

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, September 6, 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
Karen Klucznik
Steve Nelson
Jesse Nix
Nathan Phelps
Scott Young
Linda Jones
Jennifer Andrus

EXCUSED

David Perry
Judge Michael Westfall
Judge Brendon McCullagh

1. Welcome

Judge Blanch

Judge Blanch welcomed everyone to the meeting.

The committee talked about what charges the committee should focus on this year. Ms. Johnson suggested assault, burglary, theft, trespass, any charge involving domestic violence, and DUI's. The committee determined that instructions would be reviewed in the following order:

1. Assault and Burglary
2. Trespass and Mischief
3. DV-related charges
4. DUIs

Judge Blanch stated that he has seen problematic instructions from attorneys that are missing *mens rea* elements. Judge Blanch stated that according to State v. Barela, 349 P.3d 676 (Utah 2015) and State v. Bird, 345 P.3d 1141 (Utah 2015), every element of an offense must have the requisite *mens rea*. Judge Blanch suggested that the committee keep this in mind when revising instructions.

Karen Klucznik moved to approve the minutes from the June 7, 2017 meeting as written. Nathan Phelps seconded the motion and it passed unanimously.

2. Drug Offense Instructions Comment

Committee

Ms. Williams presented the committee with a public comment that suggested better phrasing of “factors relevant.” Professor Andres stated that the previously passed instruction is easy to understand to a lay juror. Mr. Nelson stated that a juror may assign legal meaning to “relevant” (juror hears a relevance objection in trial) that does not apply. He stated that a juror may hear “relevant” in another context and the solution may be to remove “relevant” because it has legal context in other areas of the trial. Judge Blanch suggested “other factors you may consider.” Ms. Jones stated that the public comment does not address the legality of the instruction, only comprehension, so the instruction should not be modified.

Ms. Jones moved to keep the instruction without modification. Judge Blanch seconded. The motion passed unanimously.

3. State v. Hummel

Committee

CR416 Jury Unanimity

Ms. Klucznik stated that the jury may not understand the distinction between a theory and an element. Ms. Johnson stated that using the word “theory” is not clear. She suggested using “elements” rather than “theory.” Professor Andrus agreed that jurors would misinterpret “theory” as opinions rather than legal elements. Ms. Klucznik and Judge Blanch suggested using “each element was proven beyond a reasonable doubt.”

Ms. Klucznik stated that this instruction does not apply to aggravated murder.

Ms. Johnson stated that this instruction should only be given if jurors ask about unanimity. She suggested that the unanimity requirement should be placed in the elements instructions rather than presented as an extra jury instruction. Ms. Klucznik was concerned with using this instruction with a special verdict form because it could cause confusion for the jurors. She stated that the jurors would have to be unanimous on a special verdict form. Judge Blanch and Ms. Jones stated that this instruction should not be used with a special verdict form. Ms. Jones stated the unanimity goes to the mechanism, not the element. Judge Blanch stated that a correct instruction would be helpful to jurors who have questions on unanimity, but it should not be given to every jury. Ms. Jones agreed that this instruction should be used on a case-by-case basis.

Ms. Jones suggested that it is unclear in *Hummel* whether an instruction should even be created. Ms. Klucznik stated that the implications of *Hummel* are unclear. Ms. Jones suggested that the Committee on Criminal Procedure should create a rule based on *Hummel* so that the Supreme Court can also review it for clarification. Ms. Johnson stated that in the interim, the committee should create an instruction so Judges and lawyers know where to find the answer on unanimity. Ms. Williams suggested asking the Supreme Court for advisement on the instruction. Judge Blanch suggested adding a committee note about *Hummel* to the previously approved unanimity instruction. The committee decided to add *Hummel* and other cases to References under CR216 Jury Deliberations.

Ms. Johnson moved to not include a jury unanimity instruction, but to reference Hummel and applicable cases about jury unanimity in a committee note in CR216 Jury Deliberation. Ms. Klucznik seconded the motion and it passed unanimously.

The committee decided to take no action on the other instructions regarding jury unanimity.

4. Justification Defense Instructions

Committee

Defense of Habitation and Deadly Force in Defense of Habitation

Judge Blanch asked if the word “habitation” could be replaced with a better word. After discussion, the committee decided to keep “habitation” because “habitation” is used in the statute.

Judge Blanch asked for a discussion on the two defense of habitation instructions. Ms. Johnson stated that the first question is “was forced used” and then the second question is “what type of force is allowed.” She stated that these ideas should be two separate instructions. She suggested that anytime deadly force is used, both instructions should be used. Ms. Klucznik was concerned that separating the instructions could cause attorneys to use one instruction for deadly force when both instructions should be used. Ms. Jones suggested a committee note to indicate to attorneys that two instructions should be used with deadly force.

Judge Blanch stated that because the committee made changes to the use of force instruction, further discussion is needed. He stated that the committee is looking at two instructions for use of force and use of deadly force. He asked if there needs to be language about the presumption transferring to the State. Ms. Jones stated that the elements instructions capture the presumption. Judge Blanch stated that if the language is needed, the committee should discuss it at the next meeting.

5. Adjourn

Committee

The meeting was adjourned at 1:32 p.m. The next meeting is Wednesday, October 11, 2017.