

14-5185. Self defense against excessive force by a peace officer; nondeadly 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 bodily harm to the defendant as a result of _____³; and
3. The defendant was in fact put in fear of immediate bodily harm and _____⁴ because of that fear; and
4. The defendant used an amount of force that the defendant believed was reasonable and necessary to prevent the bodily harm; and
- [5. The force used by defendant ordinarily would not create a substantial risk of death or great bodily harm; and]⁵
6. 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. Describe unlawful act which would result in some bodily harm as established by the evidence. Give at least enough detail to put the act in the context of the evidence.
 4. Describe the act of defendant, e.g. "struck Officer Richard Roe," "choked Officer Richard Roe."
 5. Use bracketed material only if the defendant's action resulted in death or great bodily harm. If bracketed material is used, the definition of great bodily harm, UJI 14-131 NMRA, must be given if not already given.
- [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.]