

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

Via Webex
February 1st, 2023 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Blanch
	Partial Defense (continued) - Complete packet - CR1451, CR510-540		Tab 2	Judge Blanch/Jeff Mann
	Self-Represented Parties and Standby Counsel			Judge Blanch Judge Jones
1:30	Adjourn			

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

UPCOMING MEETING SCHEDULE:

Meetings are held via Webex on the first Wednesday of each month from 12:00 noon to 1:30 p.m. (unless otherwise specifically noted):

March 1, 2023
April 5, 2023
May 3, 2023
June 7, 2023

July 5, 2023
August 2, 2023
September 6, 2023
October 4, 2023

November 1, 2023
December 6, 2023

TAB 1

Meeting Minutes – January 4th, 2023

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

Via Webex
January 4th, 2023 – 12:00 p.m. to 1:30 p.m.

DRAFT

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. James Blanch	District Court Judge [Chair]	•		None
Hon. Brendan McCullagh	Justice Court Judge	•		
Sandi Johnson	Prosecutor	•		STAFF:
Jennifer Andrus	Linguist/Communications Professor		•	Bryson King
Hon. Linda Jones	Emeritus District Court Judge	•		
Hon. Teresa Welch	District Court Judge	•		
Sharla Dunroe	Defense Attorney		•	
Janet Lawrence	Defense Attorney	•		
Jeffrey Mann	Prosecutor	•		
Richard Pehrson	Prosecutor	•		
Dustin Parmley	Defense Attorney	•		
Freyja Johnson	Defense Attorney	•		
Brian Williams	Prosecutor	•		

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee to the meeting. The committee reviewed December 7th, 2022 meeting minutes. Richard Pehrson moved to approve the minutes. Judge McCullagh seconded that motion. With no objection, the motion passes and the minutes are approved.

(2) AGENDA ITEM 2: AVOIDING BIAS INSTRUCTION

Judge Blanch informed the committee that after meeting with the Judicial Council, a member of the Council asked whether the MUJI Criminal Committee had considered taking on a project for “avoiding bias,” given that the MUJI Civil Committee had already done so. Various members of the committee expressed objection to taking on the project, largely centered on the point that our instructions already cover guidance on bias during deliberations. Committee members also shared their experiences using the instructions to inform jurors about bias in particular cases and using the voir dire process to prevent empaneling biased jurors. Judge Blanch asked whether anyone was in favor of adopting a more detailed “avoiding bias” instruction. No committee member voted in favor of that proposal. Judge McCullagh and Judge Blanch proposed an amendment to instruction 202 that would give more direction to jurors on implicit and unconscious bias by adding the language. Sandi Johnson objected to the proposal, arguing it would not add value to deliberations and would be unlikely to cause a juror to reflect on their implicit bias and proposed an alternative amendment to the language in the

instruction. With the incorporated amendments, Dustin Parmley moved to amend CR202, and Judge McCullagh seconded the motion. No members opposed the motion. The motion passes and CR202 will be amended.

(3) AGENDA ITEM 3: IMPERFECT SELF-DEFENSE INSTRUCTION

Jeff Mann leads the discussion on imperfect self-defense and reviews the amendments to the instruction with the committee members. Sandi Johnson proposed changing language about reduction of the level of offense to language about changing the offense, given the recent statutory changes. Sandi also proposed a change to the special verdict form to create a selection box for the jurors to use to say we are unable to reach a unanimous agreement on whether the State has failed to prove that the defense of imperfect self-defense does not apply. After some discussion, the committee decides to incorporate “Has” and “Has Not” check boxes and incorporate language about whether the jury finds that the State proved beyond a reasonable doubt that the defense of imperfect self-defense does not apply. Brian Williams then moved to approve the changes to the imperfect self-defense instructions and special verdict form and Judge McCullagh seconded the motion. No members opposed the motion. The motion passes. The committee then turned its attention to discussing the subjective-objective standard in the instruction and using language to represent whether the defendant’s belief was reasonable and their conduct was proportionate.

(4) ADJOURN

The meeting adjourned at approximately 1:30 p.m. The next meeting will be held on February 1st, 2023, starting at 12:00 noon.

TAB 2

Partial Defenses, Cont'd – CR1451 and CR 510-540

NOTES:

On January 4th, 2023, the committee voted to approve changes to the imperfect self-defense instruction and special verdict form. The complete packet on partial defenses is now presented to the committee for final review and approval.

CR1451: Explanation of Perfect and Imperfect Self-Defense as Defenses.

Defense of Self or Other is also sometimes called *perfect* self-defense because it is a complete defense to [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder] [Manslaughter]. As explained, perfect self-defense applies when a defendant is justified in using force against another person when and to the extent that the defendant reasonably believes that force is necessary to defend [himself] [herself], or a third party, against another person's imminent use of unlawful force.

Another form of self-defense is called *imperfect* self-defense because it is only a partial defense not a complete defense to [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder]. Imperfect self-defense changes the offense to [Murder] [Attempted Murder] [Manslaughter] [Attempted Manslaughter]. Imperfect self-defense applies when the defendant [caused the death][attempted to cause the death] of another when [he/she] reasonably, but mistakenly, believed that the circumstances provided a legal justification or excuse for the use of deadly force. In other words, although the defendant reasonably believed that he was justified in using deadly force, the use of deadly force as not actually legally justified under the circumstances.

The defendant is not required to prove that either perfect or imperfect self-defense applies. Rather, the State must prove beyond a reasonable doubt that perfect and imperfect self-defense do not apply.

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 [#].

If you find the defendant guilty of [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder], you must also consider imperfect self-defense. Your decision regarding imperfect self-defense will be reflected in the special verdict form titled "Special Verdict Form Imperfect Self-Defense."

References

Utah Code Ann. § 76-5-202(4)

Utah Code Ann. § 76-5-203(4)

Utah Code Ann. § 76-2-402

State v. Silva, 2019 UT 36, 456 P.3d 718

State v. Low, 2008 UT 58, 192 P.3d 867

State v. Spillers, 2007 UT 13, 152 P.3d 315

State v. Lee, 2014 UT App 4, 318 P.3d 1164

Committee Notes

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable self-defense instructions (*see* CR510 through CR540), use CR1451;
- Use the “Special Verdict Imperfect Self-Defense” special verdict form;
- Do not include “imperfect self-defense” as a defense in the elements instruction;
- Imperfect self-defense does not apply to manslaughter;
- Always distinguish between perfect and imperfect self-defense throughout the instructions; and
- Add the following paragraph at the bottom of the aggravated murder, attempted aggravated murder, murder, or attempted murder elements instruction

If you find Defendant GUILTY beyond a reasonable doubt of [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted 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 Instruction ____.

In the rare circumstance where imperfect self-defense is available but perfect self-defense is not available, practitioners will have to modify this instruction as appropriate. For example, practitioners should include CR510 through CR540, as applicable, because the jury will have to understand basic principles of perfect self-defense in order to understand imperfect self-defense. The imperfect self-defense instruction should clearly state that even though the jury should not consider perfect self-defense, it must still consider imperfect self-defense.

SVF ### Special Verdict Form Imperfect Self-Defense

[LOCATION] JUDICIAL DISTRICT COURT, [_____] DEPARTMENT
IN AND FOR [COUNTY] COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-vs-

[DEFENDANT'S NAME],

Defendant.

**SPECIAL VERDICT FORM
IMPERFECT SELF-DEFENSE**

Count [#]

Case No. [**]

Having found [DEFENDANT'S NAME], guilty beyond a reasonable doubt of [CRIME], as charged in Count [#],

Check ONLY ONE of the following boxes:

We unanimously find that the State:

HAS

HAS NOT

proved beyond a reasonable doubt that the defense of imperfect self-defense DOES NOT apply.

DATED this _____ day of [Month], 20[**].

Foreperson

CR510 Defense of Habitation, Self or Others, Property – Reasonableness.

Reasonableness shall be determined from the viewpoint of a reasonable person under the then-existing circumstances.

References

Utah Code § 76-2-103
Utah Code § 76-2-402
Utah Code § 76-2-405
Utah Code § 76-2-406
Utah Code § 76-2-407

Committee Notes

This instruction should be used with CR520, CR521, CR522, and CR523.

Amended Dates:

03/07/2018

CR520 Definition of Habitation.

The defense of Defense of Habitation is not limited to a habitation the defendant owns. The defense may apply to whatever place the defendant may be occupying peacefully as a substitute home or habitation, including but not limited to a hotel, motel, or where the defendant is a guest in another person's home.

References

Utah Code § 76-2-405
State v. Mitcheson, 560 P.2d 1120 (Utah 1977)

Committee Notes

This instruction should be used with CR521, CR522, CR523, and CR510.

Amended Dates:

02/07/2018

CR521 Defense of Habitation.

You must decide whether the defense of Defense of Habitation applies in this case.

Under that defense, the defendant is justified in using force against another when and to the extent the defendant reasonably believes that force is necessary to:

1. Prevent the other person's unlawful entry into the habitation; or
2. Terminate the other person's unlawful entry into the habitation; or
3. Prevent the other person's attack upon the habitation; or
4. Terminate the other person's attack upon the habitation.

The defendant is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:

1. The other person's entry is made or attempted in a violent and tumultuous manner, surreptitiously, or by stealth, and the defendant reasonably believes:
 - a. that the other person's entry is attempted or made for the purpose of assaulting or threatening personal violence to any person, dwelling, or being in the habitation; and
 - b. that the force is necessary to prevent an assault or threat of personal violence;

OR

2. The defendant reasonably believes:
 - a. that the other person's entry is made or attempted for the purpose of committing a felony in the habitation; and
 - b. that the force is necessary to prevent the commission of the felony.

References

Utah Code § 76-2-405
State v. Karr, 364 P.3d 49 (Utah App. 2015)
State v. Walker, 391 P.3d 380 (Utah App. 2017)
State v. Mitcheson, 560 P.2d 1120 (Utah 1977)
State v. Moritzsky, 771 P.2d 688 (Utah App. 1989)
State v. Patrick, 217 P.3d 1150 (Utah App. 2009)

Committee Notes

This instruction should be used with CR520, CR522, CR523, and CR510.

Amended Dates:

02/07/2018

CR522 Defense of Habitation – Presumption.

The person using force or deadly force in defense of habitation is presumed to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the entry or attempted entry:

1. is unlawful; and
2. is made or attempted:
 - a. by use of force or in a violent and tumultuous manner; or
 - b. surreptitiously or by stealth; or
 - c. for the purpose of committing a felony.

The prosecution may defeat the presumption by proving beyond a reasonable doubt that the entry was 1) lawful or 2) not made or attempted by use of force, or in a violent and tumultuous manner; or surreptitiously or by stealth; or for the purpose of committing a felony. The prosecution may also rebut the presumption by proving beyond a reasonable doubt that in fact the defendant's beliefs and actions were not reasonable.

References

Utah Code § 76-2-405
State v. Karr, 364 P.3d 49 (Utah App. 2015)
State v. Walker, 391 P.3d 380 (Utah App. 2017)
State v. Mitcheson, 560 P.2d 1120 (Utah 1977)
State v. Moritzsky, 771 P.2d 688 (Utah App. 1989)
State v. Patrick, 217 P.3d 1150 (Utah App. 2009)

Committee Notes

This instruction should be used with CR520, CR521, CR523, and CR510.

Amended Dates:

02/07/2018 09/02/2020

CR523 Defense of Habitation – Prosecutor's Burden.

The defendant carries no burden to prove the defense of Defense of Habitation. In other words, the defendant is not required to prove [he/she] was justified in using force or force likely to cause death or serious bodily injury. Rather, the prosecution must prove beyond a reasonable doubt that the defendant was not justified in using force or force likely to cause death or serious bodily injury. The prosecution carries the burden of proof beyond a reasonable doubt. If the prosecution has not carried this burden, then you must find the defendant not guilty.

References

Utah Code § 76-2-405
State v. Karr, 364 P.3d 49 (Utah App. 2015)
State v. Walker, 391 P.3d 380 (Utah App. 2017)
State v. Mitcheson, 560 P.2d 1120 (Utah 1977)

State v. Moritzsky, 771 P.2d 688 (Utah App. 1989)
State v. Patrick, 217 P.3d 1150 (Utah App. 2009)

Committee Notes

This instruction should be used with CR520, CR521, CR522, and CR510.

Amended Dates:

02/07/2018

CR530 Defense of Self or Other.

You must decide whether the defense of Defense of Self or Other applies in this case. Under that defense, the defendant is justified in using force against another person when and to the extent that the defendant reasonably believes that force is necessary to defend [himself] [herself], or a third party, against another person's imminent use of unlawful force.

The defendant is justified in using force intended or likely to cause death or serious bodily injury only if the defendant reasonably believes that:

1. Force is necessary to prevent death or serious bodily injury to the defendant or a third person as a result of another person's imminent use of unlawful force; or
2. To prevent the commission of [Forcible Felony], the elements of which can be found under jury instruction [_____].

The defendant is not justified in using force if the defendant:

1. Initially provokes the use of force against another person with the intent to use force as an excuse to inflict bodily harm upon the assailant;
2. Is attempting to commit, committing, or fleeing after the commission or attempted commission of [Felony], the elements of which can be found under jury instruction [_____]; or
3. Was the aggressor or was engaged in a combat by agreement, unless the defendant withdraws from the encounter and effectively communicates to the other person the defendant's intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force.

The following do not, by themselves, constitute "combat by agreement":

1. Voluntarily entering into or remaining in an ongoing relationship; or
2. Entering or remaining in a place where one has a legal right to be.

References

Utah Code § 76-2-402(1) and (5)

Committee Notes

Under circumstances where the use of force is a reasonable response to factors unrelated to the commission, attempted commission, or fleeing after the commission of that felony, the parties should consider modifying the language in subsection 2 regarding when the defendant is "not justified" in using force, to reflect Utah Code §76-2-402(2)(a)(ii).

Amended Dates:

03/07/2018 (instruction approved)

12/05/2018 (committee note approved)

09/02/2020

CR531 Defense of Self or Other – Imminence.

In determining imminence or reasonableness you may consider any of the following factors:

1. the nature of the danger;
2. the immediacy of the danger;
3. the probability that the unlawful force would result in death or serious bodily injury;

4. the other's prior violent acts or violent propensities;
5. any patterns of abuse or violence in the parties' relationship; or
6. any other relevant factor.

References

Utah Code § 76-2-402(1) and (5)

Amended Dates:

Approved: 03/07/2018

CR532 Defense of Self or Other – Prosecution's Burden.

A defendant carries no burden to prove the defense of Defense of Self or Others. In other words, a defendant is not required to prove [he/she] was justified in using [force] [or] [force likely to cause death or serious bodily injury]. Rather, the prosecution must prove beyond a reasonable doubt that the defendant was not justified in using [force] [or] [force likely to cause death or serious bodily injury]. If the prosecution has not met this burden, then you must find the defendant not guilty.

References

Utah Code § 76-2-402

Amended Dates:

Approved: 04/04/2018

CR533 Defense of Self or Other – No Duty to Retreat.

A defendant does not have a duty to retreat from another person's use or threatened use of unlawful force before using force to defend [himself/herself] or a third party as long as the defendant is in a place where [he/she] has lawfully entered or remained.

However, if the defendant was the aggressor or was engaged in combat by agreement, the defendant must withdraw from the encounter and effectively communicate to the other person [his/her] intent to do so. If the other person nevertheless continues or threatens to continue the use of unlawful force, the defendant no longer has the duty to retreat.

References

Utah Code § 76-2-402(4)

Amended Dates:

Approved: 04/04/2018

CR540 Use of Force in Defense of Property.

A defendant is justified in using force, other than deadly force, against another person to defend real or personal property when and to the extent [he][she] reasonably believes the force is necessary to prevent or terminate the other person's criminal interference with real or personal property.

The property must have been:

- lawfully in the defendant's possession; or
- lawfully in the possession of a member of the defendant's immediate family; or
- belonging to a person whose property the defendant has a legal duty to protect.

In determining reasonableness, you must consider:

- the apparent or perceived extent of the damage to the property;
- property damage previously caused by the other person;
- threats of personal injury or damage to property that have been made previously by the other person;
- any patterns of abuse or violence between the defendant and the other person; and
- any other relevant factor.

References

Utah Code § 76-2-406

Amended Dates:

Approved: 04/04/2018