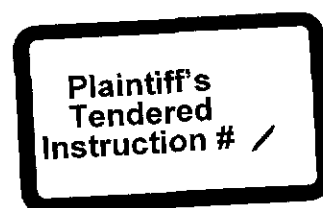


INSTRUCTION NO.

A co-occupant does not have authority to consent to a warrantless search over the express refusal of another occupant. At a shared dwelling, the warrantless search over the express refusal of consent by a physically present occupant is not lawful even though another occupant of the dwelling has given permission.

Authority: *Georgia v. Randolph*, 126 S. Ct. 1515 (2006)



INSTRUCTION NO.

In 1966, in *Miranda v. Arizona*, the United States Supreme Court created procedural safeguards to protect the constitutional rights of a person subjected to questioning by police while in custody. *Miranda* requires that prior to any custodial interrogation, “the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.”

A person is “in custody” if a reasonable person in the suspect’s position would not feel free to leave or believe himself to be deprived of freedom of action to the degree associated with formal arrest.

Authority: *Miranda v. Arizona*, 384 U.S. 436 (1966)

Plaintiff's
Tendered
Instruction # 2

INSTRUCTION NO.

Any occupant of a dwelling is justified in using any degree of physical force, including deadly physical force, against another person without first retreating if:

1. he was an occupant of a dwelling, and
2. the other person had made a knowingly unlawful entry into that dwelling, and
3. he had a reasonable belief that, in addition to the uninvited entry, the other person had committed, was committing or intended to commit a crime in the dwelling, and
4. he reasonably believed the other person might use any physical force, no matter how slight, against any occupant of the dwelling.

Authority: C.R.S. 18-1-704.5, Colorado Pattern Jury Instructions H:15

Plaintiff's
Tendered
Instruction # 3

INSTRUCTION NO.

A warrantless search or entry into a home is per se unconstitutional unless justified by an established exception. Exigent circumstances are one such exception.

Circumstances qualify as “exigent” when (1) police are engaged in “hot pursuit” of a fleeing suspect; (2) there is a risk of immediate destruction of evidence; or (3) there is a colorable claim of an emergency situation threatening the life or safety of another.

To constitute “exigent” circumstances, the government must present something more than an unfounded belief by law enforcement officers on the scene that the suspect is acting suspiciously or nervous. Exigent circumstances do not justify a warrantless search when the exigency was created by the conduct of the police.

Authority: *United States v. Anderson*, 154 F.3d 1225, 1234 (10th Cir. 1998); *People v. Pate*, 71 P.3d 1005 (2003); *Kentucky v. King*, 131 S. Ct. 1849 (2011).

Plaintiff's
Tendered
Instruction # 4