

**UTAH JUDICIAL COUNCIL
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS
MEETING AGENDA**

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
April 3, 2019 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Blanch
	Imperfect Self-Defense Instruction <ul style="list-style-type: none"> - <i>Murder Instruction (CR_____)</i> - <i>Explanation of Perfect and Imperfect Self-Defense (CR1410)</i> - <i>Imperfect Self-Defense SVF Instruction (CR219A)</i> - <i>Verdict Form – Murder (example only)</i> - <i>Special Verdict Form – Imperfect Self-Defense (SVF_____)</i> 		Tab 2	Judge Blanch
	Assault Instructions <ul style="list-style-type: none"> - <i>Special Verdict Form Review</i> - <i>Assault Against Peace Officer / Military Service Member</i> - <i>Assault Against School Employee</i> - <i>Assault / Aggravated Assault by Prisoner</i> - <i>Related Definitions</i> 		Tab 3	Sandi Johnson
1:30	Adjourn			

COMMITTEE WEB PAGE: <https://www.utcourts.gov/utc/muji-criminal/>

UPCOMING MEETING SCHEDULE:

Meetings are held at the Matheson Courthouse in the Judicial Council Room (N301), on the first Wednesday of each month from 12:00 noon to 1:30 p.m. (unless otherwise specifically noted):

May 1, 2019	September 4, 2019	November 6, 2019
June 5, 2019	October 2, 2019	December 4, 2019

UPCOMING ASSIGNMENTS:

- | | |
|--|---|
| 1. Sandi Johnson = Assault; Burglary; Robbery
2. Judge McCullagh = DUI; Traffic
3. Karen Klucznik & Mark Fields = Murder | 4. Stephen Nelson = Use of Force; Prisoner Offenses
5. Judge Jones = Wildlife Offenses |
|--|---|

TAB 1

Minutes from March 6, 2019 Meeting

NOTES:

**UTAH JUDICIAL COUNCIL
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS
MEETING MINUTES**

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
March 6, 2019 – 12:00 p.m. to 1:30 p.m.

DRAFT

MEMBERS:

PRESENT EXCUSED

Judge James Blanch, <i>Chair</i>	•	
Jennifer Andrus		•
Mark Field		•
Sandi Johnson	•	
Judge Linda Jones		•
Karen Klucznik	•	
Judge Brendan McCullagh	•	
Stephen Nelson		•
Nathan Phelps	•	
Judge Michael Westfall		•
Scott Young	•	
Jessica Jacobs	•	
Elise Lockwood	•	
Melinda Bowen	•	

GUESTS:

None

STAFF:

Keisa Williams
Jiro Johnson (minutes)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee to the meeting.

The committee considered the minutes from the January 9, 2019 meeting. With no amendments to the draft minutes, a motion was made and seconded to approve the draft minutes. The motion passed unanimously.

(2) IMPERFECT SELF-DEFENSE INSTRUCTION:

The committee discussed recent case law related to the issue of imperfect self-defense. There appears to be a defective form of an instruction in use around the state that continues to crop up in cases (at least four times over the last few years). The use of that instruction (or variation of the same) is creating issues on appeal. Judge Blanch believes the committee needs to focus its efforts on providing a solid instruction that can be used by practitioners to avoid the appellate issues.

Ms. Klucznik noted that at least four different attorneys at the Attorney General's office have faced this issue on appeal. They worked together to figure out a method of using an imperfect self-defense instruction that will hopefully avoid future appellate issues. That group believes that the imperfect self-defense instruction should be used in conjunction with the murder instruction. There are two ways to accomplish that (outlined in the meeting materials): 1) the first option is found on pages 25-26 of 89 and is titled "MURDER under § 76-5-203, with imperfect self defense"; 2) the second option is found on page 27-28 of 89 and is titled "Murder Instruction when imperfect self-defense instruction given." Ms. Klucznik noted that the second option is quite complicated. She encouraged the committee to consider the first option.

Ms. Johnson stated that she has concerns about the first option. She noted that the bracketed element #3 on page 25 doesn't require the jury to make a specific finding that imperfect self-defense does not apply. Ms. Klucznik noted that #3 isn't about imperfect self-defense; that is covered later in the instruction. Ms. Johnson understood that, but noted that on appeal someone will argue that the jury didn't get to the bottom of that instruction. Ms. Johnson stated that a special verdict form is a clearer approach in her mind for that reason. The committee considered the special verdict form on page 24 of 89. Judge McCullagh stated that he prefers the SVF method as well. Ms. Johnson stated that a murder instruction, a supplemental instruction defining imperfect self-defense (á la page 26 of 89, and a SVF is the clearest method because it requires the jury to specifically address each issue in the case.

Ms. Klucznik is concerned about the SVF method because she is concerned that the jury won't actually address the SVF and will end up only finding the person guilty of murder. Judge McCullagh noted that a judge shouldn't allow that to happen. If a person is found guilty of murder, but the SVF is blank, a judge should send the jury back to address the SVF.

The committee moved the discussion to the final paragraph on page 25. Ms. Johnson stated she wanted that final paragraph to be the standard paragraph without telling the jury that they must find the defendant guilty of manslaughter, because that is simply operation of law if imperfect self-defense is found by the jury. Ms. Johnson stated that the murder elements instruction should be focused on MURDER and PERFECT SELF-DEFENSE. If, and only if, the jury resolves those issues and finds guilt, then the jury should be required to deal with the imperfect self-defense SVF.

Ms. Klucznik asked if this raises "order of deliberations" issues. The committee discussed that issue and determined that order of deliberations shouldn't be a concern with the SVF approach.

Ms. Johnson noted that the SVF method is appropriate when the alternative being considered by the jury is not an independent crime. For instance, in a murder case, a defense attorney may request a lesser included offense instruction for manslaughter, which is an independent crime with its own elements. The same approach could not be taken with imperfect self-defense, cohabitant, position of trust, etc., because those aren't independent crimes. Thus a SVF would be the appropriate method for introducing those issues into the jury's deliberation process. Ms. Klucznik agreed with that approach.

The committee discussed what transition language should be used to guide the jury's deliberations. Ms. Klucznik noted that there is language in CR1410 that attempts to accomplish that very thing. She noted that she used that current instruction as a base for her instruction on page 26 of 89. Judge Blanch noted that the language could still describe the effect of a finding of imperfect self-defense (i.e., that the conviction is reduced to manslaughter), but the language should not say that the jury is required to make a finding about that reduction. Rather, the jury should stay focused on addressing the elements and the SVF about whether the defense applies. It is for the judge to apply those jury findings to the ultimate legal outcome. Judge Blanch also believes that the SVF option is more advisable especially in situations where there is actually a lesser included offense instruction in addition to the imperfect self-defense issues because that approach, again, promotes clarity in the jury process. Ms. Johnson noted that she has no issue with the "partial defense" and "reduce the crime" language, but is concerned about including the actual word "manslaughter" because that imports into the imperfect self-defense determination a

separate lesser included offense (which may have an instruction of its own, as noted by Judge Blanch). Judge Blanch and other committee members agreed with that concern.

Judge Blanch then focused the committee on the high-level decision of which approach is better: SVF or including in the elements instruction (à la Ms. Klucznik's first and second options noted above). The committee discussed how case law has addressed the issue in order to determine if there was language or a method that has actually been approved by the appellate courts. Judge Blanch described in greater detail the two approaches by referencing specific pages and paragraphs in the meeting materials (primarily page 25 of 89). Everyone on the committee ultimately agreed that the SVF method is the preferred approach.

Having made that decision, Judge Blanch turned the committee's attention to specific language issues, starting with the murder instruction. The committee used as its template the version included in the meeting materials on page 25 of 89. After spending some time on the murder instruction, Judge Blanch concluded that it would be advisable to not attempt to create the instruction on the fly and instead move consideration of a murder instruction to the next meeting. This would provide time to Ms. Klucznik to prepare a draft version for the committee's continued and more careful consideration. Ms. Klucznik agreed to incorporate the feedback already provided by the committee and will prepare a draft in advance of the next meeting.

Judge Blanch then turned the committee's attention to the supplemental instruction for imperfect self-defense (presently contained in CR1410, with Ms. Klucznik's slightly modified version included on page 26 of 89 in the meeting materials). During this discussion, the committee spent time exploring the effect of a jury which finds a defendant guilty of murder, but is hung on the issue of whether the State had proven that the imperfect self-defense did not apply. Some committee members believed this would result in double jeopardy barring a renewed prosecution. Other members believed the matter, including the murder case, would have to be retried. The committee discussed what order these various instructions should be presented to the jury. They discussed the possibility of creating a roadmap instruction for the process, which would describe the initial process of finding guilty or not guilty for the murder charge as a first step, followed by the additional steps of considering lesser included offenses (if any), and ultimately if any affirmative defenses like imperfect self-defense apply. Ms. Johnson outlined how that might work in practice.

Ms. Johnson cited to State v. Campos, 2013 UT App 213, for the proposition that "once a defendant—or even the prosecution for that matter—has produced enough evidence to warrant the giving of an instruction on an affirmative defense, the defendant is entitled to acquittal or, as in the case of imperfect self-defense, reduction of the charge unless the prosecution carries its burden of disproving the defense beyond a reasonable doubt (State v. Campos, 2013 UT App 213, ¶ 41, 309 P.3d 1160, 1172). She interprets this as meaning there would be no hung jury for failure to be unanimous on the special verdict form. Judge Blanch stated that for purposes of appeal, he would prefer to require unanimity (even if that might end up being wrong on appeal because at least everyone would know specifically what the jury had decided. To do otherwise leaves the jury process in a black box of uncertainty for after the fact review. Judge Blanch believes it is better to know what the issues actually are so that a better decision can be made by the judge regarding the legal ramifications of the jury's findings.

The committee then circled back around to the idea of perhaps not using a SVF and including imperfect self-defense in the elements instruction. It then avoids the unanimity issue that the committee had been discussing. Ultimately, the committee did not reach consensus on the issue during this meeting. Instead, the committee members received the following assignments:

- all committee members will continue to consider the issues discussed during this meeting and map out their thoughts on what the right approach is to adequately instruct a jury in these situations;
- Ms. Klucznik, Ms. Johnson, and Ms. Jacobs will, as a subcommittee, revise the various instructions / SVF / roadmap in light of the discussion that the committee had during the meeting; and

- provide those materials in a packet (via Mr. Drechsel) to the committee for consideration prior to the next meeting.

This matter will be addressed as the first agenda item during the next meeting.

(3) ASSAULT INSTRUCTIONS:

These materials were not addressed by the committee at this meeting. They will be considered on a future agenda.

(7) ADJOURN

The meeting adjourned at approximately 1:30 p.m. The next meeting will be held on April 3, 2019, starting at 12:00 noon.

TAB 2

Imperfect Self-Defense Materials

NOTES: Since the last meeting, Jessica, Sandi, and Karen collaborated on the following attached materials:

- Murder Instruction (CR_____)
- Explanation of Perfect and Imperfect Self-Defense (CR1410)
- Imperfect Self-Defense SVF Instruction (CR219A)
- Verdict Form – Murder (example only)
- Special Verdict Form – Imperfect Self-Defense (SVF_____)

CR_____ Murder.

(DEFENDANT'S NAME) is charged [in Count ____] with committing Murder [on or about DATE]. You cannot convict (him)(her) of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME)
2.
 - [a. Intentionally or knowingly caused the death of (VICTIM'S NAME)]; or]
 - [b. Intending to cause serious bodily injury to another, (DEFENDANT'S NAME) committed an act clearly dangerous to human life that caused the death of (VICTIM'S NAME)]; or]
 - [c. Acting under circumstances evidencing a depraved indifference to human life, (DEFENDANT'S NAME) knowingly engaged in conduct which created a grave risk of death to another and thereby caused the death of (VICTIM'S NAME)]; or]
 - [d. While engaging in the commission, attempted commission, or immediate flight from the commission or attempted commission of [the predicate offense(s)], or as a party to [the predicate offense(s)],
 - i. (VICTIM'S NAME) was killed; and
 - ii. (DEFENDANT'S NAME) acted with the intent required as an element of the predicate offense]; or]
 - [e. recklessly caused the death of (VICTIM'S NAME), a peace officer or military service member in uniform while in the commission of
 - i. an assault against a peace officer;
 - ii. interference with a peace officer making a lawful arrest, if (DEFENDANT'S NAME) used force against a peace officer; or
 - iii. an assault against a military service member in uniform.]
 - [3. The defense of self-defense, defense-of-others, defense-of-habitation does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-203
State v. Defendant, 2018 UT 0

Committee Notes

Notes go here . . .

Last Revised - 00/00/0000

CR1410 ~~Explanation of Imperfect Self-Defense as Partial Defense to Aggravated Murder or Murder~~ Explanation of Perfect and Imperfect Self-Defense as Defenses.

Imperfect self-defense is a partial defense to the charge of [aggravated] murder [attempted aggravated murder/attempted murder]. It applies when the defendant caused the death of another while incorrectly, but reasonably, believing that (his) (her) conduct was legally justified or excused. The effect of the defense is to reduce the crime of _____ to _____.

The defendant is not required to prove that the defense applies. Rather, the State must prove beyond a reasonable doubt that the defense does not apply. The State has the burden of proof at all times. If the State has not carried this burden, the defendant may only be convicted of _____.

Perfect self-defense is a complete defense to [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder][Manslaughter]. The defendant is not required to prove that perfect self-defense applies. Rather, the State must prove beyond a reasonable doubt that perfect self-defense does not apply. The State has the burden of proof at all times. As Instruction _____ provides, for you to find the defendant guilty of murder, the State must prove beyond a reasonable doubt that perfect self-defense does not apply. Consequently, your decision regarding perfect self-defense will be reflected in the “Verdict” form for Count [#].

If you find the defendant guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder] you must consider whether imperfect self-defense applies. Imperfect self-defense is a partial defense to [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder]. It applies when the defendant caused the death of another while incorrectly, but reasonably, believing that (his)(her) conduct was legally justified or excused. The effect of the defense is to reduce the level of the offense. The defendant is not required to prove that imperfect self-defense applies. Rather, the State must prove beyond a reasonable doubt that imperfect self-defense does not apply. The State has the burden of proof at all times. Your decision will be reflected in the special verdict form titled “Special Verdict Imperfect Self-Defense.”

References

Utah Code § 76-5-202(4)

Utah Code § 76-5-203(4)

Utah Code § 76-5-205

Utah Code § 76-2-402

Utah Code § 76-2-404

Utah Code § 76-2-405

Utah Code § 76-2-407

Committee Notes

If imperfect self-defense is raised, the following paragraph should be added at the bottom of the elements instruction for [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder]:

If you find Defendant GUILTY beyond a reasonable doubt of murder, you must decide whether the defense of imperfect self-defense applies and complete the special verdict form concerning that defense. Imperfect self-defense is addressed in Instructions _____.

CR219A Special Verdict Form – Imperfect Self-Defense.

If you determine beyond a reasonable doubt that (DEFENDANT'S NAME) committed ~~(NAME OF RELEVANT OFFENSE)~~ [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder], you must complete the special verdict form titled “Special Verdict Imperfect Self-Defense.”

- Check the box on the form ~~for each factor that you as the jury if you~~ unanimously find the prosecution has proven beyond a reasonable doubt imperfect self-defense DOES NOT apply.
- DO NOT check the box ~~for any factor if~~ the prosecution has failed to prove beyond a reasonable doubt imperfect self-defense DOES NOT apply.

~~Even if you do not check any boxes~~Whether or not you check a box, the foreperson must sign the special verdict form.

References

Committee Notes

Last Revised - 00/00/0000

VF_____ Verdict Form – Murder.

(Case Caption Information)

We, the jury, find the following beyond a reasonable doubt:

We, the jury, with regards to Count [#], find the defendant, (DEFENDANT’S NAME):

_____ Guilty of Aggravated Murder
_____ Guilty of Murder
_____ Guilty of Manslaughter
_____ Not Guilty

We, the jury, with regards to Count [#], find the defendant (DEFENDANT’S NAME):

_____ Guilty of (CRIME)
_____ Not Guilty

DATED this _____ day of (Month), 20(**).

Foreperson

References

Committee Notes

Last Revised - 00/00/0000

SVF_____ Special Verdict Form – Imperfect Self-Defense.

(Case Caption Information)

We, the jury, have found the defendant, (DEFENDANT’S NAME), guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder], as charged in Count [#]. We also unanimously find the State has proven the following beyond a reasonable doubt:

☐ The defense of imperfect self-defense DOES NOT apply.

DATED this _____ day of (Month), 20(**).

Foreperson

References

Committee Notes

Last Revised - 00/00/0000

TAB 3

Assault Instructions

NOTES: This section is organized into two subparts.

FIRST: a several instructions are organized as requested by the committee at the last meeting, as follows:

Class B Misdemeanor

Assault

Class A Misdemeanor

Assault of Pregnant Person / Substantial Bodily Injury (combined instruction)

Assault of Pregnant Person (stand-alone)

Assault Causing Substantial Bodily Injury (stand-alone)

Assault (MB) + SVF for Pregnant Person / Substantial Bodily Injury

Third Degree Felony

Aggravated Assault

Second Degree Felony

Aggravated Assault (combined instruction with all possible elements included)

Aggravated Assault (F3) + SVF for “serious bodily injury” OR “loss of consciousness”

SECOND: there are assault-related instructions that have not been considered by the committee, as follows:

- Assault Against Peace Officer / Military Service Member
- Assault Against School Employee
- Assault by Prisoner
- Aggravated Assault by Prisoner
- Related Definitions

CR_____ ~~Simple Assault~~ (Use SVF for SBI or Pregnant Victim).

(DEFENDANT'S NAME) is charged [in Count _____] with committing Assault [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME)
2. Intentionally, knowingly, or recklessly
 - a. attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b. committed an act with unlawful force or violence that
 - i. caused bodily injury to (VICTIM'S NAME); or
 - ii. created a substantial risk of bodily injury to (VICTIM'S NAME).
3. [The defense of _____ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-102

Committee Notes

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated *mens rea* (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

Last Revised – 11/07/2018

CR_____ Assault – Pregnant Person or Substantial Bodily Injury.

(DEFENDANT'S NAME) is charged [in Count _____] with committing Assault Against a Pregnant Person or Committing Assault that Caused Substantial Bodily Injury [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
 - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b. Committed an act with unlawful force or violence that
 - i. caused bodily injury to (VICTIM'S NAME); or
 - ii. created a substantial risk of bodily injury to (VICTIM'S NAME);

AND EITHER

3. (VICTIM'S NAME) was pregnant; and
4. (DEFENDANT'S NAME) had knowledge of the pregnancy;

OR

5. Intentionally, knowingly, or recklessly;
 - a. Committed an act with unlawful force or violence; and
 - b. The act caused substantial bodily injury to (VICTIM'S NAME).
6. [The defense of _____ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-102(3)(b)

Committee Notes

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated *mens rea* (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

Last Revised – 00/00/0000

CR_____ Assault – Pregnant Person.

(DEFENDANT'S NAME) is charged [in Count _____] with committing Assault Against a Pregnant Person [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
 - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b. Committed an act with unlawful force or violence that
 - i. caused bodily injury to (VICTIM'S NAME); or
 - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. (VICTIM'S NAME) was pregnant; and
4. (DEFENDANT'S NAME) had knowledge of the pregnancy; and
5. [The defense of _____ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-102(3)(b)

Committee Notes

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated *mens rea* (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

Last Revised – 12/05/2018

CR_____ Assault – Causing Substantial Bodily Injury.

(DEFENDANT'S NAME) is charged [in Count _____] with committing Assault Causing Substantial Bodily Injury [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly committed an act with unlawful force or violence;
3. The act caused substantial bodily injury to (VICTIM'S NAME).
4. [The defense of _____ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-102(3)(a)

Committee Notes

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated *mens rea* (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

Last Revised – 11/07/2018

CR_____ Special Verdict Form – Assault – Pregnant Person / Substantial Bodily Injury

(Case Caption Information)

We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of Assault, as charged in Count [#].

We also unanimously find beyond a reasonable doubt that (check all that apply):

_____ (DEFENDANT'S NAME) caused substantial bodily injury to (VICTIM'S NAME).

_____ (VICTIM'S NAME) was pregnant at the time of the assault and (DEFENDANT'S NAME) knew of the pregnancy.

DATED this _____ day of (Month), 20(**).

Foreperson

Last Revised - 00/00/0000

CR_____ Aggravated Assault (Must Use SVF for 3rd Degree or 2nd Degree).

(DEFENDANT'S NAME) is charged [in Count _____] with committing Aggravated Assault [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
 - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b. Made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
 - c. Committed an act with unlawful force or violence that
 - i. caused bodily injury to (VICTIM'S NAME); or
 - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and

~~3. (DEFENDANT'S NAME)~~

~~a. [Used a dangerous weapon; or]~~

~~b. [Committed an act that impeded the breathing or the circulation of blood of (VICTIM'S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:~~

~~i. applying pressure to the neck or throat of (VICTIM'S NAME); or~~

~~ii. obstructing the nose, mouth, or airway of (VICTIM'S NAME); or]~~

~~c. [Used other means or force likely to produce death or serious bodily injury].~~

~~4.3.~~ [The defense of _____ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-103

Committee Notes

Depending on the facts of the case, practitioners should include a special verdict form under the following circumstances:

- where there is “serious bodily injury” OR “loss of consciousness” (see Utah Code § 76-5-103(2)(a)); or
- where there is “targeting law enforcement officer” AND “serious bodily injury” (see Utah Code § 76-5-103(2)(b)).

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated *mens rea* (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

Last Revised – 12/05/2018

CR_____ Aggravated Assault (For Use With SVF Only for 2nd Degree).

(DEFENDANT'S NAME) is charged [in Count _____] with committing Aggravated Assault [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
 - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b. Made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
 - c. Committed an act with unlawful force or violence that
 - i. caused bodily injury to (VICTIM'S NAME); or
 - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. (DEFENDANT'S NAME)
 - a. [Used a dangerous weapon; or]
 - b. [Committed an act that ~~impeded~~interfered with the breathing or the circulation of blood of (VICTIM'S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:
 - i. applying pressure to the neck or throat of (VICTIM'S NAME); or
 - ii. obstructing the nose, mouth, or airway of (VICTIM'S NAME); or]
 - c. [Used other means or force likely to produce death or serious bodily injury].
4. [The defense of _____ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-103

Committee Notes

Depending on the facts of the case, practitioners should include a special verdict form under the following circumstances:

- where there is “serious bodily injury” OR “loss of consciousness” (see Utah Code § 76-5-103(2)(a)); or
- where there is “targeting law enforcement officer” AND “serious bodily injury” (see Utah Code § 76-5-103(2)(b)).

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated *mens rea* (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

Last Revised – 12/05/2018

CR_____ Special Verdict Form – Aggravated Assault 2nd Degree

(Case Caption Information)

We, the jury, have found the defendant, (DEFENDANT’S NAME), guilty of Aggravated Assault, as charged in Count [#].

We also unanimously find beyond a reasonable doubt that **OPTION ONE – (check all that apply):**

_____ The act resulted in serious bodily injury.

_____ The act interfering with the breathing or the circulation of blood produced a loss of consciousness.

_____ **OPTION TWO – None of the above.**

OPTION THREE – If you find beyond a reasonable doubt that none of the above circumstances apply, leave all boxes unchecked and sign the form.

DATED this _____ day of (Month), 20(**).

Foreperson

Last Revised - 00/00/0000

**INSTRUCTIONS
THAT HAVE NOT YET
BEEN REVIEWED BY
THE COMMITTEE**

CR_____ Assault Against a Peace Officer or Military Servicemember in Uniform.

(DEFENDANT'S NAME) is charged [in Count _____] with committing Assault Against a [Peace Officer][Military Servicemember in Uniform] [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME)
2. [Knowing that (VICTIM'S NAME) was a peace officer];
3. Intentionally, knowingly, or recklessly
 - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b. Committed an act with unlawful force or violence that
 - i. caused bodily injury to (VICTIM'S NAME); or
 - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); or
 - c. threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or
 - d. made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);
4. (VICTIM'S NAME) was [acting within the scope of (his)(her) authority as a peace officer][on orders and acting within the scope of authority granted to the military servicemember in uniform].
5. [The defense of _____ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-102.4

Committee Notes

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated mens rea (intentional, knowing, or reckless). Practitioners should review State v. Barela, 2015 UT 22.

Last Revised - 00/00/0000

CR_____ Definitions - Assault Against a Peace Officer or Military Servicemember in Uniform.

“Peace officer” means:

1. A law enforcement officer certified under Section 53-13-103;
2. A correctional officer under Section 53-13-104;
3. A special function officer under Section 53-13-105; or
4. A federal officer under Section 53-13-106.

“Military servicemember in uniform” means:

1. A member of any branch of the United States military who is wearing a uniform as authorized by the member’s branch of service; or
2. A member of the National Guard serving as provided in Section 39-1-5 or 39-1-9.

References

Utah Code § 76-5-102.4

Committee Notes

Last Revised - 00/00/0000

CR_____ Assault Against School Employees.

(DEFENDANT'S NAME) is charged [in Count _____] with committing Assault Against a School Employee [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Knowing that (VICTIM'S NAME) was an employee or volunteer of a public or private school;
3. Intentionally, knowingly, or recklessly
 - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b. Committed an act with unlawful force or violence that
 - i. caused bodily injury to (VICTIM'S NAME); or
 - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); or
 - c. threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or
 - d. made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);
4. (VICTIM'S NAME) was acting within the scope of (his)(her) authority as an employee or volunteer of a public or private school.
5. [The defense of _____ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-102.3

Committee Notes

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated mens rea (intentional, knowing, or reckless). Practitioners should review State v. Barela, 2015 UT 22.

Last Revised - 00/00/0000

CR_____ Assault by Prisoner.

(DEFENDANT'S NAME) is charged [in Count _____] with committing Assault by Prisoner [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
 - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b. Committed an act with unlawful force or violence that
 - i. caused bodily injury to (VICTIM'S NAME); or
 - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. At the time of the act (DEFENDANT'S NAME) was
 - a. In the custody of a peace officer pursuant to a lawful arrest; or
 - b. Was confined in a jail or other penal institution or a facility used for confinement of delinquent juveniles.
4. [The defense of _____ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-102.5

Committee Notes

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated mens rea (intentional, knowing, or reckless). Practitioners should review State v. Barela, 2015 UT 22.

Last Revised - 00/00/0000

CR_____ Aggravated Assault by Prisoner (Use SVF if Intentionally Caused SBI).

(DEFENDANT'S NAME) is charged [in Count _____] with committing Aggravated Assault By Prisoner [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
 - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b. Made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
 - c. Committed an act with unlawful force or violence that
 - i. caused bodily injury to (VICTIM'S NAME); or
 - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. (DEFENDANT'S NAME)
 - a. [Used a dangerous weapon; or]
 - b. [Committed an act that impeded the breathing or the circulation of blood of (VICTIM'S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:
 - i. applying pressure to the neck or throat of (VICTIM'S NAME); or
 - ii. obstructing the nose, mouth, or airway of (VICTIM'S NAME); or]
 - c. [Used other means or force likely to produce death or serious bodily injury];
4. At the time of the act (DEFENDANT'S NAME) was
 - a. [In the custody of a peace officer pursuant to a lawful arrest; or]
 - b. [Was confined in a jail or other penal institution or a facility used for confinement of delinquent juveniles].
5. [The defense of _____ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-103.5

Committee Notes

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated mens rea (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

Last Revised - 00/00/0000