



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instruction, M Crim JI 7.25, addressing “self-defense” to felon-in-possession-of-a-firearm charges as permitted by *People v Dupree*, 486 Mich 693 (2010). This instruction is effective September 1, 2019.

[NEW] M Crim JI 7.25 Self-Defense as Defense to Felon in Possession of a Firearm

(1) The defendant claims that [he / she] possessed the firearm in order to act in lawful [self-defense / defense of _____]. A person may possess a firearm to defend [himself / herself / another person] under certain circumstances, even where it would otherwise be unlawful for [him / her] to possess the firearm. If a person possesses a firearm to act in lawful [self-defense / defense of others], [his / her] actions are excused, and [he / she] is not guilty of being a felon in possession of a firearm.

(2) Just as when considering the claim of self-defense to the charge of [*identify principal assaultive charge to which the defendant is asserting self-defense*],¹ you should consider all the evidence and use the following rules to decide whether the defendant possessed a firearm to act in lawful [self-defense / defense of _____]. You should judge the defendant’s conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, when [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] had to possess a firearm to protect [himself / herself] from the imminent unlawful use of force by another. If [his / her] belief was honest and reasonable, [he / she] could act to defend [himself / herself / _____] with a firearm, even if it turns out later that [he / she] was wrong about how much danger [he / she / _____] was in.

(4) Second, a person is only justified in possessing a firearm when necessary at the time to protect [himself / herself / _____] from danger of death or serious injury. The defendant may only possess a firearm if it is appropriate to the attack made and the circumstances as [he / she] saw them. When you decide whether the possession of the firearm was what seemed necessary, you should consider whether the defendant knew about any other ways of

protecting [himself / herself], but you may also consider how the excitement of the moment affected the choice the defendant made.

(5) Third, at the time [he / she] possessed the firearm, the defendant must not have been engaged in a criminal act that would tend to provoke a person to try to defend [himself / herself] from the defendant.²

Use Note

1. There will not always be an assaultive-offense count charged with the felon-in-possession charge. Eliminate this first phrase if no assaultive offense is charged as a principal offense.

2. This paragraph should be given only when supported by the facts; that is, where there is evidence that, at the time the defendant used deadly force, he or she was engaged in the commission of some crime likely to lead to the other person's assaultive behavior. For example, this paragraph is usually unwarranted if the defendant was engaged in a drug transaction and used force in self-defense against an unprovoked attack by the other party in the transaction. *See People v Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974). On the other hand, this paragraph *would* apply to a defendant who engaged in a robbery of another person and that other person reacted with force. This paragraph is unnecessary where there are no issues other than who was the aggressor in the situation, whether the defendant had an honest and reasonable belief of the use of imminent force by another, or whether the degree of force used was necessary.

History

This instruction was adopted by the committee in September, 2019, to address “self-defense” to felon-in-possession-of-a-firearm charges as permitted by *People v Dupree*, 486 Mich 693; 788 NW2d 399 (2010).

Reference Guide

Case Law

People v Dupree, 486 Mich 693; 788 NW2d 399 (2010).