

308.10 SELF-DEFENSE, RETREAT—INCLUDING HOMICIDE (TO BE USED FOLLOWING THE SELF-DEFENSE INSTRUCTIONS WHERE RETREAT IS IN ISSUE).

NOTE WELL: This instruction is to be used if the evidence shows that the defendant was at a place where the defendant had a lawful right to be, including the defendant's own home¹ or premises, the defendant's place of residence, the defendant's workplace, or in the defendant's motor vehicle, when the assault on the defendant occurred.²

NOTE WELL: In the absence of a concern that the jury would believe that the nature of the assault that the victim made upon the defendant had some bearing upon the extent to which the defendant attacked in the defendant's own home has a duty to retreat before exercising the right to self-defense, a trial court need not instruct that the defendant could stand the defendant's ground and repel with force "regardless of the character of the assault." See State v. Benner, 2022-NCSC-28, ¶ 29.³

If the defendant was not the aggressor⁴ and the defendant was [in the defendant's own home]⁵ [on the defendant's own premises] [in the defendant's place of residence] [at the defendant's workplace]⁶ [in the defendant's motor vehicle]⁷ [at a place the defendant had a lawful right to be], the defendant could stand the defendant's ground and repel force with force regardless of the character of the assault being made upon the defendant. However, the defendant would not be excused if the defendant used excessive force.

1. N.C. Gen. Stat. § 14-51.2 (a) (1) states that a home is a "building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence." Curtilage is the area "immediately surrounding and associated with the home," which may include "the yard around the dwelling house as well as the area occupied by barns, cribs, and other outbuildings." *State v. Grice*, 367 N.C. 753, 759 (2015) (citations and quotations omitted) (defining curtilage in a Fourth Amendment case).

2. "[W]herever an individual is lawfully located—whether it is his home, motor vehicle, workplace, or any other place where he has the lawful right to be—the individual may stand his ground and defend himself from attack when he reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or another." *State v.*

Bass, 371 N.C. 353, 342, 819 S.E.2d 322, 326 (2018). “[A] defendant entitled to any self-defense instruction is entitled to a complete self-defense instruction, which includes the relevant stand-your-ground provision.” *Id.*

3. Instructing the jury that the defendant has “no duty to retreat” in a place where the defendant has the lawful right to be (*i.e.*, home, premises, residence, motor vehicle, workplace), pursuant to N.C.G.S. § 14-51.2(f), is sufficient, so long as the trial court makes no distinction between a simple and felonious assault in its instructions to the jury concerning the extent to which the defendant was entitled to exercise the right of self-defense without making an effort to retreat. *State v. Benner*, 2022-NCSC-28, ¶ 29. *See also* N.C.P.I.—Crim. 206.10 (First Degree Murder Where a Deadly Weapon Is Used, Covering All Lesser Included Homicide Offenses and Self-Defense). *But see State v. Francis*, 252 N.C. 57, 58-59 (1960) (holding the trial court’s instruction that “a person can’t fight somebody with a pistol who is making what is called a simple assault on him,” was erroneous by “virtually eliminating the defendant’s right to self-defense since he used a pistol in connection with defending himself against a simple assault.”).

4. *See State v. Holloman*, 369 N.C. 615 (2017), *reversing*, 247 N.C. App. 434 (2016). The Supreme Court in *Holloman* explained that G.S. 14-51.4(2)(a), allowing an aggressor to regain the right to utilize defensive force under certain circumstances, does not apply where the aggressor initially uses deadly force against the person provoked. Accordingly, the trial court did not err by instructing that a defendant who was the aggressor using deadly force had forfeited the right to use deadly force and that a person who displays a firearm to his opponent with the intent to use deadly force against him or her and provokes the use of deadly force in response is an aggressor.

5. *See State v. Pearson*, 288 N.C. 34 (1975); *State v. Kelly*, 24 N.C. App. 673 (1975).

6. N.C. Gen. Stat. § 14-51.2 (a) (4) states that a workplace is a “building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.”

7. N.C. Gen. Stat. § 14-51.2 (a) (3); which incorporates N.C. Gen. Stat. § 20-4.01 (23), defines “motor vehicle” as “Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in N.C. Gen. Stat. § 20-4.01(27)d1.”