

A Quick Guide to the Burden of Proof, Lesser Included Offenses, and Defenses

The prosecution will introduce evidence to prove beyond a reasonable doubt that Hayes committed a deliberate assault on Valdez, which resulted in his death. Based on this, the prosecution seeks a conviction of murder. (See CALCRIM 500 and CALCRIM 520.) (In proving the murder charge, the prosecution simultaneously would be proving the elements of voluntary manslaughter as a lesser included offense. Should the judge in this case decide that Hayes's defense of another was "imperfect," Jamie Hayes would be convicted of voluntary manslaughter. See below.)

The defense will introduce evidence and argue that Hayes believed that Valdez was attacking or using excessive force on Barns. (See CALCRIM 505.) This would mean Hayes could have had an honest and reasonable belief that Barns was in danger of suffering great bodily injury or death, and it would allow Hayes to argue defense of another as a complete defense.

In its closing argument, the prosecution will argue that Hayes did not act in either complete or imperfect defense of another. (See CALCRIM 571.) Rather, Hayes committed the murder of Valdez by striking Valdez with the bat and causing Valdez's death. Furthermore, witnesses' testimony and the exhibits are evidence of Hayes's malice aforethought and his unreasonable belief in any danger of great bodily injury or death posed to Barns. The prosecution may choose, however, to argue that the defendant is *at least* guilty of the lesser included offense of voluntary manslaughter.

In its closing argument, the defense will argue that, Hayes acted in complete defense of another and is not guilty of any crime. If, however, the judge believes that witnesses' testimony and the exhibits are evidence that Hayes's belief that Barns was in danger of great bodily injury or death was honest but *unreasonable*, the judge may find Hayes guilty of the lesser included offense of voluntary manslaughter, rather than murder. (See CALCRIM 571 for the elements of imperfect defense of another.)

Although characterized as a defense, the burden of proof never shifts from the prosecution. The prosecution must prove beyond a reasonable doubt that Hayes committed murder and also that Hayes was not acting in either complete or imperfect defense of another.