

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 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
Judge Brendon McCullagh
Jesse Nix
Nathan Phelps
Scott Young

EXCUSED

Jennifer Andrus
Steve Nelson
David Perry
Judge Michael Westfall

1. Welcome

Judge Blanch

Judge Blanch welcomed everyone to the meeting.

Ms. Jones moved to approve the minutes from the September 6, 2017 meeting. Judge Blanch seconded. The motion passed unanimously.

2. CR 216 Jury Deliberations

Committee

The committee reviewed the final edits to CR 216 Jury Deliberations, including the references on jury unanimity. After discussion, the committee approved the instruction.

Mr. Phelps moved to approve the revised instruction. Mr. Young seconded. The motion passed unanimously.

3. Defense of Habitation

Committee

The committee discussed *State v. Karr*. Ms. Williams stated that none of the instructions regarding defense of habitation have been passed because the committee needed to continue to discuss them. Judge Blanch asked the committee if use of force and use of deadly force should

be separate instructions. He stated that because the presumption of reasonableness only applies to the use of deadly force, two instructions may be beneficial.

Mr. Field stated that if there is a question about the use of deadly force, both instructions should be used. Ms. Jones stated that a roadmap on using both instructions could be created that would inform the jury that even if they find all the elements, the jury must consider both defenses. Ms. Johnson asked if a jury would know that once the affirmative defense was raised, the State must rebut the defense. Judge McCullagh stated that a jury would only be given the instruction if the defense was raised. Ms. Johnson stated that because the jury would be given the instruction after the affirmative defense was raised, a roadmap is unnecessary because it could confuse the jury.

Judge Blanch recommended using the statutory language to create the instruction. He stated the Non-Deadly Force instruction could apply to the use of Deadly Force with the additional elements for Deadly Force. He stated that Deadly Force and presumption language should be bracketed and can be included in the Use of Force in Habitation instruction. Ms. Johnson stated that the majority of self-defense cases will not include Deadly Force, so the instructions should be distinct. Ms. Jones stated that Deadly Force would more likely be used in the defense of habitation.

Judge Blanch recommended combining the drafts to form one instruction. The committee discussed ways to use brackets to create one instruction that attorneys could modify.

The committee discussed whether the rebuttable presumption language should be included in the instruction. Ms. Johnson stated that the rebuttable presumption language should be included because it specifically modifies “reasonable belief” that appears throughout the instruction. Ms. Jones agreed and stated that a judge or attorney may forget to include a separate rebuttable presumption instruction.

Judge Blanch asked the committee if brackets should be used or if a separate instruction was better. Ms. Jones suggested two instructions: one regarding the Use of Non-Deadly Force and one for Use of Deadly Force. Ms. Kluznick agreed and stated that the presumption should be included in both instructions because Non-Deadly Force can be used when a person is in fear of peril of death. She stated the presumption would apply even if a person used less force than they were legally entitled to use.

Mr. Field asked if Deadly Force also includes Seriously Bodily Injury Force. Ms. Kluznick answered that Seriously Bodily Injury Force is Deadly Force. Mr. Field clarified that Serious Bodily Injury Force and Force Likely to Cause Death are both considered Deadly Force. Ms. Jones stated that in the Deadly Force instruction, both Serious Bodily Injury Force and Deadly Force should be included so the jury has a full spectrum of options.

Judge McCullagh asked what the difference was between “when” and “to the extent.” Ms. Johnson answered that “when” refers to when a person can use force and “to the extent” refers to how much force a person can use. Ms. Kluznick added that “when” means imminent and “to the extent” means the degree. Judge McCullagh read part of the statute that said, “to the extent he reasonably believes force is necessary” and stated the meanings are synonymous. Ms. Kluznick stated that for Non-Deadly Force, she agreed with Judge McCullagh that there is no difference. She stated that for Deadly Force, there is a difference. Ms. Jones stated that one is temporal and the other is circumstantial. Mr. Young stated that the concepts are different. Judge McCullagh restated his opinion that the concepts are similar. Ms. Kluznick stated the difference is important between Deadly Force and Non-Deadly Force.

The committee continued to draft the instruction for Non-Deadly Force in Defense of Habitation. Ms. Johnson stated that the title, “Defense of Habitation,” should be used because “Defense of Habitation” would be used in the elements instruction.

Ms. Kluznick suggested removing “to defend [his][her] habitation” because a person may be defending something other than the habitation itself, such as a person inside the habitation. Judge McCullagh suggested capitalizing “Defense of Habitation.” The committee agreed.

Mr. Phelps suggested adding language about the possessory interest of the habitation. Ms. Jones suggested creating a separate instruction. Judge Blanch asked Mr. Phelps to create an instruction regarding possessory interest to present to the committee.

Judge McCullagh stated that Deadly Force does not require a person have a reasonable fear of imminent death. He stated that the unlawful entry or attack on habitation is what a person must believe is occurring to use Deadly Force. He stated that a person does not need to be in fear of imminent death or bodily injury to use Deadly Force. He stated that a person can use as much force as necessary to prevent a person from entering their habitation and is not required to be fearful. Ms. Kluznick disagreed and stated that a person must be in fear of imminent death or bodily injury to use Deadly Force. Judge Blanch stated that the Legislature created the statutory language for the presumption and the circumstances under which it exists.

Judge McCullagh stated there is not a definition of what constitutes a reasonable belief. Ms. Kluznick disagreed and stated the definition was included in the first paragraph of the instruction. Judge McCullagh stated that the first paragraph only requires reasonable force to stop an unlawful entry, not a fear of imminent death. Ms. Kluznick stated that the presumption only applies if the entry was made with force or surreptitiously. Judge McCullagh reiterated that a person must only believe that an unlawful entry was occurring to use deadly force.

Judge Blanch stated that there are circumstances that a person is entitled use Deadly Force that have nothing to do with whether a person fears harm for themselves or others. He stated that when this language is used in the presumption, it implies that fear of imminent harm or death is required. Ms. Johnson stated that if a person is in fear of imminent harm or death, the person can use Deadly Force or Non-Deadly Force.

Judge Blanch stated that the committee would finalize the Defense of Habitation instructions at the next meeting.

4. Adjourn

Committee

The meeting was adjourned at 1:25 p.m. The next meeting is Wednesday, December 5, 2017.