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March 4, 2024

Nicole Gray
Clerk of Court
Utah Supreme Court
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Re: *State v. Chadwick*, 20190818-SC

Dear Ms. Gray:

During oral argument in *Chadwick* today, Justice Pearce asked the State to point to specific language in *State v. Rasmussen*, 68 P.2d 176 (Utah 1937), the Court would need to overrule to require a specific-unanimity instruction upon request in every multiple-acts case. I was unable to find the relevant language during argument, so I provide this letter in response.

The defendant in *Rasmussen* requested a specific-unanimity instruction. 68 P.2d at 181-82 (lead opinion). The lead opinion would have held that its denial was error, *id.* at 181, but it affirmed because only two justices were of that opinion, *id.* at 183.

Three justices wrote separately, each finding no error under the same basic rationale. Justice Wolfe stated, "if there must be unanimity of agreement on one or more of the specifications named in the information, I think the instruction was sufficient to call that to the attention of the jury." *Id.* at 185 (Wolfe, J., concurring in the result); *see also id.* at 184-85 (denial of instruction was "not … error" or prejudicial because "ordinary jury would conceive that the instruction given by the court would require them to come to unanimity on one or more of the specifications").

Justice Folland explained that the specific-unanimity instruction was "properly refused" because "no juror would be misled" by the instructions that were given, even if the instructions could have been clearer. *Id.* at 185 (Folland, C.J, concurring). "Read in connection with the whole charge, the instruction sufficiently conveys the information that the jurors should unite in finding the existence of one or more of the acts charged … ." *Id.*

Finally, Justice Larson found "no error" because the court's instructions adequately "covered and called to the attention of the jury the matters defendant sought to reach." *Id.* at 186, 187 (Larson, J., concurring in part, dissenting in part). "To say that the jury may not have come to a unanimity on the act or acts of which defendant was guilty, is to say that the jurors utterly disregarded the instructions of the court." *Id.* (explaining rationale for finding no error or prejudice).

Sincerely,

/s/ William M. Hains
William M. Hains
Assistant Solicitor General

cc: Douglas J. Thompson; Crystal C. Powell; Heidi Nestel; Paul Cassell