

## MINUTES

### STANDING COMMITTEE ON THE MODEL UTAH CRIMINAL JURY INSTRUCTIONS

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84111

Wednesday, June 6, 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 Anderson
Keisa Williams, Staff	David Perry
Mark Field	Judge Michael Westfall
Sandi Johnson	Jesse Nix
Karen Klucznik	
Judge Brendon McCullagh	
Steve Nelson	
Nathan Phelps	
Scott Young	
Judge Linda Jones	

#### 1. Welcome and Approval of Minutes

**Judge Blanch**

Judge Blanch welcomed everyone to the meeting. The committee considered the minutes from the May 2018 meeting.

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

#### 2. Assault Instructions

**Committee**

Consideration of this agenda item was carried over for discussion / action at the committee's next meeting.

#### 3. Accomplice Liability Instructions

**Committee**

The committee addressed the party and accomplice liability instructions (CR403, CR309A, and CR309B). The committee discussed the differences between party liability / accomplice liability and principle liability and how the model instructions should reflect those differences. The

committee discussed State v. Grunwald, 2018 UT App 46 and whether / how that case can inform potential amendments to these model rules. The committee discussed some of the various circumstances that would require the use of the model rules at issue. The committee discussed whether CR403 and CR309A/B are elements instructions or definition instructions. The committee discussed a specific change to CR309A/B(2)(c) to state: “recognized that his/her conduct could result in [the principle actor] committing the crime of \_\_\_\_\_(CRIME) but the defendant chose to act anyway.”

The committee discussed what these model rules should be titled: party liability OR accomplice liability. While the legislature has disfavored the use of “accomplice,” “party” liability invokes “the parties to the case” considerations (in other words, “party” to the crime vs. “party” to the case). The committee discussed practical applications of how to instruct the jury through the use of a definitions instruction and an elements instruction. The committee agreed that there should not be two elements instructions for any single charge in a case. One solution is to reference the relevant element instruction in an accomplice liability definition instruction. This would allow the use of the stock element instructions already outlined in MUJI.

The committee then cooperated on the preparation of a draft elements instruction of CR403A regarding “party liability,” which read:

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**CR403A.** Party Liability – Elements. Approved 6-6-18.

(DEFENDANT’S NAME) is charged as a party to the offense [in Count\_\_\_\_\_] with committing (CRIME) [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), as a party to the offense;
2. [Insert element two of (CRIME)];
3. [Insert element three of (CRIME)];
4. Etc.

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 one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

## References

*State v. Grunwald*, 2018 UT App 45

*State v. Jeffs*, 2010 UT 49

Utah Code § 76-2-202

## Committee Note

This instruction must be used with CR403B.

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The committee then cooperated on the preparation of a draft definition instruction of CR403B regarding “party liability,” which read:

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**CR 403B.** Party Liability – Definition. Approved 6-6-18.

A person can commit a crime as a “party to the offense.” In other words, a person can commit a criminal offense even though he or she did not personally do all of the acts that make up the offense. Before a person may be found guilty as a “party to the offense,” you must find beyond a reasonable doubt that:

1. The person had the mental state required to commit the charged offense;

AND

2. The person

- a. directly committed the charged offense; or
- b. intentionally, knowingly, or recklessly solicited, requested, commanded or encouraged another person to commit the charged offense; or
- c. intentionally aided another person to commit the charged offense;

AND

3. The charged offense was committed either by that person or another person.

#### **References**

*State v. Grunwald*, 2018 UT App 45

*State v. Jeffs*, 2010 UT 49

Utah Code § 76-2-202

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*Mr. Phelps moved to approve the instructions as amended. Ms. Klucznik seconded. The instruction was unanimously approved.*

#### **4. HB 102 – Use of Force Amendments**

**Committee**

This matter was not considered by the committee during the meeting.

#### **5. Adjourn**

**Committee**

The meeting was adjourned at approximately 1:30 p.m. The next meeting is Wednesday, September 12, 2018.