

**14-5172. Justifiable homicide; defense of another.<sup>1</sup>**

An issue you must consider in this case is whether the defendant killed \_\_\_\_\_ (*name of victim*) while defending another.

The killing was in defense of another if:

1. There was an appearance of immediate danger of death or great bodily harm<sup>2</sup> to \_\_\_\_\_<sup>3</sup> as a result of \_\_\_\_\_<sup>4</sup>; and
2. The defendant believed that \_\_\_\_\_<sup>3</sup> was in immediate danger of death or great bodily harm from \_\_\_\_\_ (*name of victim*) and killed \_\_\_\_\_ (*name of victim*) to prevent the death or great bodily harm; and
3. The apparent danger to \_\_\_\_\_<sup>3</sup> 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 defense of another. If you have a reasonable doubt as to whether the defendant acted in defense of another, you must find the defendant not guilty.

**USE NOTES**

1. For use when the defense theory is based on a reasonable ground to believe a design exists to commit a felony; a reasonable ground to believe a design exists to do great bodily harm; or a defense of spouse or other member of the family, a necessary defense against any unlawful action. If this instruction is given, add to the essential elements instruction for the offense charged, "The defendant did not act in defense of another."

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

3. Give the name of the person in apparent danger, if known, and the relationship to defendant, if any. More than one person may be included.

4. Describe the 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 the context of the evidence.

[As amended, effective October 1, 1985; January 1, 1997; as amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed on or after December 31, 2019.]