

MAR 08 2024



MORRISE THOMPSON, PLLC
825 North 900 West
Orem, UT 94057
801-372-1139
801-671-8391
matt@morrissethompson.com
doug@morrissethompson.com

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

March 8, 2024

Re: Discussion at oral argument in *State v. Chadwick*, 20190818-SC

Ms. Gray,

At oral argument Justice Pearce asked Mr. Hains about *State v. Rasmussen*, and specifically asked about the language “that would need to be set aside, and would need to be request to set aside” and whether that language was only in “Justice Wolfe’s concurring opinion?” Mr. Hains responded that all three separate opinions asserted that the given instructions adequately conveyed the need for unanimity.

During rebuttal Justice Pearce asked Chadwick’s counsel whether the Court would need to overturn *Rasmussen* in order to hold that a specific unanimity instruction needs to be given. Counsel responded that his impression was that the holding in *Rasmussen* was generalized, and that he would provide a more complete answer after arguments.

Mr. Hains has provided a letter to the Court citing to the separate opinions of Justice Wolfe, Justice Folland, and Justice Larson. Chadwick disputes that all three concurring opinions form a holding that this Court must overturn in order to now hold that general unanimity instructions are insufficient in at least some multiple-act cases.

The lead opinion, written by Justice Moffat and joined by Justice Hanson, concluded that the request for a specific instruction “called the court’s attention to the weakness, if not actual error, in the instructions given” enough to give rise to the need “to define the separate elements upon which the jury were required to unite upon their verdict.” *Rasmussen*, 181 (Moffat, J.). No third justice joined on this point.

Each of the three other justices wrote separately. None of the these three justices joined in the opinion of another.

Justice Larson’s opinion, characterized as concurring and dissenting, is very different than the opinions of Justices Wolfe and Folland in that he did not conclude the instructions were generalized with respect to unanimity and also sufficient to establish

unanimity under the circumstances. Instead, Justice Larson noted that there were three alternative elements to the involuntary manslaughter charge (reckless driving, D.U.I., or speeding). Because instruction No. 16 required the jury to find the defendant had committed reckless driving, there was no risk of a lack of unanimity. "The instruction goes farther than defendant's request, because, as indicated by the italicized part, before the jury could find him guilty at all, they must find him guilty of reckless driving. That certainly leaves nothing to speculation or conjecture as to whether they were told there must be a unity on the act of reckless driving." *Rasmussen*, 187 (Larson, J.). Thus, from Justice Larson's perspective, it was not a multiple-act case because the instructions required the jury to find one of the acts.

Sincerely,

Douglas Thompson
doug@morrisethompson.com