

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

v.

No. [REDACTED]

:
:
:
:
:

PROPOSED JURY INSTRUCTIONS

[REDACTED], the Defendant in the above-captioned case, by and through his undersigned attorney, hereby respectfully requests the Court to instruct the jury on the following matters in addition to those instructions typically given by the Court in a criminal case. In addition, the Defendant requests leave to offer such additional instructions as may become appropriate during the course of the trial.

CONTENTS (Proposed Instructions)

1. Justification
2. Necessity

Respectfully submitted this ___ day of May, 2010.

[REDACTED]

/s/ [REDACTED]

251 N. Main Street, Suite 849
Winston-Salem, NC 27101
(336) 631-5278, Ext. 21

[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that on May ____, 2010, I electronically filed the foregoing Proposed Jury Instructions with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Arnold L. Husser
Assistant United States Attorney
101 South Edgeworth Street
Greensboro, NC 27401

Respectfully submitted,

/s/ Mireille P. Clough
MIREILLE P. CLOUGH
Assistant Federal Public Defender
North Carolina State Bar No. 28473
251 N. Main Street, Suite 849
Winston-Salem, NC 27101
(336) 631-5278, Ext. 23
Email: mireille_p_clough@fd.org

DEFENDANT'S PROPOSED INSTRUCTION NO. 1
JUSTIFICATION

Justification - Explained

Concerning the offense charged in the indictment, the Defendant has offered evidence to show that he was acting due to justification. Such justification may provide a legal excuse or legal justification for that charge.

In order to provide a legal excuse for any otherwise criminal conduct, however, the Defendant must show:

First, that he was under an unlawful and present threat of death or serious bodily injury and,

Second, that he did not recklessly place himself in a situation where he would be forced to engage in criminal conduct and,

Third, that he had no reasonable legal alternative and,

Fourth, that there was a direct causal relationship between the criminal action and the avoidance of the threatened harm.

If you find that the evidence shows each of these elements, you should return a verdict of not guilty whether or not the government has proved each element of the charged offense. However, the Defendant should not prevail with this defense unless you conclude that the evidence shows each of these four elements.¹

¹ United States v. Nwene, 20 F.Supp.2d 716 (D.N.J. 1998), affd 213 F.3d 629 (3rd Cir. 2000), cert. denied 531 U.S. 864 (121 S. Ct. 157, 148 L.Ed.2d 105) (2000) (recognizing availability of a justification defense in a prosecution for illegal reentry into the United States in violation of 8 U.S.C. 1326).

DEFENDANT'S PROPOSED INSTRUCTION NO. 2
NECESSITY

Necessity - Explained

Concerning the offense charged in the indictment, the Defendant has offered evidence to show that he was acting due to necessity. Such necessity may provide a legal excuse or legal justification for that charge.

In order to provide a legal excuse for any otherwise criminal conduct, however,

First, the defendant must have had a reasonable belief that he was faced with a choice of two evils and that he chose the lesser evil and,

Second, that he had a reasonable belief that he acted to prevent imminent threatened harm and,

Third, that he reasonably anticipated a causal relation between his conduct and the harm to be avoided and,

Fourth, that there was no reasonable legal alternative to violating the law.¹

If you find that the Defendant, at the time and place of the offense charged, acted as a result of necessity as just explained, then it is your duty to find the Defendant not guilty of that charge.

¹ United States v. Cassidy, 616 F.2d. 101, 102 (4th Cir. 1979)(considering a necessity defense in context of depredation of government property case).