

CR 421.23 Presumption – Self-defense/Defense of another - when in residence or vehicle, use of deadly force R.C. 2901.05 (effective 3/28/19) [Rev. 11/16/19]

1. PRESUMPTION - DESCRIBED. The defendant is presumed to have acted in (self-defense) (defense of another) when using defensive force that was intended or likely to cause death or great bodily harm to another if the person against whom the defensive force was used (was in the process of entering) (had entered), unlawfully and without privilege to do so, the (residence) (vehicle) occupied by the defendant.

COMMENT

Drawn from R.C. 2901.05(B)(2).

2. PRESUMPTION - REBUTTABLE. The state claims that this presumption does not apply.

This presumption does not apply if the state proves by a preponderance of the evidence that

(Use appropriate alternative)

COMMENT

R.C. 2901.05(B)(3) advances the following two sets of circumstances in which the R.C. 2901.05(B)(2) presumption does not apply.

Appellate courts have held that these are not the exclusive means by which the state may rebut the presumption and that the state could also rebut the presumption by proving the absence of any of the elements of self-defense, including that the defendant was at fault in creating the violent situation, did not have a reasonable belief that he or she was in imminent danger of death or great bodily harm, or violated a duty to retreat. *See State v. Kean*, 10th Dist. Franklin No. 17AP-427, 2019-Ohio-1171; *State v. Carosiello*, Columbiana 7th Dist. No. 15CO17, 2017-Ohio-8160; *State v. Montgomery*, 12th Dist. Clermont No. 2015-03-028, 2015-Ohio 4652; *State v. Hadley*, 3d Marion No. 9-11-30, 2013-Ohio-1942; *State v. Petrone*, 5th Dist. Stark No. 2011CA67, 2012-Ohio-911; *State v. Bundy*, 4th Dist. Pike No. 1CA818, 2012-Ohio-3934.

(A) the person against whom the defensive force was used (was a lawful resident of) (had a right to be in) the (residence) (vehicle). Even if the state rebuts the presumption of (self-defense) (defense of another), the state must still prove beyond a reasonable doubt that the defendant did not use the force in (self-defense) (defense of another).

COMMENT

Drawn from R.C. 2901.05(B)(3)(a) and (B)(4).

(or)

(B) the defendant used the defensive force while in a (residence) (vehicle) and he/she was unlawfully, and without privilege to be, in that (residence) (vehicle). Even if the state rebuts the presumption of (self-defense) (defense of another), the state must still prove beyond a reasonable doubt that the defendant did not use the force in (self-defense) (defense of another).

COMMENT

Drawn from R.C. 2901.05(B)(3)(b) and (B)(4).

Self-defense may still apply without the statutory presumption that the person against whom the force was used was lawfully in the residence. *State v. Lewis*, 8th Dist. Cuyahoga No. 97211, 2012-Ohio-3684.

3. PRIVILEGE. "Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

COMMENT

R.C. 2901.01.

4. RESIDENCE. "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.

COMMENT

R.C. 2901.05(D)(3).

5. DWELLING. "Dwelling" means a (building) (*specify conveyance of any kind*) that has a roof over it and that is designed to be occupied by people lodging in the (building) (*specify conveyance*) at night, regardless of whether the (building) (*specify conveyance*) is temporary or permanent or is mobile or immobile. (A [building] [*specify conveyance*] includes, but is not

limited to, an attached porch, and a [building] [*specify conveyance*] with a roof over it includes, but is not limited to, a tent.)

COMMENT

Drawn from R.C. 2901.05(D)(2).

6. VEHICLE. "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

COMMENT

R.C. 2901.05(D)(4).

7. PREPONDERANCE. OJI-CR 417.29; R.C. 2901.05(A).