

14-5191A. First aggressor; exceptions to the limitation on self defense.¹

If you find beyond a reasonable doubt that the defendant was the first aggressor, you must then decide whether [the following exception applies]² [any of the following exceptions apply]. If [the exception applies]² [one of these exceptions apply], _____ (*name of victim*) became the aggressor, and the defendant is no longer the first aggressor.

[1. The defendant was using force which would not ordinarily create a substantial risk of death or great bodily harm; and

2. _____ (*name of victim*) responded with force which would ordinarily create a substantial risk of death or great bodily harm]²;

[OR]

[1. The defendant tried to stop the fight;

2. The defendant let _____ (*name of victim*) know he no longer wanted to fight; and

3. _____ (*name of victim*) continued to fight the defendant.]

If the state proves beyond a reasonable doubt that _____ (*name of victim*) did not become the aggressor, the defendant is still the aggressor and cannot claim self defense. If after deliberation you find that _____ (*name of victim*) became the aggressor, you should proceed to decide whether the defendant acted in self defense.

USE NOTES

1. This instruction must be given in conjunction with UJI 14-5191 NMRA in all self-defense cases in which there is an issue regarding whether a first aggressor regained the right to claim self defense because the victim became the aggressor.

2. Use applicable bracketed alternative or alternatives.

[Adopted by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed on or after December 31, 2019.]