

**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
April 3, 2019 – 12:00 p.m. to 1:30 p.m.

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:

Michael Drechsel
Jiro Johnson (minutes)
Minhvan Brimhall (recording secretary)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee and began the proceeding.

The committee considered the minutes from the March 6, 2019 meeting.

Mr. Field made a motion to approve the minutes.

Mr. Nelson seconded.

The motion passed unanimously.

Judge Blanch then turned to the imperfect self-defense instructions.

(2) IMPERFECT SELF-DEFENSE INSTRUCTIONS:

Judge Blanch thanked Ms. Johnson, Ms. Klucznik, and Ms. Jacobs for their subcommittee work assembling the package of instructions for the committee to consider today. Ms. Johnson provided a brief explanation of the

methods for handling jury instructions for imperfect self-defense. One option involved including the imperfect self-defense instructions in the actual elements instruction for the offense (i.e., for murder, etc.). But this approach is complicated when you consider the various permutations of offenses where imperfect self-defense might be raised (murder, attempted murder, aggravated murder, attempted aggravated murder, etc.) and when those offenses might be converted to manslaughter (and different types of manslaughter, or different methods of arriving at manslaughter). The subcommittee decided that perfect self-defense should remain in the elements instruction, because it is a complete defense. But to avoid confusing the jury and promoting clarity about what the jury ultimately decides during deliberations as it relates to imperfect self-defense, a better approach is to use the special verdict form for addressing imperfect self-defense. During the last meeting, the committee had discussed whether there needed to be unanimity from the jury in finding that the State had not disproven imperfect self-defense. The subcommittee's approach is that if the jury convicts of, for instance, murder (or attempted, or aggravated, or any combination of those), and the judge determines there is sufficient reason to instruct on imperfect self-defense, that, at that point, the defendant is essentially entitled to the reduction unless the State is able to disprove imperfect self-defense beyond a reasonable doubt. For that reason, a special verdict form is the best method for addressing this with the jury. The subcommittee prepared a revised draft of CR1410 to bring clarity to this approach and the difference between perfect and imperfect self-defense. Furthermore, the subcommittee recommends adding a committee note to each elements instruction if an imperfect self-defense special verdict form is to be used. On the actual special verdict form, there is a single option: that the State had proven beyond a reasonable doubt that imperfect self-defense did not apply. If not, the jury will simply sign the blank form. That is the overall approach.

Judge Blanch called for whether there were disagreements about the approach the subcommittee had taken, there were no disagreements. The full committee is unanimous that the special verdict form described by Ms. Johnson is the best approach. Judge Blanch again thanked the subcommittee because it seems juries are not appropriately instructed on this (based upon the frequency of appellate decisions on this issue).

Ms. Klucznik collaborated with Mr. Field and indicated that the verdict form may need to have two choices so that it is clear what the jury intended. Judge Blanch noted that the entire group of proposed instructions forms would be individually analyzed and Mr. Field's concerns would be addressed at that point.

CR____ MURDER INSTRUCTION (NEW INSTRUCTION)

Judge Blanch then called the committee to attention with respect to the Murder instruction. There is no murder instruction presently included in the MUJI instructions. So this is a new instruction. Ms. Klucznik explained the changes she made to the instruction, including that she felt the instruction tracked the statute. The committee discussed the instruction. The committee discussed whether the "the defense of self-defense" language should be changed to "the defense of perfect self-defense." The committee determined that the instruction should just leave the defense language be left as in all other instructions ("[3. The defense of _____ does not apply.]").

The committee then discussed a committee note for the murder instruction. Once that discussion was completed, the committee agreed that the murder instruction, in full, should read:

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 _____ 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

COMMITTEE NOTES

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1410 (amended as appropriate);
- Use the "Special Verdict Imperfect Self-Defense" special verdict form;
- Do not include "imperfect self-defense" as a defense in element #3 above;
- Do not use an "imperfect self-defense manslaughter" elements instruction;
- Always distinguish between "perfect self-defense" and "imperfect self-defense" throughout the instructions; and
- Add the following paragraph at the bottom of this elements instruction:

"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 _____."

Last Revised – 04/03/2019

CR1410 EXPLANATION OF PERFECT AND IMPERFECT SELF-DEFENSE AS DEFENSES

Having reached agreement on the murder instruction, the committee then moved on to consider CR1410. The committee discussed whether this instruction possibly suggests to the jury what issues should be considered and in

which order which Judge Jones felt could be against case law, noting specific cases regarding order of deliberations. The committee ultimately agreed that the instructions, as written here, do not violate the order of deliberations decisions from the appellate courts.

Ms. Klucznik raised the hypothetical that if the special verdict form was not filled out, whether a judge would automatically reduce the charge from murder to manslaughter. Ms. Johnson felt that if a verdict comes back with an unsigned special verdict form, then that should be to the defendant's benefit, not against the defendant. Judge Blanch felt that in a scenario where the special verdict form is not completed, that should be resolved by appellate review, but Ms. Klucznik countered by saying the State has no avenue of review because, under these circumstances the murder charge resulted in acquittal and the judge reduces the charge to manslaughter. Judge Blanch asked the Committee if the members were comfortable moving forward despite the above concerns. The committee agreed to move on.

Ms. Lockwood raised concerns about the second paragraph of proposed CR1410 stating "if you find the defendant guilty of..." may influence a juror to believe that guilty is the appropriate verdict. After discussion, the language was changed to read "You must consider imperfect self-defense only if you find the defendant guilty of..." After discussing the instruction, the committee agreed that CR1410 should be amended to read:

CR1410 EXPLANATION OF PERFECT AND IMPERFECT SELF-DEFENSE AS DEFENSES.

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 [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder][Manslaughter], 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 [#].

You must consider imperfect self-defense only if you find the defendant guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder]. 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

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1410, amended as appropriate;
- Use the special verdict form for imperfect self-defense;
- Do not include imperfect self-defense in element #3 above;
- Do not use an imperfect self-defense manslaughter instruction;

- Always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions; and
- Add the following paragraph at the bottom of this elements instruction:

“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 _____.”

Last Revised - 04/03/2019

CR219A SPECIAL VERDICT FORM – IMPERFECT SELF-DEFENSE

The Committee then moved on to CR219A Special Verdict Form – Imperfect Self-Defense. This is an instruction that provides directions to the jury in completing the special verdict form. The committee discussed whether there was a need to have only one option or if there should be two options for the jury to pick between. There was significant discussion on this point. On the one hand, the jury is not required to be unanimous if the State has not disproven imperfect self-defense. That would suggest that a single option to indicate that the State HAS proven that imperfect self-defense does not apply. On the other hand, having a single option leaves the judge, parties, and appellate courts to wonder if the jury adequately considered the special verdict form. Ultimately, the jury decided there should be two options, agreeing on this language:

CR219A SPECIAL VERDICT FORM – IMPERFECT SELF-DEFENSE.

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

- Check ONLY ONE box on the form.
- The foreperson must sign the special verdict form.

REFERENCES

State v. Lee, 2014 UT App 4
State v. Ramos, 2018 UT App 161
State v. Navarro, 2019 UT App 2

COMMITTEE NOTES

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1410, amended as appropriate;
- Use the special verdict form for imperfect self-defense;
- Do not include imperfect self-defense in element #3 above;
- Do not use an imperfect self-defense manslaughter instruction;
- Always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions; and
- Add the following paragraph at the bottom of this elements instruction:

“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 _____.”

Last Revised – 04/03/2019

SVF____ SPECIAL VERDICT FORM – IMPERFECT SELF-DEFENSE

The committee then turned to the actual special verdict form language. Mr. Field raised a concern that if the verdict form only requires a signature, that can result in error. After much conversation the Committee adopted a second option for the special verdict form to avoid confusing language for the jurors.

The Special Verdict Form for Imperfect Self-Defense was amended to read:

SVF____ SPECIAL VERDICT FORM – IMPERFECT SELF-DEFENSE.

(Case Caption Information)

Having found the defendant, (DEFENDANT’S NAME), guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder], as charged in Count [#],

Check ONLY ONE of the following boxes:

☐ We unanimously find beyond a reasonable doubt that the State has proven that the defense of imperfect self-defense DOES NOT apply.

OR

☐ We are not unanimously convinced that the defense of imperfect self-defense DOES NOT apply.

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

Foreperson

REFERENCES

State v. Lee, 2014 UT App 4
State v. Ramos, 2018 UT App 161
State v. Navarro, 2019 UT App 2

COMMITTEE NOTES

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1410, amended as appropriate;
- Use the special verdict form for imperfect self-defense;
- Do not include imperfect self-defense in element #3 above;
- Do not use an imperfect self-defense manslaughter instruction;
- Always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions; and
- Add the following paragraph at the bottom of this elements instruction:

“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 _____.”

Last Revised - 04/03/2019

AN INTRODUCTORY PREFACE

Some of the committee members were concerned that some attorneys will have a problem with the committee's approach with imperfect self-defense with a special verdict form. The committee agreed that the purpose of jury instructions is to make the process and requirements clear for the jury. Ms. Klucznik agreed to draft a foreword to explain to judges and practitioners the reasoning behind the overarching approach to these instructions, including the special verdict form.

The Committee agreed that they would make a wholesale review of the instructions that were worked on today and that the package of instructions would be voted on at the beginning of the next meeting.

(3) ASSAULT INSTRUCTIONS

This Item was not considered at this meeting and was moved to the agenda for the next meeting.

(4) ADJOURN

The meeting adjourned at approximately 1:35 p.m. The next meeting will be held on May 1, 2019, starting at 12:00 noon.