

820 EXAMPLE: [PRIVILEGE: LIMITS OF] SELF DEFENSE: UNINTENDED INFLICTION OF HARM UPON THIRD PARTY CHARGED AS RECKLESS OR NEGLIGENT CRIME ENUMERATED IN 939.48(3)

Statutory Definition of the Crime

First degree reckless homicide, as defined in § 940.02(1) of the Criminal Code of Wisconsin, is committed by one who recklessly causes the death of another human being under circumstances that show utter disregard for human life.

State's Burden Of Proof

Before you may find the defendant guilty of first degree reckless homicide, the State must prove by evidence that satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant caused the death of (name of victim).

“Cause” means that the defendant’s act was a substantial factor in producing the death.

2. The defendant caused the death by criminally reckless conduct.

“Criminally reckless conduct” means:

- the conduct created a risk of death or great bodily harm to another person; and
- the risk of death or great bodily harm was unreasonable and substantial; and
- the defendant was aware that her conduct created the unreasonable and

substantial risk of death or great bodily harm.

3. The circumstances of the defendant's conduct showed utter disregard for human life.

In determining whether the circumstances of the conduct showed utter disregard for human life, consider these factors: what the defendant was doing; why the defendant was engaged in that conduct; how dangerous the conduct was; how obvious the danger was; whether the conduct showed any regard for life; and, all other facts and circumstances relating to the conduct.

Self-Defense As To (Name Person)

There is evidence in this case that the defendant was acting in self-defense as to (name of person). However, this does not necessarily mean that the unintended infliction of harm to (name of victim) was lawful. This is because self-defense does not apply if the unintended infliction of harm amounted to the crime of first degree reckless homicide.

You should consider the evidence relating to self-defense, along with all other evidence in this case, in determining whether the defendant's conduct created an unreasonable risk of death or great bodily harm to (name of victim). You should also consider the evidence relating to self-defense, along with all other evidence in this case, in determining whether the defendant's conduct showed utter disregard for human life.

Self-Defense

Self-defense requires that:

- the defendant believed that there was an actual or imminent unlawful interference with the defendant's person; and,
- the defendant believed that the amount of force they used or threatened to use was necessary to prevent or terminate the interference; and,
- the defendant's beliefs were reasonable.

The defendant may intentionally use force that is intended or likely to cause death or great bodily harm only if the defendant reasonably believed that the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).

Determining Whether Beliefs Were Reasonable

A belief may be reasonable even though mistaken. In determining whether the defendant's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense. The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of her acts and not from the viewpoint of the jury now.

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant caused the death of (name of victim) by criminally reckless conduct and that the circumstances of the conduct showed utter disregard for human life, you should find the defendant guilty of first degree reckless homicide.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 820 EXAMPLE was approved by the Committee in December 2023.

The instruction is drafted as an example of how Wisconsin Jury Instruction-Criminal 820 would be applied in a scenario where the underlying offense is first-degree reckless homicide, as specified in Section 940.02(1).