

MINUTES

SUPREME COURT'S ADVISORY COMMITTEE ON THE MODEL UTAH JURY INSTRUCTIONS – CRIMINAL

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Wednesday, February 3, 2016
12:00 p.m. to 1:30 p.m.
Judicial Council Room

PRESENT

Judge James Blanch, Chair
Alison Adams-Perlac, Staff
Jennifer Andrus
Mark Field
Professor Carissa Byrne Hessick
Sandi Johnson
Linda Jones
Karen Klucznik
Judge Brendon McCullagh
Steve Nelson
Jesse Nix
Nathan Phelps
Judge Michael Westfall
Scott Young

EXCUSED

David Perry

1. Welcome

Judge Blanch

Judge Blanch welcomed everyone to the meeting.

Mr. Phelps moved to approve the minutes from the January 6, 2016 meeting. Ms. Jones seconded the motion and it passed unanimously.

2. Drug Offense Instructions

Karen Klucznik

Judge Blanch asked for the discussion on the following items.

(a) Special Verdict Form and Instruction

Ms. Adams-Perlac presented the special verdict form for firearm enhancements. The Committee discussed special verdict form. Ms. Jones stated that she researched the unanimity

requirement for the issues the jury does not find. She stated that the jury must be unanimous, but if the jury is not unanimous, the jury is hung. Ms. Johnson suggested “the State has proven” or “the State has not proven for the special verdict form. The Committee discussed that the jury needs to know there are three options, guilty, not guilty, or hung jury, but not necessarily put the hung jury option on the forms. The Committee discussed making sure the form states that the decision has to be unanimous. It was noted that the elements instructions do not have the needed wording for unanimity. After a quick search, it was verified that they do not include the word “unanimous.” A member noted that is only required for a guilty find. The Committee then reviewed the homicide verdict forms. This model form has the appropriate format. The Committee agreed to use this format for the special verdict form.

Ms. Klucznik suggested adding mens rea language. Judge Blanch stated that the committee should reapprove the firearms instruction with the special verdict form.

Ms. Klucznik moved to approve the proposed special verdict form and the instruction. Ms. Jones seconded the motion and it passed unanimously.

(b) Special Enhancements

Ms. Klucznik suggested removing, “Otherwise, do not check the box” because this is an instruction. She also suggested consolidating the distance requirement regarding schools. She also suggested consolidating the distance requirement regarding schools. Ms. Johnson suggested, “In or within 100 feet.” Ms. Jones suggested combining “in, on the grounds, or 100 feet” into one sentence. She stated that combining the enhancements would prevent practitioners from erroneously deleting a relevant part.

Mr. Phelps asked if the status of a school is a question of fact or law. Judge Blanch stated that it is a question for the jury.

Ms. Klucznik suggested placing the defenses in a separate instruction.

Ms. Johnson suggested combining all the locations rather than make each one specific element. Ms. Klucznik explained that the timing elements may pose a problem. Ms. Johnson stated that consolidation is better to prevent jurors from erroneously interpreting the instruction, such as believing that the inside of the school is not within 100 feet of the school.

Judge Blanch asked for consensus on the three approaches: separating each one, or consolidating them. Mr. Phelps stated that the options should be separate and a committee note should be added. Mr. Field noted that it should be up to an attorney to be specific when the instruction is given. Ms. Jones. Judge Blanch suggested, “In some circumstances, it may make sense to combine some of the above enhancements. For example...”

Ms. Klucznik asked why the reference section includes *State v. Saunders*, 199 UT 59. Ms. Jones stated that the court ruled that unanimity is required. Ms. Johnson stated that *Saunders* is not applicable. Ms. Johnson stated that if the jury disagrees on the exact location but either location falls within the options, the jury can find the defendant guilty. After further discussion the Committee voted to remove the *Saunders* note. The Committee agreed that the term “believed” is not a defense versus what was known.

Judge Blanch asked Ms. Adams-Perlac to create an instruction that combines the elements and the committee can review it at the next meeting.

The committee discussed the defenses and agreed that a separate instruction should be used. Ms. Johnson suggested leaving a place where practitioners can insert the relevant location into the instruction. The committee discussed varied language for the instruction. Judge McCullagh stated that a more direct instruction would be better.

The committee proposed the following language for defenses:

Special Enhancements – Not a Defense

–[(DEFENDANT’S NAME)’s belief or ignorance about the person’s age is not a defense.]

[(DEFENDANT’S NAME)’s belief or ignorance about whether the location was (ONE OF LOCATIONS IDENTIFIED IN SPECIAL ENHANCEMENT INSTRUCTION) is not a defense.]

Judge McCullagh moved to approve the Special Enhancements – Not a Defense instruction. Ms. Johnson seconded the motion and it passed unanimously.

3. Adjourn

Committee

The meeting was adjourned at 1:21 p.m. The next meeting is Wednesday, March 2, 2016.