

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, February 1, 2017
12:00 p.m. to 1:30 p.m.
Judicial Council Room

PRESENT

Judge James Blanch, Chair
Keisa Williams, Staff
Mark Field
Sandi Johnson
Linda Jones
Karen Klucznik
Steve Nelson
Jesse Nix
Nathan Phelps

EXCUSED

David Perry
Judge Michael Westfall
Judge Brendon McCullagh
Scott Young

1. Welcome

Judge Blanch

Judge Blanch welcomed everyone to the meeting.

Ms. Klucznik moved to approve the minutes from the January 2017 meeting. Mr. Phelps seconded the motion and it passed unanimously.

2. Justification Defense Instructions

Committee

(a) Unjustified Use of Force

Judge Blanch stated that the proposed instruction did not explain the burden of proof well. Ms. Johnson stated that the instruction is wrong because it states that a person does not have a duty to retreat and then includes subsection 3 about the aggressor. Ms. Jones suggested splitting the instruction into three separate instructions. Judge Blanch stated that the elements instruction for self-defense will include language about the State disproving self-defense. Ms. Klucznik suggested using language that begins, "You must decide if the defense of _____ applies in this case." Mr. Field stated that this instruction should supplement an affirmative defense instruction. Judge Blanch suggested that the committee begin with affirmative defenses and then review this instruction. He stated that this instruction should be presented after affirmative defenses.

(b) Defense of Habitation

Ms. Jones suggested beginning the instruction with “you must decide whether the defense of habitation applies in this case.” Ms. Johnson stated that the instruction should be consistent with the elements instruction, specifically the element that the State must disprove the affirmative defense. Judge Blanch stated that the committee should create language to ensure that the State must disprove the affirmative defense. Ms. Klucznik stated that the jury does not need to decide whether the defense applies. Ms. Jones disagreed and stated that previously approved instructions include the sentence, “you must decide whether the [defense] applies in this case.” Mr. Field stated that the instruction should simply define the defense.

Ms. Klucznik stated that the instruction should match the statutory language. Ms. Johnson recommended using the statutory language and then listing factors. The committee reviewed the statutory language and created the instruction based on the statute.

Ms. Jones and Ms. Johnson suggested creating two instructions: one for non-deadly force and one for deadly force. Ms. Klucznik suggested bracketing the difference. The committee agreed to create two instructions.

The committee discussed the language of “when and to the extent.” Ms. Johnson stated that “when” means when it occurs and “to the extent” means how much force a person can use. Ms. Klucznik and Ms. Jones suggested separating § 76-2-405(1) into four smaller points to ensure clarity. Ms. Johnson stated that the State’s burden to disprove the affirmative defense should be stated in each instruction or in a separate instruction. Ms. Jones suggested using bullet points instead of numbers because numerical order is unimportant.

Ms. Johnson suggested using “the defendant” because the defendant is the only person that can assert the defense.

Judge Blanch asked if burden of proof language should be included in the instruction. Ms. Klucznik stated that it would not be necessary because the burden of proof will be in the elements instruction. Ms. Jones recommended that the burden of proof language be included in the instruction rather than a separate instruction.

Ms. Klucznik stated that “the prosecutor carries the burden at all times” is inaccurate. Ms. Jones suggested, “the prosecution carries the burden of proof” to limit it to the instruction.

The committee discussed the name of the instruction. “Defense of Defense of Habitation” and “Justification of Defense of Habitation,” and “Force in Defense of Habitation” were suggested. Judge Blanch stated that the title must be easily understandable because it would be part of the elements instruction. Mr. Field stated that “Defense of Habitation” was the simplest and most understandable. Ms. Johnson disagreed and stated that judges may add words when reading the instruction to the jury.

The committee decided to continue working on the instruction at the next meeting.

3. Adjourn

Committee

The meeting was adjourned at 1:27 p.m. The next meeting is Wednesday, March 1, 2017.