

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

Via WebEx
August 4, 2021 – 12:00 p.m. to 1:30 p.m.

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge James Blanch, <i>Chair</i>	•		Gage Hansen
Jennifer Andrus		•	
Melinda Bowen	•		STAFF:
Mark Field	•		Michael Drechsel
Sandi Johnson	•		
Elise Lockwood		•	
Judge Brendan McCullagh	•		
Debra Nelson	•		
Stephen Nelson		•	
Nathan Phelps	•		
Judge Michael Westfall		•	
Scott Young	•		
Judge Linda Jones, <i>Emeritus</i>		•	
<i>Prosecutor – Vacant</i>			

(1) WELCOME, COMMITTEE BUSINESS, AND RECOGNITION OF MEMBERS:

Judge Blanch welcomed the committee members to the meeting. He then recognized six members whose membership terms are expiring. He noted the valuable contributions each had made over the years and thanked them individually for their time and efforts. The members are: Karen Klucznik (prosecutor), Mark Field (prosecutor), Nathan Phelps (defense attorney), Scott Young (defense attorney), Melinda Bowen (law professor), and Judge Michael Westfall (district court judge). The committee members gave a round of applause for these members.

Over the pandemic the committee has encountered more circumstances where it has been difficult to get a quorum present. Judge Blanch noted a need to have members present for meetings moving forward. He also noted that for the September 1 meeting, he is on the jury trial rotation which will require ending the meeting around 1:00 p.m. (instead of at the normal 1:30 p.m. time).

(2) APPROVAL OF MINUTES:

The committee considered the minutes from the May 5, 2021 meeting. Mr. Phelps moved to approve the draft minutes; Judge McCullagh seconded the motion. The committee voted unanimously in support of the motion. The motion passed.

(3) PARTIAL DEFENSE INSTRUCTIONS:

Judge Blanch noted that this has been one of the most complex and involved projects the committee has undertaken in his time working on MUJI instructions. He thanked the committee for the work performed on this project thus far.

CR1450 Practitioner’s Note: Explanation Concerning Imperfect Self-Defense

Judge Blanch turned the committee’s attention to an instruction with modifications approved at the May 5, 2021 committee meeting: CR1450. Mr. Drechsel explained that immediately after the May 5, 2021 meeting, in his review of CR1450, he noticed that the version of CR1450 that had been approved by the committee had not displayed all of the changes that were actually proposed to the instruction (the “track changes” feature had not been used to highlight all of the proposed changes). As a result, the committee had only considered the change highlighted in pink text on page 7 of the May 5, 2021 meeting materials (that being the final paragraph of the proposed changes to CR1450). The committee had not considered other proposed changes in the two preceding paragraphs. Prior to today’s meeting, Mr. Drechsel prepared a version of CR1450 with all the changes properly displayed with the “track changes” feature in Word. That version of CR1450 was included in today’s meeting materials on page 13. With this history in mind, the committee made a fresh review of CR1450. After making the review and entertaining discussion, Judge McCullagh made a motion to approve the following language:

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CR1450 Practitioner's Note: Explanation Concerning Imperfect Self-Defense

Imperfect self-defense is an affirmative defense that can reduce aggravated murder to murder, attempted aggravated murder to attempted murder, murder to manslaughter, and attempted murder to attempted manslaughter. See Utah Code Ann. § 76-5-202(4) (aggravated murder); Utah Code Ann. § 76-5-203(4) (murder).

When the defense is asserted, the State must disprove the defense beyond a reasonable doubt before the defendant can be convicted of the greater crime. If the State cannot disprove the defense beyond a reasonable doubt, the defendant can be convicted only of the lesser crime.

Instructing the jury on imperfect self-defense has proved to be problematic because many practitioners have tried to include the defense as an element of either or both of the greater crime and the reduced crime. The inevitable result is that the elements instruction on the reduced crime misstates the burden of proof on the defense as it applies to that reduced crime. See, e.g., *State v. Lee*, 2014 UT App 4, 318 P.3d 1164.

To avoid these problems, these instructions direct the jury to decide the defense separately from the charged offense exclusively through a special verdict form. Under this approach, the jury is given a standard elements instruction on the greater offense, with no element addressing imperfect self-defense. The final paragraphs of the elements instruction then explain how the jury should proceed based on whether it has found the defendant guilty of the charged offense:

- If the jury finds that the State *has not* proved the elements of the greater offense beyond a reasonable doubt, the elements instruction on the greater offense directs the jury to find the defendant NOT GUILTY of the charged offense. The instruction then directs the jury that it may consider any lesser offenses included in the instructions.
- If the jury finds the State *has* proved the elements of the greater offense beyond a reasonable doubt, the elements instruction on that greater offense directs the jury to the imperfect self-defense instructions to determine whether the State has disproved imperfect self-defense beyond a reasonable doubt. In a separate roadmap instruction, the jury is instructed to record its finding on the defense on a special verdict form attached to the jury’s specific guilty verdict.

~~If the jury finds that the State has proved the elements of the greater offense beyond a reasonable doubt, the jury enters a guilty verdict on that offense. The jury is directed to the imperfect self-defense instructions and instructed that it must complete the imperfect self-defense special verdict form. On the special verdict form, the jury must indicate whether it has unanimously found that the State disproved the defense beyond a reasonable doubt. If the jury indicates the State has disproved the defense, the trial court enters a conviction for the greater crime. If the jury indicates the State has not disproved the defense, the trial court enters a conviction for the lesser crime.~~

The committee considered *State v. Drej*, 2010 UT 35, 233 P.3d 476, and concluded that it does not preclude this approach.

Committee Notes

Last revised – 05/01/201908/04/2021

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Ms. Bowen seconded the motion. The committee voted unanimously in support of the motion. The motion passed. Staff will wait to publish the approved instruction until the remaining proposed instructions are reviewed and approved by the committee.

CR505A Roadmap for mitigation defenses

The committee did not directly consider any proposed changes to CR505A at this meeting. The instruction had been approved at the May 5, 2021 meeting and was only included in the meeting materials to keep the complete set of proposed instructions together for committee consideration. Later in the meeting, the committee approved changes to the “Committee Note” language in other instructions, which language was identical to the committee note in CR505A. The committee instructed staff to apply the same changes to any instruction that employed the modified committee note language. Staff compared the committee notes of the various instructions and modified the previously approved committee note in CR505A, pursuant to the committee’s instruction. As a result, staff will publish the following final version of CR505A when the committee has completed its review and approval of the remaining instructions:

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CR505A Roadmap for mitigation defenses.

If you find the defendant guilty of (CHARGED CRIME) or (LESSER INCLUDED CRIME) on Count [#], you will then need to decide whether the mitigation defense of [imperfect self-defense] [extreme emotional distress special mitigation] [mental illness special mitigation] [or] [battered person mitigation] applies to that crime.

[The elements for imperfect self-defense are set forth in Instruction [#].]

[The elements for extreme emotion distress special mitigation are set forth in Instruction [#].]

[The elements for mental illness special mitigation are set forth in Instruction [#].]

[The elements for battered person mitigation are set forth in Instruction [#].]

Because each mitigation defense has its own elements and burden of proof, make sure to read the instructions carefully. For each mitigation defense listed, you must complete a special verdict form. You will find the special verdict form[s] for Count [#] immediately behind “General Verdict Form: Count (#).”

Committee Notes

A roadmap instruction such as this one should be prepared for each count that involves one or more lesser offenses and one or more mitigation defenses.

General verdict forms and special verdict forms should then be prepared as explained in the instruction.

“Imperfect Self-defense” mitigation is only applicable to aggravated murder, murder, attempted aggravated murder, or attempted murder charges.

“Extreme Emotional Distress” mitigation is only applicable when the defendant causes the death of another or attempts to cause the death of another.

“Battered Person” mitigation is applicable to any offense between cohabitants.

Mental Illness can be both a defense and mitigation:

- Under Utah Code 76-2-305 it is a complete defense if it negates the mental state, except for homicide or attempted homicide;
- Under Utah Code 76-5-205.5 it is a special mitigation when the defendant causes the death of another or attempts to cause the death of another, and will reduce the level of the offense; and
- Under Utah Code 77-16a-102 it can be the basis for a finding of guilty with a mental illness at the time of the offense, which does not reduce the offense but changes sentencing requirements and is a necessary finding by the trier of fact.

Approved 08/04/2021

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CR1402A and CR1403A: Current Aggravated Murder Instructions

Judge Blanch turned the committee’s attention to the proposed versions of CR1402A, CR1402B, CR1403A, and CR1403B. Ms. Johnson explained the proposed instructions to the committee. She started with CR1402A and CR1403A, noting that these are consistent with the existing instructions (CR1402 and CR1403). The only addition is the new committee note. The committee reviewed the proposed committee note changes. Mr. Field noted a need to correct an internal reference from “element #3” to “element #5.” This same change is necessary in CR1403A (as well as CR1402B and CR1403B). After further review by the committee, Ms. Johnson and Ms. Nelson made a joint motion to approve CR1402A and CR1403A, as follows:

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CR1402A Aggravated Murder Elements – Utah Code § 76-5-202(1).

The defendant, (DEFENDANT'S NAME), is charged with Aggravated Murder. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (DEFENDANT'S NAME);
2. Intentionally or knowingly;
3. Caused the death of (VICTIM'S NAME);
4. Under one or more of the following circumstances: [insert all applicable aggravating circumstances];
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 of Aggravated Murder. On the other hand, if you are not convinced that all of these elements have been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Aggravated Murder.

Committee Notes

If the date and/or location of a crime is an element of the offense, those can be included within the list of elements. In some circumstances, identifying the specific counts might assist the jury in sorting through offenses with overlapping elements. In those circumstances, the specific count to which the instruction applies should be identified in the first paragraph.

~~*See explanatory note at the beginning of the homicide section. The committee recommends that practitioners consider replacing this phrase with more specific language relating to the legal justification or excuse at issue in the case. For example, if the issue is self-defense, this element could be tailored to: "That the defendant did not act in self-defense."~~

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- Use the “Special Verdict Imperfect Self-Defense” special verdict form;
- Do not include “imperfect self-defense” ~~or any mitigation defense~~ as a defense in element #3-5 above;
- Do not use an “imperfect self-defense manslaughter” elements instruction; ~~and~~
- 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 _____.”~~

~~“Imperfect Self-defense” mitigation is only applicable to aggravated murder, murder, attempted aggravated murder, or attempted murder charges.~~

~~“Extreme Emotional Distress” mitigation is only applicable when the defendant causes the death of another or attempts to cause the death of another.~~

~~“Battered Person” mitigation is applicable to any offense between cohabitants.~~

~~Mental Illness can be both a defense and mitigation:~~

- ~~Under Utah Code 76-2-305 it is a complete defense if it negates the mental state, except for homicide or attempted homicide;~~
- ~~Under Utah Code 76-5-205.5 it is a special mitigation when the defendant causes the death of another or attempts to cause the death of another, and will reduce the level of the offense; and~~

- Under Utah Code 77-16a-102 it can be the basis for a finding of guilty with a mental illness at the time of the offense, which does not reduce the offense but changes sentencing requirements and is a necessary finding by the trier of fact.

Approved 08/04/2021

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 AND
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CR1403A Aggravated Murder Elements – Utah Code § 76-5-202(2).

The defendant, (DEFENDANT’S NAME), is charged with Aggravated Murder. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (DEFENDANT'S NAME);
2. With reckless indifference to human life;
3. Caused the death of (VICTIM'S NAME); and
4. That the defendant did so incident to an act, scheme, course of conduct, or criminal episode during which (he)(she) was a major participant in the commission or attempted commission of: [Insert All Applicable Predicate Felonies][;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 of Aggravated Murder. On the other hand, if you are not convinced that all of these elements have been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Aggravated Murder.

Committee Notes

If the date and/or location of a crime is an element of the offense, those can be included within the list of elements. In some circumstances, identifying the specific counts might assist the jury in sorting through offenses with overlapping elements. In those circumstances, the specific count to which the instruction applies should be identified in the first paragraph.

**See explanatory note at the beginning of the homicide section. The committee recommends that practitioners consider replacing this phrase with more specific language relating to the legal justification or excuse at issue in the case. For example, if the issue is self-defense, this element could be tailored to: "That the defendant did not act in self-defense."*

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- Use the “Special Verdict Imperfect Self-Defense” special verdict form;
- Do not include “imperfect self-defense” or any mitigation defense as a defense in element #53 above;
- Do not use an “imperfect self-defense manslaughter” elements instruction; and
- 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 _____.”

“Imperfect Self-defense” mitigation is only applicable to aggravated murder, murder, attempted aggravated murder, or attempted murder charges.

“Extreme Emotional Distress” mitigation is only applicable when the defendant causes the death of another or attempts to cause the death of another.

“Battered Person” mitigation is applicable to any offense between cohabitants.

Mental Illness can be both a defense and mitigation:

- Under Utah Code 76-2-305 it is a complete defense if it negates the mental state, except for homicide or attempted homicide;
- Under Utah Code 76-5-205.5 it is a special mitigation when the defendant causes the death of another or attempts to cause the death of another, and will reduce the level of the offense; and
- Under Utah Code 77-16a-102 it can be the basis for a finding of guilty with a mental illness at the time of the offense, which does not reduce the offense but changes sentencing requirements and is a necessary finding by the trier of fact.

Approved 08/04/2021

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Judge McCullagh seconded the motion. The committee voted unanimously in support of the motion. The motion passed. Staff will wait to publish the approved instruction until the remaining proposed instructions are reviewed and approved by the committee.

CR1402B and CR1403B: New Mitigation Aggravated Murder Instructions

The committee then turned its attention to CR1402B and CR1403B. Ms. Johnson explained that these are proposed new instructions that are designed to be used in Aggravated Murder cases when mitigation of some sort is at issue in the case. CR1402B and CR1403B start with CR1402A and CR1403A as their respective foundations. Ms. Johnson explained that CR1402B and CR1403B then add a new final paragraph to the body of each instruction, guiding the jurors to review the various mitigation defenses if they have found the defendant guilty of the offense described in that elements instruction. Each instruction also proposed to add the same committee note that had been added to the other instructions above.

The committee discussed removing the asterisk on element #5, as well as the related explanatory language in the committee note associated with the asterisk. After discussion, the committee agreed that this language should be removed from CR1402A, CR1402B, CR1403A, and CR1403B. Staff was instructed to make this same change across all four instructions, including CR1402A and CR1403A that the committee had already approved.

After the committee reviewed and discussed CR1402B, Mr. Field made a motion to approve proposed CR1402B, as follows:

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CR1402B Aggravated Murder Elements – Utah Code § 76-5-202(1) with Mitigation Defenses.

The defendant, (DEFENDANT'S NAME), is charged with Aggravated Murder. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (DEFENDANT'S NAME);
2. Intentionally or knowingly;
3. Caused the death of (VICTIM'S NAME);
4. Under one or more of the following circumstances: [Insert All Applicable Aggravating Circumstances]; and
5. The defense of [perfect self-defense][defense-of-others][defense-of-habitation][mental illness (76-2-305)] does not apply.

After you carefully consider all the evidence in this case, 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. On the other hand, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY of Aggravated Murder.

If you find the defendant guilty, you must then decide whether the mitigation defense[s] of [imperfect self-defense][extreme emotional distress special mitigation][mental illness special mitigation][battered person mitigation] applies.

[Imperfect self-defense is defined in Instruction [#].]

[Extreme emotional distress special mitigation is defined in Instruction [#].]

[Mental illness special mitigation is defined in Instruction [#].]

[Battered person mitigation is defined in Instruction [#].]

Committee Notes

If the date and/or location of a crime is an element of the offense, those can be included within the list of elements. In some circumstances, identifying the specific counts might assist the jury in sorting through offenses with overlapping elements. In those circumstances, the specific count to which the instruction applies should be identified in the first paragraph.

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- Use the “Special Verdict Imperfect Self-Defense” special verdict form;
- Do not include “imperfect self-defense” or any mitigation defense as a defense in element #5 above;
- Do not use an “imperfect self-defense manslaughter” elements instruction; and
- Always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions.

“Imperfect Self-defense” mitigation is only applicable to aggravated murder, murder, attempted aggravated murder, or attempted murder charges.

“Extreme Emotional Distress” mitigation is only applicable when the defendant causes the death of another or attempts to cause the death of another.

“Battered Person” mitigation is applicable to any offense between cohabitants.

Mental Illness can be both a defense and mitigation:

- Under Utah Code 76-2-305 it is a complete defense if it negates the mental state, except for homicide or attempted homicide;
- Under Utah Code 76-5-205.5 it is a special mitigation when the defendant causes the death of another or attempts to cause the death of another, and will reduce the level of the offense; and
- Under Utah Code 77-16a-102 it can be the basis for a finding of guilty with a mental illness at the time of the offense, which does not reduce the offense but changes sentencing requirements and is a necessary finding by the trier of fact.

Approved 08/04/2021

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Judge McCullagh seconded the motion. The committee voted unanimously in support of the motion. The motion passed. Staff will wait to publish the approved instruction until the remaining proposed instructions are reviewed and approved by the committee.

After the committee reviewed and discussed CR1403B, Ms. Bowen made a motion to approve proposed CR1403B, as follows:

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CR1403B Aggravated Murder Elements – Utah Code § 76-5-202(2) with Mitigation Defenses.

The defendant, (DEFENDANT'S NAME), is charged with Aggravated Murder. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (DEFENDANT'S NAME);
2. With reckless indifference to human life;
3. Caused the death of (VICTIM'S NAME); and
4. That the defendant did so incident to an act, scheme, course of conduct, or criminal episode during which (he)(she) was a major participant in the commission or attempted commission of: [Insert All Applicable Predicate Felonies];and]
5. The defense of [perfect self-defense][defense-of-others][defense-of-habitation][mental illness (76-2-305)] does not apply.]

After you carefully consider all the evidence in this case, 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. On the other hand, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY of Aggravated Murder.

If you find the defendant guilty, you must then decide whether the mitigation defense[s] of [imperfect self-defense][extreme emotional distress special mitigation][mental illness special mitigation][battered person mitigation] applies.

- [Imperfect self-defense is defined in Instruction [#].]
- [Extreme emotional distress special mitigation is defined in Instruction [#].]
- [Mental illness special mitigation is defined in Instruction [#].]
- [Battered person mitigation is defined in Instruction [#].]

Committee Notes

If the date and/or location of a crime is an element of the offense, those can be included within the list of elements. In some circumstances, identifying the specific counts might assist the jury in sorting through offenses with overlapping elements. In those circumstances, the specific count to which the instruction applies should be identified in the first paragraph.

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- Use the “Special Verdict Imperfect Self-Defense” special verdict form or special verdict forms for other applicable mitigation defenses;
- Do not include “imperfect self-defense” or any mitigation defense as a defense in element #5 above;
- Do not use an “imperfect self-defense manslaughter” elements instruction; and
- Always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions.

“Imperfect Self-defense” mitigation is only applicable to aggravated murder, murder, attempted aggravated murder, or attempted murder charges.

“Extreme Emotional Distress” mitigation is only applicable when the defendant causes the death of another or attempts to cause the death of another.

“Battered Person” mitigation is applicable to any offense between cohabitants.

Mental Illness can be both a defense and mitigation:

- Under Utah Code 76-2-305 it is a complete defense if it negates the mental state, except for homicide or attempted homicide;
- Under Utah Code 76-5-205.5 it is a special mitigation when the defendant causes the death of another or attempts to cause the death of another, and will reduce the level of the offense; and
- Under Utah Code 77-16a-102 it can be the basis for a finding of guilty with a mental illness at the time of the offense, which does not reduce the offense but changes sentencing requirements and is a necessary finding by the trier of fact.

Approved 08/04/2021

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Ms. Nelson seconded the motion. The committee voted unanimously in support of the motion. The motion passed. Staff will wait to publish the approved instruction until the remaining proposed instructions are reviewed and approved by the committee.

CR1404 Aggravated Murder Elements when Extreme Emotional Distress is at Issue

The committee next turned its attention to CR1404. The subcommittee that prepared the instructions that were discussed at the meeting recommended that CR1404 be removed from the MUJI instructions. The approach used in CR1404 (including the mitigation in the elements instruction) has been replaced by the approach adopted in CR1402B and CR1403B (keeping mitigation out of the elements instruction, and instead handling mitigation using special verdict forms).

The committee reviewed and discussed this recommendation. After discussion, the committee agreed that CR1404 is no longer needed.

Ms. Johnson made a motion to remove CR1404 from the MUJI instructions. Mr. Young seconded the motion. The committee voted unanimously in support of the motion. The motion passed. Staff will wait to publish the approved instruction until the remaining proposed instructions are reviewed and approved by the committee.

CR1411A Murder

Judge Blanch turned the committee's attention to CR1411A. Ms. Johnson explained that the approach taken here is the same as was taken with CR1402A and CR1403A (adding the same language to the committee note). Ms. Johnson also realized that element #3 of the body of the instruction should be modified to be consistent with element #5 in CR1402B and CR1403B. She also noted that the bullet point in the committee note that starts "Add the following paragraph at the bottom of this elements instruction:" followed by quote language should be removed from the committee note since that language has now been incorporated into CR1411B.

As part of the discussion, the committee made further revisions to the committee note language that has been added to all of these instruction, refining the language that describes what specific offenses are relevant for each type of mitigation. The committee instructed staff to propagate these same revisions to the other previously-approved instructions.

After further review and discussion, Mr. Field made a motion to approve proposed CR1403B, as follows:

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CR1411A 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 causes 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;
 - ii. (VICTIM'S NAME) was not a party to [the predicate offense(s)]; and
 - ii. (DEFENDANT'S NAME) acted with the intent required as an element of [the predicate offense(s)]; 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 [perfect self-defense][defense-of-others][defense-of-habitation][mental illness (76-2-305)] does not apply. 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, do not use CR1411A, but instead use CR1411B:

- ~~• In addition to other applicable imperfect self-defense instructions, use CR1451 (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 _____.”~~

“Imperfect Self-defense” mitigation is only applicable to aggravated murder, murder, attempted aggravated murder, or attempted murder charges.

“Extreme Emotional Distress” mitigation is only applicable when the defendant causes the death of another or attempts to cause the death of another.

“Battered Person” mitigation is applicable to any offense between cohabitants.

Mental Illness can be both a defense and mitigation:

- Under Utah Code 76-2-305 it is a complete defense if it negates the mental state, except for homicide or attempted homicide;
- Under Utah Code 76-5-205.5 it is a special mitigation when the defendant causes the death of another or attempts to cause the death of another, and will reduce the level of the offense; and
- Under Utah Code 77-16a-102 it can be the basis for a finding of guilty with a mental illness at the time of the offense, which does not reduce the offense but changes sentencing requirements and is a necessary finding by the trier of fact.

Amended Dates:

04/03/2019; 09/02/2020; 08/04/2021

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Judge McCullagh seconded the motion. The committee voted unanimously in support of the motion. The motion passed. Staff will wait to publish the approved instruction until the remaining proposed instructions are reviewed and approved by the committee.

CR1411B Murder with Mitigation Defenses

The committee then focused on CR1411B. Ms. Johnson explained that this proposed new instruction is consistent with the approach taken with CR1402B and CR1403B, with similar changes to the body of the instruction and the addition of the new committee notes.

After review and discussion, Ms. Johnson made a motion to approve proposed CR1411B, as follows:

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CR1411B MURDER with Mitigation Defenses

(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 causes 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;
 - ii. (VICTIM’S NAME) was not a party to [the predicate offense(s)]; and
 - ii. (DEFENDANT’S NAME) acted with the intent required as an element of [the predicate offense(s)]; 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 [perfect self-defense][defense-of-others][defense-of-habitation][mental illness (76-2-305)] does not apply.]

After you carefully consider all the evidence in this case, 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. On the other hand, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY of Murder.

If you find the defendant guilty, you must then decide whether the mitigation defense[s] of [imperfect self-defense][extreme emotional distress special mitigation][mental illness special mitigation][battered person mitigation] applies.

[Imperfect self-defense is defined in Instruction [#].]

[Extreme emotional distress special mitigation is defined in Instruction [#].]

[Mental illness special mitigation is defined in Instruction [#].]

[Battered person mitigation is defined in Instruction [#].]

Committee Note

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- Use the “Special Verdict Imperfect Self-Defense” special verdict form or special verdict forms for other applicable mitigation defenses;
- Do not include “imperfect self-defense” or any mitigation defense as a defense in element #3 above;
- Do not use an “imperfect self-defense manslaughter” elements instruction; and
- Always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions.

“Imperfect Self-defense” mitigation is only applicable to aggravated murder, murder, attempted aggravated murder, or attempted murder charges.

“Extreme Emotional Distress” mitigation is only applicable when the defendant causes the death of another or attempts to cause the death of another.

“Battered Person” mitigation is applicable to any offense between cohabitants.

Mental Illness can be both a defense and mitigation:

- Under Utah Code 76-2-305 it is a complete defense if it negates the mental state, except for homicide or attempted homicide;
- Under Utah Code 76-5-205.5 it is a special mitigation when the defendant causes the death of another or attempts to cause the death of another, and will reduce the level of the offense; and
- Under Utah Code 77-16a-102 it can be the basis for a finding of guilty with a mental illness at the time of the offense, which does not reduce the offense but changes sentencing requirements and is a necessary finding by the trier of fact.

Approved 08/04/2021

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Judge McCullagh seconded the motion. The committee voted unanimously in support of the motion. The motion passed. Staff will wait to publish the approved instruction until the remaining proposed instructions are reviewed and approved by the committee.

(4) PUBLIC COMMENT REVIEW – HOMICIDE INSTRUCTIONS:

The committee did not address this item during the meeting. Consideration of what remains at issue for this agenda item hinges on how pending matters related to Item #3 above are resolved. The committee will address this at a future meeting.

(5) ADJOURN

The meeting adjourned at approximately 1:30 p.m. The next meeting will be held on September 1, 2021, starting at 12:00 noon via Webex.