

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, April 4, 2018
12:00 p.m. to 1:30 p.m.
Judicial Council Room

PRESENT	EXCUSED
Judge James Blanch, Chair	Professor Jenny Anderson
Keisa Williams, Staff	Judge Linda Jones
Mark Field	David Perry
Sandi Johnson	Judge Michael Westfall
Karen Klucznik	
Judge Brendon McCullagh	
Steve Nelson	Guest – Jacey Skinner
Jesse Nix	
Nathan Phelps	
Scott Young	

1. Welcome and Approval of Minutes

Judge Blanch

Judge Blanch welcomed everyone to the meeting. He introduced Jacey Skinner, Deputy State Court Administrator, who updated the committee on recently passed legislation that may impact the work of the committee.

Mr. Field moved to approve the minutes from the March 2018 meeting. Judge McCullagh seconded. The minutes were unanimously approved.

2. Defense of Person(s)

Committee

The committee reviewed Judge Blanch’s instructions prepared prior to the meeting.

Defense of Habitation – Prosecutor’s Burden (Instruction 39)

The committee added brackets to separate “force” and “force likely to cause death or serious bodily injury.”

CR____. Defense of Self or Others - Prosecution's Burden. Approved 4/4/18.

A defendant carries no burden to prove the defense of Defense of Self or Others. In other words, a defendant is not required to prove [he/she] was justified in using [force] [or] [force likely to cause death or serious bodily injury]. Rather, the prosecution must prove beyond a reasonable doubt that the defendant was not justified in using [force] [or] [force likely to cause death or serious bodily injury]. If the prosecution has not met this burden, then you must find the defendant not guilty.

References:

Utah Code § 76-2-402

Committee Note:

This instruction should be used with instructions 33, 34, 36, and 41 (Need to update with actual instruction numbers)

Judge McCullagh moved to approve the instruction as amended. Ms. Klucznik seconded. The instruction was unanimously approved.

Defense of Self or Others – Duty to Retreat (Instruction 40)

Ms. Klucznik stated that language about aggressor or combat by agreement is not necessary in the instruction because a defendant cannot use the instruction if they were the aggressor or engaged in combat by agreement. Ms. Johnson disagreed and stated that although the language is redundant, the language should be included because a person may continue or threaten to continue the use of unlawful force. The committee created the following instruction:

CR.____. Defense of Self or Others – No Duty to Retreat. Approved 4/4/18.

A defendant does not have a duty to retreat from another person's use or threatened use of unlawful force before using force to defend [himself/herself] or a third party as long as the defendant is in a place where [he/she] has lawfully entered or remained.

However, if the defendant was the aggressor or was engaged in combat by agreement, the defendant must withdraw from the encounter and effectively communicate to the other person [his/her] intent to do so. If the other person nevertheless continues or threatens to continue the use of unlawful force, the defendant no longer has the duty to retreat.

References

Utah Code § 76-2-402(3)

Mr. Phelps moved to approve the instruction as amended. Mr. Young seconded. The instruction was unanimously approved.

3. Defense of Property

Committee

The committee reviewed Judge Blanch's instructions prepared prior to the meeting.

Use of Force in Defense of Property

Judge Blanch stated that the language is from the statute. The committee modified the language to be less redundant than the statute, but left it substantially the same as the statute.

CR____. Use of Force in Defense of Property. Approved 4/4/18.

A defendant is justified in using force, other than deadly force, against another person to defend real or personal property when and to the extent [he][she] reasonably believes the force is necessary to prevent or terminate the other person's criminal interference with real or personal property.

The property must have been:

- lawfully in the defendant's possession; or
- lawfully in the possession of a member of the defendant's immediate family; or
- belonging to a person whose property the defendant has a legal duty to protect.

In determining reasonableness, you must consider:

- the apparent or perceived extent of the damage to the property;
- property damage previously caused by the other person;
- threats of personal injury or damage to property that have been made previously by the other person;
- any patterns of abuse or violence between the defendant and the other person; and
- any other relevant factor.

References

Utah Code § 76-2-406

Mr. Young moved to approve the instruction as amended. Judge McCullagh seconded. The instruction was unanimously approved.

4. Adjourn

Committee

The meeting was adjourned at 1:31 p.m. The next meeting is Wednesday, May 2, 2018.