

14-5186. Self defense against excessive force by a peace officer; deadly force by defendant.¹

An issue in this case is whether the defendant acted in self defense. A defendant has the right to defend himself or herself against an officer only if the officer used excessive force. Excessive force means greater force than reasonably necessary.

The defendant acted in self defense if

1. The officer used greater force than reasonable and necessary by _____²; and
2. There was an appearance of immediate danger of death or great bodily harm³ to the defendant as a result of _____⁴; and
3. The defendant was in fact put in fear of immediate death or great bodily harm and _____⁵ because of that fear; and
4. The apparent danger would have caused a reasonable person in the same circumstances to act as the defendant did.

The burden is on the state to prove beyond a reasonable doubt that the defendant did not act in self defense. If you have a reasonable doubt as to whether the defendant acted in self defense, you must find the defendant not guilty.

USE NOTES

1. For use in nonhomicide cases when the self defense theory is based on the limited right of self defense against excessive force by a peace officer. If this instruction is given, add to the essential elements instruction for the offense charged, "The defendant did not act in self defense."

2. Describe the act of the officer.

3. The definition of "great bodily harm," UJI 14-131 NMRA, must be given if not already given.

4. Describe unlawful act, felony or act which would result in death or some great bodily harm as established by the evidence. Give at least enough detail to put the act in context of the evidence.

5. Describe act of defendant, *e.g.*, "struck Officer Richard Roe," "choked Officer Richard Roe."

[Adopted by Supreme Court Order No. 09-8300-028, effective September 16, 2009; as amended by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed on or after December 31, 2018.]