

2006.5 BATTERY: DEFENSE OF PROPERTY

(Defendant) claims that any injury (plaintiff) sustained was inflicted by (defendant) in defense of (his) (her) property.

(Defendant) has the burden of proof to satisfy you by the greater weight of the credible evidence, to a reasonable certainty, that (he) (she) reasonably believed that some force was necessary to prevent an interference with (his) (her) property.

(Defendant) further has the same burden of proof to satisfy you by the greater weight of the credible evidence, to a reasonable certainty, that the amount of force used was no more than a person of ordinary intelligence and prudence would have believed necessary under the same or similar circumstances.

A "reasonable belief" is the belief a person of ordinary intelligence and prudence would have under the circumstances confronting the defendant at the time of (his) (her) acts and not from the viewpoint of the jury now. The fact that (defendant)'s belief may have been in error does not make (his) (her) conduct wrongful if a person of ordinary intelligence and prudence would have the same belief under the same or similar circumstances.

It is not reasonable to use force intended or likely to cause death or great bodily harm in defending one's property. "Great bodily harm" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

If you find that (defendant) reasonably believed some force was necessary to defend (his) (her) property and that the force used was reasonable, then you should find that there was no battery.

COMMENT

This instruction was approved by the Committee in 1995. This instruction was revised in 2002 to conform the language regarding the burden of proof to the Committee's 2002 revisions to Wis. JI-Civil 200 and 205, the instructions on the civil burdens of proof. See Wis. JI-Civil 200, Comment. The comment was updated in 2011 and 2012.

See Oleson v. Fader, 160 Wis. 473, 152 N.W. 290 (1915); Wis JI-Criminal 855 and 860. See also Wis. Stat. § 895.529(3)(a) (created by 2011 Wisconsin Act 93) and the commentary to Wis JI-Civil 2006.2 for a discussion of self-defense.