

**UTAH JUDICIAL COUNCIL
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS
MEETING MINUTES**

Judicial Council Room (Executive Dining Room), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
December 4, 2019 – 12:00 p.m. to 1:30 p.m.

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge James Blanch, <i>Chair</i>	•		None
Jennifer Andrus		•	
Mark Field		•	
Sandi Johnson	•		STAFF:
Judge Linda Jones	•		Michael Drechsel
Karen Klucznik	•		Jiro Johnson (minutes)
Judge Brendan McCullagh	•		Minhvan Brimhall (recording secretary)
Stephen Nelson	•		
Nathan Phelps	•		
Judge Michael Westfall		•	
Scott Young		•	
Elise Lockwood	•		
Debra Nelson	•		
Melinda Bowen		•	

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee. Judge Blanch asked for a motion to approve the minutes

- Mr. Phelps made the motion.
- Ms. Johnson seconded the motion.
- The motion carried unanimously.

Judge Blanch introduced the newest committee member, Debra Nelson, from the Salt Lake Legal Defender Association. Ms. Nelson briefly discussed her history as an appellate attorney for indigent clients.

(2) REVIEW OF AGGRAVATED ASSAULT INSTRUCTIONS TARGETING A LAW ENFORCEMENT OFFICER:

Judge Blanch then turned the committee's attention to the assault instruction involving targeting a law enforcement officer. Ms. Johnson addressed the proposed aggravated assault instruction included in Tab 2 of the meeting materials. Ms. Johnson elaborated on her proposed instructions, including her proposed addition of "intentionally or knowingly" in element 4 of the instruction, including her research and consideration of other legal authorities in support of adding these two mental states. The committee discussed the matter and agreed that

adding “intentionally or knowingly” to element 4 is appropriate, in particular due to the “in furtherance of a political or social objective” language in the statute.

On a separate note, Ms. Klucznik questioned whether “recklessly” was a necessary mental state for element 3. Ms. Johnson believed that recklessly is appropriate in element 3 because it was conceivable that a person is aware and still consciously disregards a risk. Judge Blanch asked if a Committee Note was needed to explain the committee’s reasoning for adding the two mental states to element 4. After discussion, the committee unanimously felt a Committee Note was not needed. Ms. Lockwood asked if “knowingly” is not an appropriate mens rea to include. The committee discussed the “knowingly” mens rea and concluded that “knowingly” should be included.

Ms. Klucznik moved to adopt the following language for the instruction:

CR ____ Aggravated Assault – Targeting Law Enforcement Officer.

(DEFENDANT’S NAME) is charged [in Count ____] with committing Aggravated Assault – Targeting a Law Enforcement Officer[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) Intentionally, knowingly, or recklessly
 - a. Committed an act with unlawful force or violence that
 - b. Caused bodily injury to (VICTIM’S NAME) by:
 - i. [use of a dangerous weapon; or]
 - ii. [interfering with the breathing or circulation of blood of (VICTIM’S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:
 1. Applying pressure to the neck or throat of (VICTIM’S NAME); or
 2. Obstructing the nose, mouth, or airway of (VICTIM’S NAME); or]
 - iii. [other means or force likely to produce death or serious bodily injury]; and
 - c. 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); and
2. (DEFENDANT’S NAME)’s actions caused serious bodily injury; and
3. (DEFENDANT’S NAME) intentionally, knowingly, or recklessly committed the offense against a law enforcement officer; and
4. (DEFENDANT’S NAME) intentionally or knowingly acted in furtherance of political or social objectives in order to intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government; [and]
5. [The defense of _____ does not apply.]

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 § 76-5-103

Utah Code § 76-5-21

Ms. Johnson seconded that motion. The committee voted unanimously to approve the instruction.

(3) DUI AND RELATED TRAFFIC INSTRUCTIONS:

Judge Blanch then turned the committee's attention to the instructions regarding DUI and Related Traffic Instructions. Judge McCullagh continued where the committee left off regarding its discussion of how *Vialpando* impacts the DUI offenses as to an intent element. After the last meeting, Ms. Johnson researched *State v. Thompson* which mentions that DUI is a strict liability offense. Judge Jones explained her belief that *Thompson* is not inconsistent with *Vialpando* or *Bird*. The committee discussed the precedential effect of these opinions as it relates to preparation of a DUI instruction. Judge Jones suggested that these cases should be listed in a Committee Note / Reference so that practitioners can review the case law in preparing instructions. The committee agreed that a Committee Note is appropriate.

Ms. Klucznik pointed out that the Legislature has had numerous opportunities to remove the ambiguity being discussed by the committee. Ms. Johnson stated that the issue may be raised this coming session.

The committee began reviewing the language of the DUI instruction found on page 10 of the meeting materials, which language had been preliminarily approved at the end of the previous meeting. The committee was reminded that at the conclusion of the last meeting, the committee had decided to craft a Committee Note at this meeting. Judge Jones suggested that a Committee Note might be better stated instead as a general "Preamble" to the DUI instructions. Some committee members supported the Preamble idea, while others believed it would not be reviewed by practitioners when they are looking for instructions. The committee discussed the language in the proposed Committee Note on page 11 of the materials. During the discussion, the committee made significant revisions to all of the proposed language.

The committee then considered whether this instruction should be broken into different instructions for different levels of offense (class B misdemeanor, class A misdemeanor, and felony versions of the instruction). The committee agreed that it is preferable to have three different instruction for each level, as well as an option to use a SVF if desired. This is similar to the committee's approach to crafting assault instructions. Judge McCullagh agreed to prepare these instructions for the next meeting.

The committee then returned its attention to the existing language in the DUI instruction on page 10 of the meeting materials. Ms. Klucznik noted that element 3 subpart d needed to be revised to remove the statutory citation and instead insert the direct language from 41-6a-714. After discussion, the committee revised that language to mirror the statutory language (without a citation).

The committee did not vote on the language of the instruction or committee note at this time. Instead, Judge McCullagh will revise the instruction into three separate instructions with the Committee Note as discussed by the committee and present those drafts to the committee at the beginning of the next meeting.

On a completely different topic, Ms. Lockwood still intends to bring a "specific intent" instruction to the committee for review. Judge Jones also explained that she recently had a jury ask a question about who has the burden of proof. Judge Jones' review of the stock instruction left her feeling a need to create a single instruction that squarely states that the burden of proof is on the State and that the defendant is presumed innocent without having to put on any evidence. The committee quickly reviewed the existing model instructions and determined that the matter was adequately covered by those instructions for the time being.

(4) ENTRAPMENT INSTRUCTION:

This item was not addressed at the meeting and will be moved to a future agenda.

(5) SEXUAL INTERCOURSE:

This item was not addressed at the meeting (other than a brief mention by Judge Blanch at the very end of the meeting). Actual discussion of the matter will be moved to a future agenda.

(6) ADJOURN

The Committee then concluded its business at 1:27 pm. The next meeting will be held on January 8, 2020, starting at 12:00 noon.