

## 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, May 2, 2018  
12:00 p.m. to 1:30 p.m.  
Judicial Council Room

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

#### 1. Welcome and Approval of Minutes

**Judge Blanch**

Judge Blanch welcomed everyone to the meeting.

*Ms. Klucznik moved to approve the minutes from the April 2018 meeting. Judge McCullagh seconded. The minutes were unanimously approved.*

#### 2. Defense of Person(s)

**Committee**

Ms. Johnson informed the committee that she had met with prosecutors and defense attorneys to create three (3) draft assault instructions; 1) Simple Assaults (regular and alternate language with DV), 2) Assault - Class A, and 3) Aggravated Assaults. Ms. Johnson's group discussed whether a Special Verdict Form (SVF) was warranted on DV cases. The group discussed the possibility of creating two options: One where DV is not going to be at issue; and another where it might be the disputed issue with a separate verdict form and not include it in the elements. Ms. Johnson's group anticipates the creation of another instruction defining cohabitant and including a SVF. Ms. Johnson stated that her working group did refer to Judge Taylor's recommended instructions as a starting point and used the standard MUJI-Crim instruction format.

CR \_\_\_\_ . Simple Assault [DV].

The committee discussed how to address cohabitancy in domestic violence cases. The committee discussed including cohabitancy in the elements instruction versus using a special verdict form. The committee decided to use bracketed language in the elements instruction and a committee note to address cohabitancy.

**CR \_\_\_\_ . Simple Assault [DV].** Draft 5/2/18

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Assault [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME);
3. [That the defense of \_\_\_\_\_ does not apply;]
4. [(DEFENDANT'S NAME) and (VICTIM'S NAME) were cohabitants at the time of this offense.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code §76-5-102

Utah Code §77-36-1

Utah Code §77-36-1.1

**Committee Note**

In domestic violence cases, practitioners should decide whether to include element #4 in this instruction or to use a special verdict form.

*Judge Jones moved to approve instruction. Mr. Phelps seconded. The instruction was unanimously approved.*

Assault Causing Serious Bodily Injury and/or Victim Pregnant [DV]

The committee discussed whether to create one instruction or multiple instructions because of the varying elements. The committee discussed whether cohabitancy requires a mental state, but the committee agreed that there was no guidance in caselaw or statute. Ms. Johnson volunteered to research the issue. Discussion on the instruction was tabled for the next meeting.

### **3. Party Liability**

#### **Committee**

The committee discussed the current Party Liability instructions in light of the *State v. Grunwald* case to determine whether changes are necessary. The *Grunwald* case discussed the MUJI-Crim instructions; however, Judge Blanch stated that the instruction considered in *Grunwald* is not the current MUJI instruction. Judge Jones drafted two different instructions based on a recent mail theft case. The current MUJI instruction puts the parties to the offense first, before it talks about the elements of the offense. Judge Jones' instruction reverses that order by listing the elements of the offense first. The order of the instruction at issue in *Grunwald* was ordered the way the current MUJI instruction is ordered. The committee discussed which order was less confusing.

Judge Jones suggested that another way to construct the instruction is to create a simple elements instruction with an element "party to the offense," and then defining "party to the offense." The current "party to the offense" MUJI instruction needs work because it does not include the mens rea the Court of Appeals talked about for the offense. The committee discussed the way in which the mens rea element should be included. Judge McCullagh suggested that the committee order the instruction as follows: 1) general instruction explaining party liability, and 2) elements instruction which is the roadmap. Judge Jones suggested the order of the instruction be as follows: 1) elements of crime, and 2) party liability. The committee discussed making the order as follows: 1) You must find that the principle actor committed the crime, then 2) Defendant was the principle actor, OR, with the intent of the principle actor, he did the following (elements of party liability).

Judge Blanch asked that Judge Jones redraft her instructions on mail theft to make them more general and compare it to our current instruction and propose changes. Judge Jones' stated that she attempted to do that in the instructions she brought to the meeting. Those instructions will be included in the materials for the next meeting. Mr. Nelson noted that accomplice liability gets complicated in gang cases because people can be both an accomplice and a player at the same time and that will need to be addressed, possibly in a committee note.

### **4. Adjourn**

#### **Committee**

*The meeting was adjourned at 1:31 p.m. The next meeting is Wednesday, June 6, 2018.*