to instruct the theory of self-defense because there was no evidence that the defendant reasonably believed that unlawful physical force was imminent against him. *People v. Laurson*, 15 P.3d 791 (Colo. App. 2000).

Even though the general assembly has defined self-defense in this section,

it is not improper for the courts to instruct further upon the issue of self-defense. *People v. Berry*, 703 P.2d 613 (Colo. App. 1985).

The court's instruction for physical self-defense was sufficient.

Generally, a jury instruction that tracks the statutory language is considered to be sufficient. *People v. Grenier*, 200 P.3d 1062 (Colo. App. 2008).

Self-defense instruction required for case involving unreasonable or excessive force during an arrest.

Self-defense instruction is required when evidence has been presented that officers displayed weapons and were commanded to discharge them in course of effecting arrest and that their conduct was unreasonable or excessive under the circumstances. *People v. Fuller*, 781 P.2d 647 (Colo. 1989).

Defendant asserting self-defense, who was not initial aggressor, was entitled to jury instruction regarding no duty to retreat

so as to dispel inference that lesser force would have been adequate. *Idrogo v. People*, 818 P.2d 752 (Colo. 1991); *Cassels v. People*, 92 P.3d 951 (Colo. 2004).

Defendant was entitled to a jury instruction on the doctrine of no retreat where,

on cross examination, the prosecution elicited evidence that defendant had other choices besides killing her husband, implying that she could have retreated rather than kill him. Also, in closing, the prosecution argued that defendant had many choices besides using force upon her husband, including withdrawal from the situation. *People v. Garcia*, 1 P.3d 214 (Colo. App. 1999), *aff'd*, 28 P.3d 340 (Colo. 2001).

Self-defense is available as an affirmative defense against charge of heat of passion

manslaughter.

The general assembly has recognized a reasonable person, suddenly and unexpectedly confronted with potentially deadly or gravely injurious conduct does not act unreasonably by instinctively and passionately striking out at the source of such provoking conduct. *Sanchez v. People*, 820 P.2d 1103 (Colo. 1991).

Instructions on self-defense held proper.

Hinton v. People, 169 Colo. 545, 458 P.2d 611 (1969); *People v. Willner*, 879 P.2d 19 (Colo. 1994).

In a case where some of the evidence indicated that defendant killed in self-defense to protect his person, an instruction to the effect that a defendant may safely act upon appearances to avoid apprehended danger even though it develops later that the appearances were false and that there was in effect no danger to do him serious injury is appropriate. *People v. Tapia*, 183 Colo. 141, 515 P.2d 453 (1973).

Instruction held denial of right of self-defense.

An instruction to the effect that in order for the doctrine of self-defense to apply, the jury must believe that deceased intended to assault or kill the inmates of the house is error as a denial of the right of self-defense as defined in this section. *Bailey v. People*, 54 Colo. 337, 130 P. 832 (1913).

Instruction held denial of right to present a defense.

When no evidence was presented at trial that defendant intended to provoke a fight with the victims or their friend for the purpose of inflicting injury upon them under a guise of provocation, an instruction on the issue of provoking the victim as an exception to self-defense violated the defendant's right to present a defense. *People v. Silva*, 987 P.2d 909 (Colo. App. 1999).

Instruction on self-defense held deficient

because it only stated that self-defense is an affirmative defense to the crime of manslaughter if the defendant had reasonable grounds to believe, and did believe, that he or another person was in imminent danger or being killed or receiving great bodily injury; the instruction failed to inform the jury that self-defense is an affirmative defense if the deceased had been committing or reasonably appeared about to commit first or second degree assault. *People v. Janes*, 982 P.2d 300 (Colo. 1999).

An instruction that defendant must retreat to the wall is erroneous.

Where the jury is instructed that the defendant in every case must retreat to the wall before he is entitled to resort to self-defense, the error is manifest. *Ritchey v. People*, 23 Colo. 314, 47 P. 272 (1896); *Enyart v. People*, 67 Colo. 434, 180 P. 722 (1919).

Instruction on combat by agreement held deficient

because it provided no guidelines as to elements which must be proved by prosecution. *People v. Cuevas*, 740 P.2d 25 (Colo. App. 1987).

Self-defense may be asserted as a defense to attempted heat of passion manslaughter.

Thomas v. People, 820 P.2d 656 (Colo. 1991).

Defendant charged with heat of passion manslaughter may assert a claim of self-defense.

Evidence of low IQ and physical and sexual abuse of the defendant in the past is admissible to prove the claim of self defense. *People v. Young*, 825 P.2d 1004 (Colo. App. 1991).

Self-defense is an available defense against a charge of obstructing a peace officer

when a defendant reasonably believes that unreasonable or excessive force is being used by the peace officer. *People v. Barrus*, 232 P.3d 264 (Colo. App. 2009).

As is instruction that slayer must have had no other probable means of escape.

It was error to charge the jury to the effect that to justify homicide on the plea of self-defense it must appear that the slayer had no other possible, or at least probable, means of escaping. *Babcock v. People*, 13 Colo. 515, 22 P. 817 (1889); *Enyart v. People*, 67 Colo. 434, 180 P. 722 (1919).

When the "make-my-day" statute (§18-1-704.5) is being used as an affirmative defense,

it is error for a jury instruction to place the burden on the defendant to prove the affirmative defense. *People v. Janes*, 962 P.2d 315 (Colo. App. 1998).

Assertion of error for failure to give instruction not well taken.

Where the record discloses that the defendant did not tender nor request the giving of an instruction on self-defense, nor did he assign the court's failure to give the instruction as a ground for new trial, nor was there evidence to support the giving of such an instruction, for all these reasons the assertion of error for failure to give such instruction is not well taken. *People v. Lankford*, 185 Colo. 445, 524 P.2d 1382 (1974).

Instruction on provocation of the victim given over defense objection held reversible error

because the court failed to determine which issues were raised by the evidence prior to giving the instruction; accordingly, the error was not harmless because the giving of the instruction created a situation that could have been misleading and confusing to the jury. *People v. Silva*, 987 P.2d 909 (Colo. App. 1999).

Limitation of right to emergencies is erroneous.

In a prosecution for murder an instruction on self-defense which advised the jury that the right of self-defense is based upon the law of necessity, and is only given in emergencies to persons who are attacked, was erroneous. *Vigil v. People*, 143 Colo. 328, 353 P.2d 82 (1960).

Limitation of right of self-defense to persons who do not bring on the difficulty themselves is too broad a statement.

Vigil v. People, 143 Colo. 328, 353 P.2d 82 (1960).

Defendant is entitled to present evidence of prior violent act of victim if:

(1) The defendant contends that he acted in self-defense and there is competent evidence to support the contention; (2) either the act occurred or the defendant became aware of its occurrence within a reasonable time of the homicide; and (3) the defendant knew of the victim's prior violence at the time of the homicide. *People v. Ferrell*, 200 Colo. 128, 613 P.2d 324 (1980).

Spouse justified in aiding victimized spouse.

A wife is clearly justified in attempting to aid her husband when he is the victim of an assault, and the husband's assailant who, as a result, then assaults the wife cannot claim that his actions were justified on the basis of self-defense. *People v. Schliesser*, 671 P.2d 993 (Colo. App. 1983).

Self-defense instruction is not appropriate where defendant presents evidence of "battered woman syndrome" but is on trial for contract-for-hire murder of her husband.

People v. Yaklich, 833 P.2d 758 (Colo. App. 1991).

Self-defense instruction based on battered woman syndrome is not available in murder for-hire cases,

regardless of the definition of "imminent" under this section. A defendant is entitled to an instruction embodying the defendant's theory of the case only if there is evidence to support the theory. In case where a wife hired her husband's killers, the wife's evidence that she suffered from battered woman syndrome was insufficient as a matter of law to support her theory that she was in imminent danger at the time her husband was killed. The trial court, therefore, erred in allowing a self-defense instruction. *People v. Yaklich*, 833 P.2d 758 (Colo. App. 1992).

Lay witness may offer opinion testimony

on intent of victim if witness had sufficient opportunity to observe the person and draw a rational conclusion about the person's state of mind. *People v. Jones*, 907 P.2d 667 (Colo. App. 1995).

Whether use of knife in defense is excessive force is a jury question.

People v. Smith, 682 P.2d 493 (Colo. App. 1983).

No error in refusing to instruct the jury regarding felony menacing

where the record was devoid of any evidence or indication that the defendant could have held a reasonable belief that the man he threatened with a knife was engaged in the imminent use of unlawful physical force against defendant's brother. *People v. Williams*, 827 P.2d 612 (Colo. App. 1992).

Unless a defendant demonstrates the required level of prejudice under a harmless error or plain error standard, giving an unsupported instruction

on a self-defense exception does not necessarily warrant reversal. *People v. Castillo*, 2014 COA 140M, ___ P.3d ___, rev'd on other grounds, 2018 CO 62, 421 P.3d 1141.

Trial court committed plain error requiring reversal of conviction in not giving self-defense law instruction to jury on the charge of reckless manslaughter.

Court informed jury only that it could consider self-defense with respect to count of reckless manslaughter without describing the law of self-defense. *People v. McClelland*, 2015 COA 1, 350 P.3d 976; *People v. Luna*, 2020 COA 123M, 474 P.3d 230.

Applied

in *Hardy v. People*, 133 Colo. 201, 292 P.2d 973 (1956); *Maes v. People*, 166 Colo. 15, 441 P.2d 1 (1968); *People v. Thompson*, 197 Colo. 299, 592 P.2d 803 (1979); *People v. Jones*, 675 P.2d 9 (Colo. 1984); *People v. Reed*, 695 P.2d 806 (Colo. App. 1984), cert. denied, 701 P.2d 603 (Colo. 1985).

Research References & Practice Aids

Cross references:

- (1) For limitations on civil suits against persons using physical force in defense of a person or to prevent the commission of a felony, see § 13-80-119.
- (2) For the legislative declaration in SB 20-221, see section 1 of chapter 279, Session Laws of Colorado 2020.

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