

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA,  
IN AND FOR THE COUNTY OF COCHISE.

STATE OF ARIZONA, )  
Plaintiff, )  
vs. )  
J. W. BIGHART, )  
Defendant, )

Instructions requested by defendant.

I.

Where one without fault is placed under circumstances sufficient to excite the fears of a reasonable man that another designs to take his life, or to do him great bodily injury, and to afford grounds for the belief by him, as a reasonable man, that there is imminent danger of the accomplishment of this design, he may, if influenced by these fears alone, slay his assailant, and be justified by the appearances. But before a person thus situated can be justified in taking the life of another, it must be made to appear from the evidence that the slayer's life was in imminent danger, or that he was in imminent danger of great bodily harm, or that it so appeared to him, as a reasonable man, and that the killing was necessary to prevent the taking of his own life, or the infliction upon himself of great bodily harm by the party slain, and unless the circumstances in this case, as shown by the evidence, were such that the life of the defendant was in imminent danger from the deceased, or that the appearances were such as to induce a reasonable man in the defendant's position to believe such to be the case, the act of the defendant in firing upon and killing the deceased was not in self defense, and the defendant was not justifiable therefor.

3/6-14

*Ernest Alfred Chas. ... Judge*  
II.

Homicide in self defense is an affirmative, positive and intentional act, and necessarily, therefore, a voluntary one, and design to kill prior to the killing may properly exist in self defense. The existence of an intent to kill upon the part of the person committing the homicide does not prevent the act of killing from being justifiable in a proper case on the ground of self defense, the issue being the necessity, or the apparent necessity on the part of the defendant to kill in order to prevent the deceased from killing him or doing him great bodily harm, and not the bare intent of the defendant to kill the deceased. The mere fact that a person intended to kill another when he fired a shot at him is not sufficient to prove that his intent was malicious or murderous, since he may have been acting in self defense, and though a person killing another bore express malice against him,

he is not guilty of murder if he acted in self defense. Previous ill-will or malice on the part of the defendant against the deceased cannot take away the right of self defense from the defendant, or convert a justifiable homicide into a murder.

3/6-14 Given Alfred Chockwood Judge

A person may anticipate an attack of an antagonist, and justifiably kill him, if, under all the circumstances of the case, such course seems to him, as a reasonable man, necessary in order to protect himself from ~~death or great bodily injury~~, and when one person had reasonable grounds to fear that another would take his life whenever he found an opportunity, and that he was in constant danger from him of death or great bodily harm, and that an escape would not secure safety, but would leave the danger as great or greater than before, killing that other in resisting an assault would be justifiable. *imminent*

3/6-14 Given as modified Alfred Chockwood Judge

The mere fact that a man expects to be attacked does not deprive him of going to places where he has a right to go, and going to such places with such knowledge does not deprive him of the right to plead self defense if he is attacked and compelled to kill his assailant in order to save himself. *out*

3/6-14 Refused Alfred Chockwood

Mere words or threats uttered by the deceased, however abusive or violent, without any overt act or other indication of an intent to follow up the words with an assault to carry out the threats, are not sufficient grounds for the reasonable belief of imminent danger which is necessary to sustain the plea of self defense on a trial for criminal homicide, but if there is an overt act or indication of an intent to follow up abusive and threatening words with an assault to carry out the threats, the indications of intent are to be gathered from all of the circumstances of the case, and when there is sufficient ground for a reasonable belief of imminent danger, the plea of self defense should be sustained, and you should find the defendant not guilty.

3/6-14 Given Alfred Chockwood Judge

The question whether, under all the circumstances, there are grounds for a reasonable belief in the mind of the slayer that a necessity existed for taking the life of the other, is one for the determination of the jury, in the solution of which the condition of both of the parties at the time is a legitimate subject for consideration.

3/6-14 Given Alfred Chockwood Judge

Even though you believe that as a matter of fact the defendant was in no danger of serious bodily harm at the time he fired the fatal shot, nevertheless if the defendant really believed that at such time he was in imminent danger of serious bodily injury, and if, furthermore, the circumstances and appearances at such time



III.

VII.

were such as to make his belief that he was in imminent danger reasonable to a person of the mental condition and temperament and situation of the defendant, and that he fired the shot moved solely by that belief, you must find the defendant not guilty.

3/6-14

VIII.

*Refused Alfred Christwood Judge*

*Ref out*

Where one, without fault, is placed under circumstances sufficient to excite the fears of a reasonable person that another designs to do him great bodily injury or to take his life, and to afford grounds for a reasonable belief that there is imminent danger of the accomplishment of this design, he is not bound to retreat in order to avoid the necessity of killing his assailant, but is entitled to stand his ground and meet any attack made upon him in such a way and with such force as, under all the circumstances, he honestly believes to be necessary in order to save his own life, or protect himself from great bodily injury, even though in order to do so, he slays his assailant.

*Given Alfred Christwood Judge*

3/6-14

PREVIOUS REPUTATION

There has been evidence in this case tending to show that the defendant, before the commission of this alleged crime, had sustained a good reputation for peace and quietude in the community where he lives. This is legitimate testimony, and is to be taken into consideration by you in connection with the other testimony in the case, the presumption being that a person of good reputation as a peaceable and quiet citizen would be less likely to commit an offense of this character than one of a different character or reputation, but you are instructed that while you take this testimony into consideration, that if you find from the evidence in the case that the defendant committed the offense charged, or either of the offenses mentioned as subject to your verdict in this case, you should find the defendant guilty of that offense, notwithstanding the fact that at the time of the commission thereof he enjoyed a good reputation for peace and quietude.

*out*

3/6-14 *Refused Alfred Christwood Judge*

15-16

*dqr*

A Man may repel force by force in defence of his person against any one who manifestly intends or endeavors by violence or surprise feloniously to kill him or to commit some great bodily injury upon him, and he is not obliged to retreat, but he may pursue his adversary until he has secured himself from all danger, and if he kill him in so doing, it is justifiable homicide.

Isaac Alfred Chace  
Judge

3/6-14