

TENDERED COURT INSTRUCTION #1

To prove a claim of unlawful entry against Defendant Valdez and Defendant Martinez [and Defendant Motyka], each the Plaintiffs must prove the following element against a Defendant by a preponderance of the evidence:

1. the Defendant's entry into the residence was made without consent, and
2. that exigent circumstances did not justify the Defendant's entry.

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TENDERED COURT INSTRUCTION #2

In determining whether a Defendant's entry into the residence was made without consent, you are instructed as follows.

Police officers may enter a residence without a warrant if an occupant of the residence consents to allow them inside. A person may consent to allow police officers to enter their home just as they might allow any other visitor to do so. You should consider all of the circumstances of the interaction between the police and Daniel Martinez Jr., including the time of day, the words spoken by the officers and Mr. Martinez, the general appearance and demeanor of the officers, and all of the other customary social practices that factor into whether an occupant of a residence decides to allow a visitor knocking on the door to come in.

It is not necessary that the person responding to the police specifically say "I consent" or use any other particular words. Indeed, non-verbal conduct, such as opening a door further and stepping aside or gesturing to police officers to come in can be an indication of consent.

A police officer who relies upon consent to enter a residence must stay within the scope of any limitations that the person granting consent expresses.

With regard to all questions having to do with consent, your focus must be on the events as they would appear to a reasonable police officer in the situation.

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TENDERED COURT INSTRUCTION #3

In determining whether exigent circumstances justified a Defendant's entry into the residence, you are instructed as follows.

Police officers are permitted to enter a residence without a warrant in various circumstances where the nature of the situation is such that the police's need to enter is so immediate and compelling that it would be unreasonable to require them to go obtain a warrant before entering. These are called "exigent circumstances." Some examples of exigent circumstances include the need for police to enter to provide emergency assistance to an occupant, to prevent what appears to be an imminent attempt by an occupant to destroy evidence of a crime, or the need to protect fellow officers in the residence from harm.

In determining whether exigent circumstances existed to justify a Defendant's entry into the residence here, you should consider all of the facts and circumstances of the incident. You should examine these circumstances as they would appear to a reasonable police officer on the scene, mindful of the uncertainties that police routinely encounter, rather than with the benefit of hindsight. At the same time, you should consider whether any emergency or immediate need to enter the residence was the result of misconduct by one or more of the officers, as police are not permitted to create their own exigent circumstances in order to gain entry to a residence.

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Instruction # 3