

## Imminent Peril

Middleton v. McNeil, 158 L.Ed.2d 701, 541 U.S. 433 (2004)

"An 'imminent' peril is one that is apparent, present, immediate and must be dealt with, or must so appear at the time to the slayer." Id. at 706.

"In a criminal trial, the State must prove every element of the offense, and a jury instruction violates due process if it fails to give effect to that requirement. See Sandstrom v. Montana, 442 U.S. 510, 520-521 (1979)." Id. at 706-707.

"[t]he instructions were at worst ambiguous because they were internally inconsistent." Id. at 708.

"[M]cNeil had to show that her actions 'were motivated by an actual belief or perception that (a) the defendant was in imminent danger of death or great bodily injury from an unlawful attack or threat by the victim ..." McNeil v. Middleton, 344 F.3d 988, 993 (9th.Cir.2003)(citations omitted).

"When asserting a claim of instructional error the Supreme Court has held that a petitioner must show that the instructional error 'so infected the entire trial that the resulting conviction violates due process.' Estelle v. McGuire, 502 U.S. 62, 72 (1991)." Id. at 995.

NOTE: Pages 996-997 contain an interesting discussion on how the erroneous inclusion of the "reasonable person" standard into McNeil's jury instruction would "eliminate one of her defenses," and the use of it combined with a "genuine threat" could lead to an incorrect verdict.

True threat update: John Walsh, host of America's Most Wanted transmitted a threat in his book, Public Enemies, page 246, wherein he stated: "But in this moment when the camera was off, I leaned into him and said, 'You push me one more fucking time and I'm going to break your jaw.'"