**14.17 Firearms—Unlawful Possession—Defense of Justification**

The defendant claims that [he] [she] was justified in committing the crime of [*specify unlawful possession offense charged*]. Justification is a defense to that charge. The defendant is justified in committing the crime of [*specify unlawful possession offense charged*] if:

First, the defendant was under unlawful and present threat of death or serious bodily injury;

Second, the defendant did not recklessly place [himself] [herself] in a situation where he would be forced to engage in criminal conduct;

Third, the defendant had no reasonable legal alternative; and

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

The defendant has the burden of proving each of the elements of this defense by a preponderance of the evidence.

**Comment**

The defense usually arises when a defendant is charged as a felon in possession of a firearm. It is based on the theory that criminal conduct may be justified if necessary to prevent a greater wrong. The defendant is entitled to the instruction when there is any foundation in the evidence. However, a “mere scintilla” of evidence supporting a theory of justification is not sufficient. *United States v. Wofford*, 122 F.3d 787, 789 (9th Cir. 1997). The justification instruction should be given only in exceptional circumstances. *United States v. Gomez*, 92 F.3d 770, 774-75 (9th Cir. 1996).

The burden is on the defendant to prove the elements of the defense.  *United States v. Beasley*,346 F.3d 930, 935 (9th Cir. 2003). Where the defendant is involved in illegal activities and his or her fear is a result of engaging in those activities, the justification defense is not permitted. *United States v. Phillips*, 149 F.3d 1026, 1030 (9th Cir. 1998).

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