

CR522 Defense of Habitation – Presumption.

The person using force or deadly force in defense of habitation is presumed to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the entry or attempted entry:

1. is unlawful and
2. is made or attempted
 - a. by use of force, or in a violent and tumultuous manner; or,
 - b. surreptitiously or by stealth; or,
 - c. for the purpose of committing a felony.

The prosecution may defeat the presumption by showing that the entry was 1) lawful or 2) not made or attempted by use of force, or in a violent and tumultuous manner; or surreptitiously or by stealth; or for the purpose of committing a felony. The prosecution may also rebut the presumption by proving that in fact the defendant's beliefs and actions were not reasonable.

References:

Utah Code § 76-2-405

State v. Karr, 364 P.3d 49 (Utah App. 2015)

State v. Walker, 391 P.3d 380 (Utah App. 2017)

State v. Mitcheson, 560 P.2d 1120 (Utah 1977)

State v. Moritzsky, 771 P.2d 688 (Utah App. 1989)

State v. Patrick, 217 P.3d 1150 (Utah App. 2009)

Committee Note:

This instruction should be used with CR520, CR521, CR523, and CR510.

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