

MINUTES

STANDING COMMITTEE ON THE MODEL UTAH CRIMINAL JURY INSTRUCTIONS

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

Wednesday, November 2, 2016
12:00 p.m. to 1:30 p.m.
Judicial Council Room

PRESENT

Judge James Blanch, Chair
Mark Field
Sandi Johnson
Linda Jones
Judge Brendon McCullagh
Steve Nelson
Jesse Nix
Nathan Phelps
Nancy Sylvester, Staff

EXCUSED

Keisa Williams, Staff
Karen Klucznik
David Perry
Judge Michael Westfall
Scott Young

1. Welcome

Judge Blanch

Judge Blanch welcomed everyone to the meeting and each member introduced themselves.

Ms. Johnson moved to approve the minutes from the October 2016 meeting. Mr. Phelps seconded the motion and it passed unanimously.

2. Drug Offense Instructions

Committee

(a) Innocent Possession

Ms. Johnson stated that the proposed version shifted the burden to the defendant to prove that he was an innocent possessor. She suggested adding language, similar to a self-defense instruction, which clarifies that the burden remains with the State. The committee worked on language to reflect that the burden remains with the State.

Judge McCullagh stated that “illegal substance” should not be used because the substance may not be illegal. He recommended using “controlled substance” because it better defines the substance.

Judge McCullagh stated that the innocent possession instruction is not a defense because “intent to use” is required to convict a defendant of possession of drugs. He stated that the

instruction should begin, “you must decide whether the State has proven that the defendant did not innocently possess the controlled substance.” Judge Blanch stated that the elements instruction in drug offenses references the “defense of innocent possession.”

Ms. Jones recommended using “substance” instead of “controlled substance” because the substance could be a counterfeit substance. Judge Blanch recommended using “illegal” not “illicit” because the instruction should only cover illegal activity. Ms. Jones asked if *State v. Miller* intended to get to the transitory possession (where someone was in the process of taking adequate measures). Judge Blanch recommended using “defendant was taking adequate measures.” Judge McCullagh stated that adequacy would be a factual question determined by the jury.

Ms. Johnson stated that the instruction did not address defendants that have already taken adequate steps to get rid of the substances. Judge Blanch agreed and recommended using “took or was taking.” Mr. Field asked if “adequate” also meant “reasonable.” Ms. Jones stated that the court in *Miller* used “adequate.”

CR _____. Innocent Possession. Approved 11/2/16.

You must decide whether the State has proven that the defendant did not innocently possess the [controlled][chemical][counterfeit] substance. The defendant is not required to prove [he][she] innocently possessed the substance. Rather, the State must prove beyond a reasonable doubt the defendant did not innocently possess the substance. The State has the burden of proof at all times. A person innocently possesses a substance if

1. [he][she] obtained the substance innocently and possessed it with no illegal purpose; and
2. the defendant took or was taking adequate measures to rid [himself] [herself] of possession of the substance as promptly as reasonably possible.

References

State v. Miller, 2008 UT 61.
Utah Code § 58-37-8

Mr. Phelps moved to approve the instruction. Ms. Jones seconded the motion and it passed unanimously.

(b) Special Verdict form for Marijuana

Ms. Johnson recommended using “100 pounds or more of marijuana” as stated in the statute.

SVF Marijuana Possession. Approved 11/2/16.

(LOCATION) JUDICIAL DISTRICT COURT, [_____] DEPARTMENT,
IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-vs-

(DEFENDANT'S NAME)

Defendant.

:
:
:
:
:

SPECIAL VERDICT

Count (#)

Case No. (**)

We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of Possession of Marijuana. We also (check only the box that applies):

☐ Unanimously find beyond a reasonable doubt Defendant knowingly possessed 100 pounds or more of marijuana

☐ Do not find beyond a reasonable doubt Defendant knowingly possessed 100 pounds or more of marijuana.

DATED this _____ day of (MONTH), 20(**).

Foreperson

References

Utah Code § 58-37-8(2)(a)(ii) and (2)(b)(i)

Ms. Jones moved to approve the instruction. Mr. Nelson seconded the motion and it passed unanimously.

(c) Drug Related Negligent Driving

Ms. Johnson recommended tabling the discussion on this instruction because the Supreme Court is hearing an appeal on the statute in *State v. Ainsworth*.

3. Committee Note for "Reckless as to Result"

Committee

Ms. Johnson stated that the committee note under CR304B is incorrect because recklessness is not applicable for murder, child abuse, and kidnapping. She recommended removing the committee note entirely.

Ms. Johnson moved to approve the modification to the committee note. Mr. Phelps seconded the motion and it passed unanimously.

4. Adjourn

Committee

Judge Blanch stated that the committee is finished with the drug offenses. He stated that the committee will next examine instructions on defenses, domestic violence offenses, and stock opening instructions. *The meeting was adjourned at 1:12 p.m.* The next meeting is Wednesday, December 7, 2016.