

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

Via Webex
January 5, 2022 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Blanch
	Jury Unanimity Instructions		Tab 2	Judge Blanch Judge McCullagh
	Update on Criminal Recodification Effect on CR1402B, CR1403B, and CR1411B			Mr. Mann Mr. Pehrson
	Agg. Murder with Mitigation (CR1402B, CR1403B, and CR1411B)		Tab 3	Committee
	Partial defense instructions		Tab 4	Committee
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):

February 2, 2022
March 2, 2022
April 6, 2022
May 4, 2022

June 1, 2022
July 6, 2022
August 3, 2022
September 7, 2022

October 5, 2022
November 2, 2022
December 7, 2022

TAB 1

Minutes – December 1, 2021 Meeting

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

Via Webex
 December 1, 2021 – 12:00 p.m. to 1:30 p.m.
DRAFT

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. James Blanch	District Court Judge [Chair]	•		None
Jennifer Andrus	Linguist / Communications		•	
Sharla Dunroe	Defense Counsel	•		
Sandi Johnson	Prosecutor		•	
Janet Lawrence	Defense Counsel	•		
Elise Lockwood	Defense Counsel		•	
Jeffrey Mann	Prosecutor	•		
Hon. Brendan McCullagh	Justice Court Judge	•		
Debra Nelson	Defense Counsel	•		
Stephen Nelson	Prosecutor		•	
Richard Pehrson	Prosecutor	•		
Hon. Teresa Welch	District Court Judge	•		
<i>vacant</i>	Criminal Law Professor	---	---	
Hon. Linda Jones	<i>Emeritus</i>	•		

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee to the meeting.

The committee considered the minutes from the November 3, 2021 meeting.

Mr. Pehrson moved to approve the draft minutes; Judge Welch seconded the motion.

The committee voted unanimously in support of the motion. The motion passed.

(2) COURT OF APPEALS INVITATION: A SPECIFIC JURY UNANIMITY INSTRUCTION

Judge Blanch turned the committee's attention to the court of appeals' invitation in *State v. Paule*, 2021 UT App 120 to explore creation of a specific jury unanimity instruction. Judge Blanch reminded the committee that this had been a topic of significant committee inquiry in the last year. Judge Blanch reviewed with the committee an overview of recent appellate opinions that have addressed jury unanimity, including: *State v. Alires*, 2019 UT App 206; *State v. Mendoza*, 2021 UT App 79; and *State v. Paule*, 2021 UT App 120. In Judge Blanch's view, three possible solutions exist to the unanimity issues raised in these cases: a) instructing the jury generally regarding the specific jury unanimity requirement; b) relying on the prosecuting attorney to argue to the jury which specific acts relate to which specific count(s); or c) ensuring that elements instructions are specifically tailored to a particular act, clearly identifying date / location / other relevant factual detail(s) to orient the jurors to the connection between each count and the specific alleged criminal offense.

The committee then turned its attention to the proposed draft provide in the meeting materials (see page 9 of the meeting materials). Judge Jones pointed out that each of the two paragraphs are possible alternatives to an instruction. The committee reviewed the language of each paragraph and discussed issues in the proposed language. After initial discussion, the committee agreed that the second paragraph is the preferable starting point and that the first paragraph should not be pursued.

The committee discussed revisions to the second paragraph / alternative. Mr. Mann and Judge McCullagh each noted there is a need for two types of unanimity instruction: a single offense that has multiple alternatives (later identified as a *Mendoza*-type instruction) AND multiple offenses / multiple acts (often at different times) with multiple alternatives (later identified an *Aires*-type instruction). Judge McCullagh offered to create the *Aires*-type instruction for the next meeting, and suggested that the committee focus its efforts today on the *Mendoza*-type instruction, using the second paragraph / alternative as a starting point. The committee revised the language in the second alternative / *Mendoza*-type instruction. Judge McCullagh proposed that this instruction remain as generic as possible without actually listing the alternative ways to commit the offense in the instruction. Ms. Lawrence noted that there is another case relevant in this context: *State v. Covington*, 2020 UT App 110. Judge Welch noted that regardless of which instruction is used, the committee should include cautionary language in a committee note, describing some of the limitations inherent in this instruction because of case law; although the instruction might be a good starting point, it will need to be adjusted on a case-by-case basis to adequately address the factually unique circumstances of each case.

Judge Blanch will make further refinements to the *Aires*-type instruction and Judge McCullagh will prepare a draft *Mendoza*-type instruction in advance of the next meeting. Mr. Drechsel will send Judge Blanch and Judge McCullagh the revised materials from today's meeting as the launch points for their respective efforts.

(3) CONTINUED CONSIDERATION OF CR1402B, CR1403B, AND CR1411B REVISIONS IN LIGHT OF PROPOSED CRIMINAL RECODIFICATION:

Judge Blanch turned the time over to Mr. Mann to explain his proposed language for CR1402B, CR1403B, and CR1411B. Mr. Mann reiterated his concern that these instructions (particularly the last line of the paragraph after the elements, and the first line of the following paragraph where the language tells the jury that it must "find the Defendant guilty") is misleading considering the additional burden on the state to disprove imperfect self-defense. Mr. Mann noted that he had made some investigation about the effect of the forthcoming criminal recodification which includes revisions to the criminal code sections regarding extreme emotional distress, but doesn't currently propose any change to the imperfect self-defense statutes. Mr. Drechsel proposed that Mr. Mann and Mr. Pehrson could reach out to Will Carlson (who is involved with the recodification effort) to explore the viability of making changes to the imperfect self-defense statute resulting in the charged offense not changing because of the application of the mitigation defense.

Mr. Mann had proposed some language (emailed to committee members as a memo in advance of the meeting) to address his concerns. The committee didn't review that proposed language in detail during the meeting, instead opting to get additional information about the possibility that the recodification could result in relevant changes that would impact the direction the committee takes these instructions. Mr. Mann, Mr. Pehrson, and Ms. Johnson (who wasn't present at the meeting today, but who had previously worked on this very issue) will meet with Mr. Carlson to discuss possible legislative changes and then report back to the committee.

(4) ADJOURN

The meeting adjourned at approximately 1:20 p.m. The next meeting will be held on January 5, 2022, starting at 12:00 noon.

TAB 2

Jury Unanimity Instructions

NOTES:

CR_____ Jury Unanimity.

The prosecution has charged that defendant committed [count 1] in more than one way. You may not find the defendant guilty of that offense unless you all agree that the prosecution has proved that the defendant committed the offense in at least one of the multiple ways AND you all agree on the specific way(s) in which the defendant committed the offense.

References

- State v. Saunders*, 1999 UT 59
- State v. Hummel*, 2017 UT 19
- State v. Alires*, 2019 UT App 206
- State v. Case*, 2020 UT App 81
- State v. Whytock*, 2020 UT App 107
- State v. Covington*, 2020 UT App 110
- State v. Mendoza*, 2021 UT App 79
- State v. Paule*, 2021 UT App 120

Committee Notes

Counsel and trial courts should consider the use of either instruction _____ or instruction _____ in certain cases to help eliminate confusion or ambiguity about whether the jury has reached a unanimous conclusion regarding a defendant's guilt or innocence. When appropriate, these instructions should be included in addition to the general unanimity principles contained within instructions CR216 and CR218.

Increasingly, Utah's appellate courts are identifying circumstances in which it is not clear, based on instructions given, that juries necessarily reached unanimous agreement as to all elements of a particular charged crime. Examples of such case law are set forth below. Instruction _____ is meant for use in circumstances in which the prosecution has alleged the defendant committed a particular crime in two or more alternative ways, such as asserting the defendant committed two or more acts that each would constitute a charged offense of obstruction of justice. See, e.g., *State v. Mendoza*, 2021 UT App 79. Instruction _____ is meant for use in circumstances in which the prosecution has alleged the defendant committed multiple crimes consisting of identical elements on separate occasions, such as asserting the defendant committed multiple acts constituting separate instances of aggravated sexual abuse of a child over a period of time. See, e.g., *State v. Alires*, 2019 UT App 206. In circumstances such as these, use of instruction _____ or instruction _____, in addition to the unanimity language in CR216 and CR218, should help reduce confusion or ambiguity over whether the jury has reached unanimous agreement as to whether the defendant committed a particular specific criminal act.

However, the Committee cautions counsel and trial courts against relying exclusively on these instructions to ensure it is clear a jury's verdict is unanimous. To remove ambiguity, it may also be advisable to amend the language of particular elements instructions and [special?] verdict forms to ensure it is clear which specific acts relate to which charged offenses. The appellate courts have further encouraged counsel to explain clearly to jurors in closing arguments which specific acts relate to which charged offenses. The Committee recommends to counsel and trial courts that they employ such approaches, in addition to use of the instructions described above, to ensure it is sufficiently clear that jury verdicts are unanimous.

INSTRUCTION NO. 70

AGGRAVATED SEXUAL ABUSE OF A CHILD

CARLOS LUCERO is charged in Count I with committing Aggravated Sexual Abuse of a Child (Hotel). You cannot convict him of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. CARLOS LUCERO;
2. Intentionally, knowingly, or recklessly touched A.V.'s vagina with his hand at a hotel;
and
3. Did so with the intent to arouse or gratify the sexual desire of any person; and
4. A.V. was under 14 years old at the time of the offense; and
5. You find that ~~at~~ the following aggravating circumstance applies:
 - a. CARLOS LUCERO was in a position of special trust in relation to A.V.

[Signature]
9/1/21

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.

INSTRUCTION NO. 31

AGGRAVATED SEXUAL ABUSE OF A CHILD

CARLOS LUCERO is charged in Count II with committing Aggravated Sexual Abuse of a Child (West Jordan house). You cannot convict him of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. CARLOS LUCERO;
2. Intentionally, knowingly, or recklessly caused A.V. to touch his penis with her hand at a house in West Jordan; and
3. Did so with the intent to arouse or gratify the sexual desire of any person; and
4. A.V. was under 14 years old at the time of the offense; and
5. You find that the following aggravating circumstance applies:
 - a. CARLOS LUCERO was in a position of special trust in relation to A.V.

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.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

FILED DISTRICT COURT
Third Judicial District
SALT LAKE COUNTY
SEP - 1 2021

STATE OF UTAH,

Plaintiff,

vs.

CARLOS ISRAEL LUCERO,

Defendant.

VERDICT

Case No. 191911468

Judge James T. Blanch

We, the jurors in the above case find the defendant, CARLOS ISRAEL LUCERO, as follows:

Count I: AGGRAVATED SEXUAL ABUSE OF A CHILD (Hotel)

Not Guilty
 Guilty

Count II: AGGRAVATED SEXUAL ABUSE OF A CHILD (West Jordan house)

Not Guilty
 Guilty

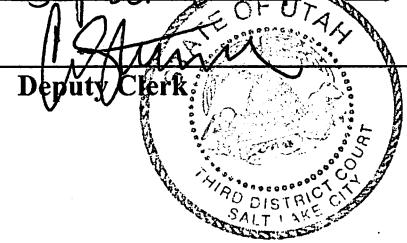
Count III: RAPE OF A CHILD

Not Guilty
 Guilty

Dated this 1st day of September, 2021.

 Foreperson

Filed September 1st, 2021

By 
Deputy Clerk



TAB 3

Agg. Murder with Mitigation (CR1402B, CR1403B, and CR1411B)

NOTES:

The final paragraphs of the minutes for the November 3, 2021 meeting describe where the committee's consideration of these instructions left off. The versions of CR1402B, CR1403B, and CR1411B are the most up-to-date version the committee has approved.

Mr. Mann also prepared possible revisions to these instructions in advance of the December 1, 2021 meeting. Those specific revisions were not discussed at that meeting. Mr. Mann's materials are included after the most recent drafts of CR1402B, CR1403B, and CR1411B.

WITH MITIGATION:

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

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

CR1411B Murder with Mitigation Defenses.

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] 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 that all of the elements of Aggravated Murder have been met defendant GUILTY of Aggravated Murder.

If you find the defendant guilty that all of the elements of Aggravated Murder have been met, 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

Elements

There is some uncertainty in the case law regarding a unanimity requirement as it relates to the aggravating circumstances in element 4. See *State v. Hummel*, 2017 UT 19. Therefore, if more than one aggravating circumstance applies in element 4, practitioners are encouraged to use a special verdict form requiring the jury to identify the aggravating circumstance(s) they unanimously find. See *State v. Mendoza*, 2021 UT App 79; *State v. Alires*, 2019 UT App 206; *State v. Saunders*, 1999 UT 59; *State v. Tillman*, 750 P.2d 546 (Utah 1987).

Mitigation

For mitigation defenses (imperfect self-defense mitigation, extreme emotional distress mitigation, battered person mitigation, or mental illness mitigation), the committee has prepared other definitional instructions and special verdict forms that should be used together with this elements instruction.

“Imperfect Self-defense” mitigation is potentially applicable to aggravated murder and attempted aggravated murder. 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 other 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.

“Extreme Emotional Distress” mitigation is potentially applicable to aggravated murder and attempted aggravated murder (Utah Code § 76-5-205.5; CR_____).

“Battered Person” mitigation is potentially applicable to offenses between cohabitants (Utah Code § 76-2-409; CR_____)

“Mental Illness”:

- is never a complete defense to aggravated murder or attempted aggravated murder (Utah Code § 76-2-305);
- can be a special mitigation, reducing the level of an aggravated murder or attempted aggravated murder offense (Utah Code § 76-5-205.5); and
- can be the basis for a finding of guilty with a mental illness at the time of the aggravated murder and attempted aggravated murder, which does not reduce the offense, but is a necessary finding by the trier of fact and changes sentencing requirements (Utah Code §§ 77-16a-102 and 77-16a-104).

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] 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

Elements

There is some uncertainty in the case law regarding a unanimity requirement as it relates to the predicate felony in element 4. See *State v. Hummel*, 2017 UT 19. Therefore, if more than one predicate felony applies in element 4, practitioners are encouraged to use a special verdict form requiring the jury to identify the predicate felony or felonies they unanimously find. See *State v. Mendoza*, 2021 UT App 79; *State v. Alires*, 2019 UT App 206; *State v. Saunders*, 1999 UT 59; *State v. Tillman*, 750 P.2d 546 (Utah 1987).

Mitigation

For mitigation defenses (imperfect self-defense mitigation, extreme emotional distress mitigation, battered person mitigation, or mental illness mitigation), the committee has prepared other definitional instructions and special verdict forms that should be used together with this elements instruction.

“Imperfect Self-defense” mitigation is potentially applicable to aggravated murder and attempted aggravated murder. 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 other 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.

“Extreme Emotional Distress” mitigation is potentially applicable to aggravated murder and attempted aggravated murder (Utah Code § 76-5-205.5; CR____).

“Battered Person” mitigation is potentially applicable to offenses between cohabitants (Utah Code § 76-2-409; CR____)

“Mental Illness”:

- is never a complete defense to aggravated murder or attempted aggravated murder (Utah Code § 76-2-305);
- can be a special mitigation, reducing the level of an aggravated murder or attempted aggravated murder offense (Utah Code § 76-5-205.5); and
- can be the basis for a finding of guilty with a mental illness at the time of the aggravated murder and attempted aggravated murder, which does not reduce the offense, but is a necessary finding by the trier of fact and changes sentencing requirements (Utah Code §§ 77-16a-102 and 77-16a-104).

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
iii. (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]; and]
3. [The defense of [perfect self-defense][defense-of-others][defense-of-habitation] 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 Notes

Elements

There is some uncertainty in the case law regarding a unanimity requirement as it relates to proving the alternatives in element 2. See *State v. Hummel*, 2017 UT 19. Therefore, if more than one alternative applies in element 2, practitioners are encouraged to use a special verdict form requiring the jury to identify the alternative(s) they unanimously find. See *State v. Mendoza*, 2021 UT App 79; *State v. Alires*, 2019 UT App 206; *State v. Saunders*, 1999 UT 59; *State v. Tillman*, 750 P.2d 546 (Utah 1987).

Mitigation

For mitigation defenses (imperfect self-defense mitigation, extreme emotional distress mitigation, battered person mitigation, or mental illness mitigation), the committee has prepared other definitional instructions and special verdict forms that should be used together with this elements instruction.

“Imperfect Self-defense” mitigation is potentially applicable to murder and attempted murder. 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 other 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.

“Extreme Emotional Distress” mitigation is potentially applicable to murder and attempted murder (Utah Code § 76-5-205.5; CR____).

“Battered Person” mitigation is potentially applicable to offenses between cohabitants (Utah Code § 76-2-409; CR____)

“Mental Illness”:

- is never a complete defense to murder or attempted murder (Utah Code § 76-2-305);

- can be a special mitigation, reducing the level of a murder or attempted murder offense (Utah Code § 76-5-205.5); and
- can be the basis for a finding of guilty with a mental illness at the time of the murder and attempted murder, which does not reduce the offense, but is a necessary finding by the trier of fact and changes sentencing requirements (Utah Code §§ 77-16a-102 and 77-16a-104).

MUJI Committee Meeting – December 1, 2021

Issue #1: Mitigation Elements Instruction.

The current elements instruction states that if the jury finds each element of the offense [agg murder, murder, etc.] it MUST find the defendant GUILTY. But when mitigation is at issue, the question of the defendant's guilty on the charged offense is not over until the jury has considered the mitigation defense. In my view, it is confusing (and perhaps misleading) to tell the jury it MUST find the defendant guilty before the jury has decided everything it must decide to find him guilty. The instruction should instead say that if it finds each element has been proven, it must then consider the mitigation defense. Below are two proposed wordings.

1. 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, 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, murder, etc.], unless you determine that the level of the offense should be reduced due to the mitigation defense[s] of [imperfect self-defense, extreme emotional distress, mental illness special mitigation, battered person mitigation]. This/these mitigation defense[s] are explained in instruction[s] _____.

2. 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, 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 also decide whether the mitigation defense[s] of [imperfect self-defense, extreme emotional distress, mental illness special mitigation, battered person mitigation] appl[y][ies] before you can find the defendant GUILTY of [aggravated murder, murder, etc]. This/these mitigation defense[s] is/are explained in instruction[s] _____.

Issue #2: Imperfect self-defense instruction.

In an effort to further avoid the confusing language about finding the defendant guilty of the charged offense and then considering imperfect self-defense, I propose a revision of the imperfect self-defense instruction and verdict form.

~~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]. 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.~~

Imperfect self-defense applies when the defendant caused the death or attempted to cause the death of another The effect of the defense is to reduce the level of the offense from [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder] to [Murder] [Attempted Murder] [Manslaughter] [Attempted Manslaughter].

Therefore, if you find that each and every element of [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder] has been proven beyond a reasonable doubt and that the State proved beyond a reasonable doubt that imperfect self-defense does not apply, then you must find the defendant GUILTY of

Commented [JM1]: If perfect self-defense is at issue, there will be a separate instruction explaining its elements and how it applies, which this paragraph does not. This instruction doesn't do anything but tell the jury either (1) a lesser version of a full instruction on perfect self-defense or (2) something it doesn't need to consider at all if perfect self-defense is not at issue. Get rid of it.

Commented [JM2]: Insert one of these specific statements of the law from the statute or case law.

"under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances." UCA 76-5-203(4)(a).

. . . when (he/she) "reasonably, but mistakenly, believes 'that the circumstances provided a legal justification or excuse' for the use of deadly force." *State v. Silva*, 2019 UT 36, ¶25, 456 P.3d 718 (quoting UCA 76-5-203(4)(a)).

. . . when (he/she) "reasonably but incorrectly believed that (his/her) actions were legally justifiable" or excusable. *State v. Lee*, 2014 UT App 4, ¶38 (Voros, J., concurring).

Commented [JM3]: The supreme court has stated that "a correct instruction" for imperfect self-defense on a charge of attempted murder "would have informed the jury that if Garcia acted in imperfect self-defense, he could be convicted of attempted manslaughter. If the jury were to find that imperfect self-defense did not apply, Garcia could be guilty of attempted murder." *State v. Garcia*, 2017 UT 53, ¶23, n.5, 424 P.3d 171. Here, I have added language explaining to the jury what the reduced offense is. This will also be helpful for my proposed change in the verdict form below.

[Aggravated Murder] [Attempted Aggravated Murder] [Murder]
[Attempted Murder].

On the other hand, if you find that each and every element of
[Aggravated Murder] [Attempted Aggravated Murder] [Murder]
[Attempted Murder] has been proven beyond a reasonable doubt but
that the State DID NOT prove beyond a reasonable doubt that
imperfect self-defense does not apply, then you must find the
defendant GUILTY of the reduced offense of [Murder] [Attempted
Murder] [Manslaughter] [Attempted Manslaughter].

Your decision will be reflected in the special verdict form titled
"Special Verdict Imperfect Self Defense."

Issue #3: Verdict form.

With the above changes, there is no need for a special verdict form. Instead, the regular verdict form can be used to explain that with imperfect self-defense, there are three options: (1) guilty of the charged offense, (2) guilty of the reduced offense, or (3) not guilty. Under my suggestion for the imperfect self-defense instruction, we have told the jury the effect of imperfect self-defense is to reduce one specific offense to another specific offense. This way the jury can enter a guilty verdict of the actual offense of conviction – original or reduced.

As to Count I, [Aggravated Murder] [Attempted Aggravated Murder]
[Murder] [Attempted Murder], we, the jury, find the defendant:

____Guilty of [Aggravated Murder] [Attempted Aggravated Murder]
[Murder] [Attempted Murder] because we unanimously find that the
State proved each and every element of [Aggravated Murder]
[Attempted Aggravated Murder] [Murder] [Attempted Murder]
beyond a reasonable doubt, and that the State proved beyond a
reasonable doubt that imperfect self-defense does not apply.

Commented [JM4]: If evidence of an affirmative defense is presented, "defendant is entitled to acquittal or, as in the case of imperfect self-defense, reduction of the charges 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.

If the jury is hung on imperfect self-defense, D gets the benefit of it and is convicted of only the lesser offense.

I don't know how to accurately explain to the jury that it need not be unanimous on the question of imperfect self-defense, but it can be.

____Guilty of the reduced offense of [Murder] [Attempted Murder]
[Manslaughter] [Attempted Manslaughter] because we unanimously
find that the State proved each and every element of [Aggravated
Murder] [Attempted Aggravated Murder] [Murder] [Attempted
Murder] beyond a reasonable doubt, but we do not unanimously find

Commented [JM5]: optional

that the State proved beyond a reasonable doubt that imperfect self-defense does not apply.

Commented [JM6]: optional

___Not guilty

If we still want a special verdict form, I suggest we simplify it to having a "Yes" and "No" box under a single heading.

We unanimously find that the State has proved beyond a reasonable doubt that the defense of imperfect self-defense does not apply.

- Yes
- No

TAB 4

Partial Defense Instructions (continued)

NOTES:

The materials that follow are a continuation of the specific work the committee addressed on May 5, 2021, and again on August 4, 2021. The following materials have not yet been discussed by the committee.

OVERVIEW

Mitigation Defenses:

- Imperfect self-defense
- Extreme emotional distress
- Battered person
- Mental Illness

For the mitigation defenses we have done the following:

- For aggravated murder and murder, we anticipate two elements instructions as templates: 1) elements instruction with no mitigation defenses; 2) elements instruction with mitigation defenses. The reason for this is that imperfect self-defense always gets inserted erroneously into the “defenses” element, so we are trying to make sure practitioners do not include it in the elements instruction.
- For all other crimes, we will have a generic template for when practitioners will have a mitigation defense
- There will be a roadmap instruction for when a mitigation defense is raised
- For each mitigation defense, we will have
 - definition/elements instructions
 - special verdict form

In Summary:

Completed at August 4, 2021 Meeting:

- ~~Modify CR1450 to add a note~~
- ~~Create new instruction CR505A for roadmap with mitigation defenses~~
- ~~Create new CR numbers for Aggravated Murder without mitigation defenses 1402A, 1403A~~
- ~~Create new elements instructions for Aggravated Murder with mitigation defenses 1402B, 1403B~~
- ~~Create new CR number for Murder without mitigation defenses 1411A~~
- ~~Create new elements instruction for Murder with mitigation defenses 1411B~~
- ~~Delete Murder with Extreme Emotional Distress in the elements 1404~~

Remaining Issues to Address:

- Modify current Imperfect Self-Defense instructions
- Need to add more imperfect self-defense instructions
- Added Mental Illness Special Mitigation Definitions/instructions
- Added Mental Illness Special Mitigation Special Verdict Form
- Added Battered Person Mitigation definitions/instructions
- Add elements template for any other crime involving mitigation defenses of Battered Person or a finding of Guilty but Mentally Ill
- Added Battered Person Special Verdict Form
- **Need to add Extreme Emotional Distress Special Mitigation Definitions/instructions**
- **Need to add Extreme Emotional Distress Special Mitigation Special Verdict Form**

CR1451 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 § 76-2-404
Utah Code § 76-5-203(4)	Utah Code § 76-2-405
Utah Code § 76-5-205	Utah Code § 76-2-407
Utah Code § 76-2-402	

Committee Notes

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” as a defense in the elements instruction;
- 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 the 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

CR1452 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 CR1451 (amended as appropriate);
- Use the specific Aggravated Murder or Murder elements instruction(s) in CR1402B, CR1403B, or CR1411B;
- Use the "SVF1450 Special Verdict Imperfect Self-Defense" special verdict form;
- Do not include "imperfect self-defense" as a defense in element #3 of the elements instruction 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 _____."

Use Special Verdict Form SVF1450 in connection with this instruction.

Last Revised – 04/03/2019

SVF 1450. 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 IMPERFECT SELF-DEFENSE Count (#) Case No. (**)
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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 that the State has proved beyond a reasonable doubt that the defense of imperfect self-defense DOES NOT apply.
- OR
- We do not unanimously find that the State has proved beyond a reasonable doubt 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

CR570 Battered Person Mitigation Defense

The battered person mitigation defense is a partial defense to Count [#] (CRIME). The battered person mitigation defense does not result in an acquittal, but instead is a mitigating circumstance.

The battered person mitigation defense is the only time the defendant has the burden of proof. For the battered person mitigation defense to apply, you must unanimously find the defendant has proved by clear and convincing evidence:

1. (VICTIM'S NAME) was a cohabitant of [DEFENDANT'S NAME];
2. (VICTIM'S NAME) engaged in a pattern of abuse against (DEFENDANT'S NAME) or another cohabitant; and
3. (DEFENDANT'S NAME) reasonably believed committing the crime was necessary to end the pattern of abuse.

To prove something by clear and convincing evidence, the defendant must present sufficient evidence to persuade you to the point that there remains no serious or substantial doubt as to the truth of the fact. Proof by clear and convincing evidence thus requires a greater degree of persuasion than proof by a preponderance of the evidence but less than proof beyond a reasonable doubt.

References

Utah Code § 76-2-409

Committee Note

Whenever the battered person mitigation defense is submitted to the jury,

- include CR570, the definitional instruction for the defense;
- provide roadmap instruction CR505A and include each count to which the defense may apply;
- use the elements instruction template in CR572 for every crime to which the defense applies;
- using SVF570, prepare a special verdict form for each count and offense to which the defense might apply;
- make sure the special verdict forms are labeled in the same way they are referenced in the roadmap instruction; and
- present the special verdict forms in the same manner provided by the roadmap instruction.

CR571 Definitions Applicable to Battered Person Mitigation Defense

“Cohabitant”^[MD1] means the (DEFENDANT’S NAME) and (VICTIM’S NAME) were 16 years of age or older, and at the time of the offense, (DEFENDANT’S NAME):

- [is or was a spouse of (VICTIM’S NAME);]
- [is or was living as if a spouse of (VICTIM’S NAME);]
- [is related to the other party as the person’s [parent][grandparent][child][aunt][uncle][niece][nephew];]
- [is a natural, adoptive, step, or foster sibling to the other party, provided at least one of the siblings is over 18 years of age;]
- [has or had one or more children in common with (VICTIM’S NAME);]
- [is the biological parent of (VICTIM’S NAME)’s unborn child;]
- [resides or has resided in the same residence as (VICTIM’S NAME);] or
- [is or was in a consensual sexual relationship with (VICTIM’S NAME)].

“Reside” means to dwell permanently or for a length of time; to have a settled abode for a time; to dwell permanently or continuously.

“Residence” is defined as “a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit.” It does not require an intention to make the place one’s home. It is possible that a person may have more than one residence at a time.

When determining whether (DEFENDANT’S NAME) and (VICTIM’S NAME) resided in the same residence, factors to consider include the following:

- the amount of time one spends at the shared abode and the amount of effort expended in its upkeep;
- whether a person is free to come and go as he pleases, treating the place as if it were his own home;
- whether there has been a sharing of living expenses or sharing of financial obligations for the maintenance of a household;
- whether there has been sexual contact evidencing a conjugal association;
- whether furniture or personal items have been moved into a purported residence;
- voting, owning property, paying taxes, having family in the area, maintaining a mailing address, being born or raised in the area, working or operating a business, and having children attend school in the forum.

In deciding whether (DEFENDANT’S NAME) and (VICTIM’S NAME) were residing in the same residence, you are not limited to the factors listed above, but you may also apply the common, ordinary meaning of the definition to all of the facts and circumstances of this case.

“Preponderance of the Evidence” means the fact is more likely to be true than not true.

References

Utah Code § 76-2-409

Committee Note

For purposes of the battered person mitigation defense, “abuse”^[MD2] and “cohabitант” are defined by reference to statutory definitions in other parts of the Utah Code. See Utah Code § 76-2-409. Where possible, this instruction integrates those references into a unified whole.

Because Battered Persons Mitigation Defense can only be used between cohabitants, it is likely the cohabitant definitions^[MD3] will already be given, in which case this instruction is not necessary.

CR572 Elements with Battered Person Mitigation / Mental Illness Special Mitigation.

(DEFENDANT'S NAME) is charged [in Count ____] with committing (CRIME) [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. ELEMENT ONE...;
3. ELEMENT TWO...;
4. [That 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.~~

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.

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

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

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

CR573 Special Verdict Form – Battered Person Mitigation

If you determine beyond a reasonable doubt that (DEFENDANT'S NAME) committed Count [#] (CRIME), you must complete the special verdict form titled “Special Verdict Form Battered Person Mitigation Defense.”

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

References

Utah Code Ann. § 76-2-409

Committee Notes

Whenever the battered person mitigation defense is submitted to the jury,

- include CR570, the definitional instruction for the defense;
- provide roadmap instruction CR505A and include each count to which the defense may apply;
- use the elements instruction template in CR572 for every crime to which the defense applies;
- using SVF570, prepare a special verdict form for each count and offense to which the defense might apply;
- make sure the special verdict forms are labeled in the same way they are referenced in the roadmap instruction; and
- present the special verdict forms in the same manner provided by the roadmap instruction.

SVF570. Battered Person Mitigation Defense

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

<p><u>THE STATE OF UTAH,</u></p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p><u>(DEFENDANT'S NAME),</u></p> <p style="text-align: center;">Defendant.</p>	<p>SPECIAL VERDICT FORM BATTERED PERSON MITIGATION DEFENSE</p> <p style="text-align: center;"><u>Count (#)</u></p> <p style="text-align: center;"><u>Case No. (**)</u></p>
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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 (DEFENDANT'S NAME) has proved by clear and convincing evidence that the battered person mitigation defense applies.

OR

We do not unanimously find that (DEFENDANT'S NAME) has proved by clear and convincing evidence that the battered person mitigation defense applies.

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

Foreperson

Mental Illness Special Mitigation

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 for homicide or attempted homicide, and will reduce the level of the offense
 - Must be found by the trier of fact by a preponderance of the evidence
- 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.
 - Must be found by the trier of fact by a preponderance of the evidence

CR580 Mental Illness Special Mitigation

Mental illness special mitigation is a partial defense to Count [#], [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder]. It does not result in an acquittal, but instead is a mitigating circumstance that reduces [Aggravated Murder to Murder] [Attempted Aggravated Murder to Attempted Murder] [Murder to Manslaughter] [Attempted Murder to Attempted Manslaughter].

Mental illness special mitigation exists when a person [causes] [attempts to cause] the death of another under circumstances that are not legally justified, but the person acts under a delusion attributable to a mental illness, and the nature of the delusion is such that, if the facts existed as the defendant believed them to be in [his] [her] delusional state, those facts would provide a legal justification for [his] [her] conduct.

Mental illness special mitigation applies only if the defendant's actions, in light of [his] [her] delusion, were reasonable from the objective viewpoint of a reasonable person.

A person who was under the influence of voluntarily consumed, injected or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense may not avail [himself] [herself] of special mitigation based on mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.

References

Utah Code Ann. § 76-2-305

Utah Code Ann. § 76-5-205.5

Committee Note

Whenever mental illness special mitigation is submitted to the jury,

- include CR580, the definitional instruction for the defense;
- provide roadmap instruction CR505A and include each count to which the defense may apply;
- use the elements instruction template in CR572 for every crime to which it applies;
- using SVF580, prepare a special verdict form for each count and offense to which the defense might apply;
- make sure the special verdict forms are labeled in the same way they are referenced in the roadmap instruction; and
- present the special verdict forms in the same manner provided by the roadmap instruction.

CR581 Definitions Applicable to Mental Illness Special Mitigation

“Mental illness” means a mental disease or defect that substantially impairs a person’s mental, emotional, or behavioral functioning. A mental defect may be a condition as the result of a birth defect, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, intellectual disability.

“Intellectual disability” means a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to age 22.

“Mental illness” does not mean an abnormality manifested primarily by repeated criminal conduct.

“Preponderance of the evidence” means the fact is more likely to be true than not true.

References

Utah Code Ann. § 76-2-305

Committee Note

CR582 Special Verdict Form – Mental Illness Special Mitigation

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 Form Mental Illness Special Mitigation.”

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

References

Utah Code Ann. § 76-5-205.5(7)

Committee Notes

Whenever mental illness special mitigation is submitted to the jury:

- Use the specific Aggravated Murder or Murder Elements Instructions in CR1402B, 1403B, or 1411B
- Use the “SVF580 Special Verdict Mental Illness Special Mitigation” special verdict form;
- Do not include “mental illness special mitigation” as a defense in element #3 of the elements instruction; and
- Always distinguish between “mental illness defense” and “mental illness special mitigation” throughout the instructions.

SVF580. Mental Illness Special Mitigation

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

<p><u>THE STATE OF UTAH,</u></p> <p style="text-align: center;"><u>Plaintiff,</u></p> <p style="text-align: center;">-vs-</p> <p><u>(DEFENDANT'S NAME),</u></p> <p style="text-align: center;"><u>Defendant.</u></p>	<p>SPECIAL VERDICT FORM</p> <p>MENTAL ILLNESS</p> <p>SPECIAL MITIGATION</p> <p style="text-align: center;"><u>Count (#)</u></p> <p style="text-align: center;"><u>Case No. (**)</u></p>
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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 (DEFENDANT'S NAME) has proved by a preponderance of the evidence that mental illness special mitigation exists.

OR

We do not unanimously find that (DEFENDANT'S NAME) has proved by a preponderance of the evidence that mental illness special mitigation exists.

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

Foreperson

Extreme Emotional Distress Special Mitigation

- Under Utah Code 76-5-205.5, it is a special mitigation for homicide or attempted homicide, and will reduce the level of the offense
 - Must be found by the trier of fact by a preponderance of the evidence