

855 PRIVILEGE: DEFENSE OF ONE'S PROPERTY — § 939.49(1)

INSERT THE FOLLOWING AFTER THE ELEMENTS OF THE CRIME ARE DEFINED BUT BEFORE THE CONCLUDING PARAGRAPHS.

Defense of Property

Defense of property is an issue in this case. The law of defense of property allows the defendant to threaten or intentionally use force to defend (his) (her) property only if:

- the defendant believed that (name of victim) was unlawfully interfering with the defendant's property; and,
- the defendant believed that the amount of force the defendant used or threatened was necessary to prevent or terminate the interference; and,
- the defendant's beliefs were reasonable.

The law of defense of property does not allow a person to intentionally use force intended or likely to cause death or great bodily harm for the sole purpose of defense of one's property.¹

Determining Whether Beliefs Were Reasonable

A belief may be reasonable even though mistaken. In determining whether the defendant's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense. The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of his acts and not from the viewpoint of the jury now.

State's Burden of Proof

The State must prove by evidence which satisfies you beyond a reasonable doubt that the defendant was not acting lawfully in defense of property.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all ____ elements of _____² have been proved and that the defendant did not act lawfully in defense of property, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 855 was originally published in 1962 and revised in 1994. This revision was approved by the Committee in April 2005.

The 1994 revision of this instruction changed the format to allow integrating the description of defense of property with the instruction for the crime charged. See the Comment to Wis JI-Criminal 800.

1. This statement is a slight change from the text of § 939.49, which is phrased: "it is not reasonable." No change in substance is intended. What is being expressed is a flat rule that "it is not permissible to use deadly force for the sole purpose of protecting property." Comment to § 339.49, 1953 Judiciary Committee Report on the Criminal Code, p. 48.

2. In the two blanks provided, insert the number of elements that the crime has and the name of that crime, where the crime has a convenient short title. For example, for a case involving simple battery under § 940.19(1), the sentence would read as follows: ". . . that all four elements of battery have been proved . . ." See Wis JI-Criminal 1220A. If the crime does not have a convenient short title, use "this offense" instead. For example, for a case involving substantial battery under § 940.19(2), the sentence would read: "that both elements of this offense were proved, . . ." See Wis JI-Criminal 1222A.