

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

Via WebEx
October 7, 2020 – 12:00 p.m. to 1:30 p.m.

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

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee to the meeting.
The committee considered the minutes from the [month] [day], 2020 meeting.
Karen moved to approve the draft minutes; Steve Nelson seconded the motion.
The committee voted unanimously in support of the motion. The motion passed.

(2) RECOGNITION OF MR. REMINGTON JIRO JOHNSON:

Since the late-fall of 2018, Mr. Johnson has assisted the committee in preparation of meeting minutes. Due to other responsibilities, he reported to the committee that he would not be able to continue in this role. Judge Blanch recognized Mr. Johnson’s contribution to the committee’s work and praised his attention to detail. His involvement with the committee will be missed. The committee provided a round of applause and wished Mr. Johnson well wishes moving forward.

Judge Blanch asked committee members to consider whether they were aware of anyone who may be well-situated to fill Mr. Johnson’s position assisting the committee. Because this role is not an official committee position, there is no need for this to go through formal processes. Judge Blanch instructed the committee

members that if they have an individual to recommend they should email the suggestion to staff (Michael Drechsel).

(3) BATTERED PERSON MITIGATION INSTRUCTIONS:

Ms. Klucznik explained that these materials are not in a position to reconsider for this meeting. She has recently emailed Ms. Johnson some ideas that need additional time to be developed. Therefore, the committee did not consider any materials on this agenda item at this time. The matter will be placed on the agenda for the November 4, 2020 meeting.

(4) PUBLIC COMMENT REVIEW:

Judge Blanch turned the committee members back to review of public comments from the June 3, 2020 through July 19, 2020 comment period. The committee turned to the assault instruction public comments. One of the public comments received questioned whether a person can recklessly attempt in Utah. Ms. Johnson researched the issue and determined the public comment raises an important issue because it is, in fact, not possible to recklessly attempt to assault in Utah. The current assault instructions (CR1302, CR1303, CR1304, CR1305, CR1306, CR1320, CR1321, and CR1322) do not reflect that legal limitation and instead state that “reckless attempt” is a permissible element. This needs to be corrected. To help the committee address this issue, Ms. Johnson presented to the committee some proposed revisions of the various assault instructions. The general approach is to separate “intentionally or knowingly attempting” and intentionally, knowingly, or recklessly committing an act.” Ms. Johnson also proposed (in response to a separate public comment) that the instructions be revised to include a committee note regarding the use of a special verdict form if the relevant elements employed in the instruction will result in a higher level of offense.

Judge Blanch asked the committee to discuss Ms. Johnson’s analysis about “reckless attempt.” The committee agreed with her assessment of the situation. Judge Blanch then turned the committee’s attention to the proposed changes under Tab 3B of the meeting materials (pages 29-36). The committee considered each proposed instruction in turn, starting with CR1302:¹

CR1302 Misdemeanor Assaults

(DEFENDANT'S NAME) is charged [in Count ____] with committing Assault [against a Pregnant Person][that Caused Substantial Bodily Injury] [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);
 - a) Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM’S NAME); or
 - b) Intentionally, knowingly, or recklessly 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).

¹ In preparing these minutes, staff incorporated the current MUJI instruction language and then incorporated the committee’s proposed and approved revisions to that current language. For this reason, the assault instructions outlined in the minutes appear differently than in the meeting materials, but more accurately track the changes to existing instruction language for the record. The substance of the revisions in these minutes accurately reflects the work of the committee during the meeting.

1. ~~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).~~
- 2) [The act caused substantial bodily injury to (VICTIM'S NAME).]
- 3) [(VICTIM'S NAME) was pregnant, and (DEFENDANT'S NAME) had knowledge of the pregnancy.]
- 4) [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 § 76-5-102

Committee Notes

If the case requires instruction on elements 2 or 3, practitioners should consider using a special verdict form (SVF1301), as these elements result in different levels of offense.

In cases involving domestic violence, practitioners should include a special verdict form (SVF1331) and instructions defining cohabitant (CR1330 and CR1331).

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated mens rea (intentional, knowing, or reckless). Practitioners should review State v. Barela, 2015 UT 22.

 Ms. Klucznik made a motion to approve the revised CR1302 instruction; the motion was seconded by Mr. Nelson. The committee unanimously approved the motion on CR1302.

The committee then turned its attention to CR1303:

CR1303 Assault Against School Employees

(DEFENDANT'S NAME) is charged [in Count ____] with committing Assault Against a School Employee [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);
 - a) Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b) Intentionally, knowingly, or recklessly
 - i) committed an act with unlawful force or violence that
 - (1) caused bodily injury to (VICTIM'S NAME); or
 - (2) created a substantial risk of bodily injury to (VICTIM'S NAME); or

- ii) ~~[threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or]~~
 - iii) ~~[made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);]~~
- 2) ~~Knowing that (DEFENDANT'S NAME) had knowledge that (VICTIM'S NAME) was an employee or volunteer of a public or private school;~~
- 3) ~~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); or]~~
 - c) ~~[threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or]~~
 - d) ~~[made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);]~~
- 3) (VICTIM'S NAME) was acting within the scope of (his)(her) authority as an employee or volunteer of a public or private school; and
- 4) [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 § 76-5-102.3

Mr. Nelson made a motion to approve the revised CR1303 instruction; the motion was seconded by Mr. Phelps. The committee unanimously approved the motion on CR1303.

The committee then turned its attention to CR1304:

CR1304 Assault Against a Peace Officer

(DEFENDANT'S NAME) is charged [in Count ____] with committing Assault Against a Peace 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);
 - a) ~~[Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or]~~
 - b) ~~[Intentionally, knowingly, or recklessly~~
 - i) ~~[committed an act with unlawful force or violence that~~
 - (1) ~~caused bodily injury to (VICTIM'S NAME); or~~
 - (2) ~~created a substantial risk of bodily injury to (VICTIM'S NAME); or]~~

- ii) ~~[threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or]~~
 - iii) ~~[made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);]~~
- 2) ~~(DEFENDANT'S NAME) had knowledge~~Knowing that (VICTIM'S NAME) was a peace officer;
- 3) ~~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); or]~~
 - c) ~~[threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or]~~
 - d) ~~[made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);]~~
- 4)3) [(DEFENDANT'S NAME):
- a) [has been previously convicted of a class A misdemeanor or a felony violation of Assault Against a Peace Officer or Assault Against a Military Servicemember in Uniform;]
 - b) [caused substantial bodily injury;]
 - c) [used a dangerous weapon; or]
 - d) [used means or force likely to produce death or serious bodily injury]]
- 5)4) (VICTIM'S NAME) was acting within the scope of (his)(her) authority as a peace officer; and
- 6)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 § 76-5-102.4(2)(a)

Committee Notes

If the case requires instruction on more than one subpart under element 43, practitioners are advised to use separate elements instructions or a special verdict form (SVF1301), as these subparts result in different levels of offense.

Depending on the facts of the case, practitioners should carefully consider removing element 4.a. from this elements instruction and instead use a special verdict form in a bifurcated proceeding.

In making the revisions, Judge McCullagh noted that the committee note regarding presenting the factors in current element 4 (revised element 3) as part of a special verdict form need to be included in the instruction. Ms. Johnson noted that the language is already in the current instruction, even though it isn't reflected in the proposed language included in the meeting materials. She noted that the current committee note will need to be modified so that "element 4" becomes "element 3." With those changes, Mr. Nelson made a motion to approve the revised CR1304 instruction; the motion was seconded by Ms. Johnson. The committee unanimously approved the motion on CR1304.

The committee then turned its attention to CR1305:

CR1305 Assault Against a Military Servicemember in Uniform

(DEFENDANT'S NAME) is charged [in Count ____] with committing Assault Against a Military Servicemember in Uniform [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);
 - a) Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
 - b) Intentionally, knowingly, or recklessly
 - i) committed an act with unlawful force or violence that
 - (1) caused bodily injury to (VICTIM'S NAME); or
 - (2) created a substantial risk of bodily injury to (VICTIM'S NAME); or
 - ii) threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or
 - iii) made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'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); or~~
 - ~~c) threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or~~
 - ~~d) made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);~~
- ~~3) (DEFENDANT'S NAME):~~
 - ~~a) [has been previously convicted of a class A misdemeanor or a felony violation of Assault Against a Peace Officer or Assault Against a Military Servicemember in Uniform;]~~
 - ~~b) [caused substantial bodily injury;]~~
 - ~~c) [used a dangerous weapon; or]~~
 - ~~d) [used means or force likely to produce death or serious bodily injury]~~
- ~~4) (VICTIM'S NAME) was on orders and acting within the scope of authority granted to the military servicemember in uniform; 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 § 76-5-102.4(2)(b)

Committee Notes

If the case requires instruction on more than one subpart under element 32, practitioners are advised to use separate elements instructions or a special verdict form (SVF1301), as these subparts result in different levels of offense.

Depending on the facts of the case, practitioners should carefully consider removing element 3.a. from this elements instruction and instead use a special verdict form in a bifurcated proceeding.

Mr. Field made a motion to approve the revised CR1305 instruction; the motion was seconded by Mr. Nelson. The committee unanimously approved the motion on CR1305.

The committee then turned its attention to CR1306:

CR1306 Assault by Prisoner

(DEFENDANT'S NAME) is charged [in Count ____] with committing Assault by Prisoner [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) Intending to cause bodily injury;
 - a) [Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or]
 - b) [Intentionally, knowingly, or recklessly 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) 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); and~~
- 3) At the time of the act (DEFENDANT'S NAME) was
 - a) in the custody of a peace officer pursuant to a lawful arrest; or
 - b) was confined in a [jail or other penal institution][a facility used for confinement of delinquent juveniles] regardless of whether the confinement is legal; and
- 4) [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 § 76-5-102.5

Mr. Nelson made a motion to approve the revised CR1306 instruction; the motion was seconded by Ms. Klucznik. The committee unanimously approved the motion on CR1306.

The committee then turned its attention to CR1320:

CR1320 Aggravated Assault

(DEFENDANT'S NAME) is charged [in Count ____] with committing Aggravated 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) ~~intentionally, knowingly, or recklessly~~
 - a) Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or]
 - b) Intentionally, knowingly, or recklessly
 - i) made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
 - ii) committed an act with unlawful force or violence that
 - (1) caused bodily injury to (VICTIM'S NAME); or
 - (2) created a substantial risk of bodily injury to (VICTIM'S NAME);] and
- 2) (DEFENDANT'S NAME)'s ~~conduct included the use of intentionally, knowingly, or recklessly~~
 - a) ~~used~~ a dangerous weapon; or]
 - b) ~~committed any~~ act that interfered with the breathing or the circulation of blood of (VICTIM'S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:
 - i) applying pressure to the neck or throat of (VICTIM'S NAME); or
 - ii) obstructing the nose, mouth, or airway of (VICTIM'S NAME); or]
 - c) ~~used~~ other means or force likely to produce death or serious bodily injury]; and
- 3) [(DEFENDANT'S NAME)'s actions
 - a) [resulted in serious bodily injury; or]
 - b) [produced a loss of consciousness by impeding the breathing or circulation of blood of (VICTIM'S NAME).]]
- 4) [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

Committee Notes

If the case requires instruction on element 3, practitioners should consider using a special verdict form (SVF1301), as this element can result in different levels of offense.

In cases involving domestic violence, practitioners should include a special verdict form (SVF1331) and instructions defining cohabitant (CR1330 and CR1331).

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated mens rea (intentional, knowing, or reckless). Practitioners should review State v. Barela, 2015 UT 22.

Mr. Phelps made a motion to approve the revised CR1320 instruction; the motion was seconded by Mr. Nelson. The committee unanimously approved the motion on CR1320.

The committee then turned its attention to CR1321:

CR1321 Aggravated Assault by Prisoner

(DEFENDANT'S NAME) is charged [in Count ____] with committing Aggravated Assault By Prisoner [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) ~~Intentionally or knowingly~~ attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or]
 - b) ~~Intentionally, Knowingly, or recklessly~~
 - i) made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
 - ii) committed an act with unlawful force or violence that
 - (1) caused bodily injury to (VICTIM'S NAME); or
 - (2) created a substantial risk of bodily injury to (VICTIM'S NAME);] and
- ~~3)2~~ (DEFENDANT'S NAME)
 - a) [used a dangerous weapon; or]
 - b) [committed an act that interfered with the breathing or the circulation of blood of (VICTIM'S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:
 - i) applying pressure to the neck or throat of (VICTIM'S NAME); or
 - ii) obstructing the nose, mouth, or airway of (VICTIM'S NAME); or]
 - c) [used other means or force likely to produce death or serious bodily injury]; and
- ~~4)3~~ [(DEFENDANT'S NAME) intentionally caused serious bodily injury];
- ~~5)4~~ At the time of the act (DEFENDANT'S NAME) was
 - a) in the custody of a peace officer pursuant to a lawful arrest; or
 - b) was confined in a [jail or other penal institution][facility used for confinement of delinquent juveniles] regardless of whether the confinement is legal; and
- ~~6)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 § 76-5-103.5

Ms. Johnson made a motion to approve the revised CR1321 instruction; the motion was seconded by Mr. Field. The committee unanimously approved the motion on CR1321.

The committee then turned its attention to CR1322 (Aggravated Assault – Targeting a Law Enforcement Officer). The committee discussed the proposed instruction revisions in the meeting materials. Ms. Johnson pointed out that the proposed draft incorporates the same changes regarding reckless attempt as the previous instructions. The committee did not spend significant time discussing this proposed revision, since it was consistent with the similar changes made in numerous other instructions. Ultimately, these changes were not approved by the committee due to the following conversation (meaning CR1322 is the only remaining assault instruction where the fix for “reckless attempt” has not yet been approved by the committee).

The reason no changes were approved to CR1322 began with Ms. Johnson noting that there was additional public comment on this instruction. Those comments revolved around regarding combining “bodily injury” (element (1)(b)(ii)(1)) with “serious bodily injury” (element (3)). The public comment noted that because “serious bodily injury” is the only way that this type of aggravated assault can be committed, it was confusing and unnecessary to include “bodily injury” in the instruction.

Ms. Johnson noted that she was concerned about collapsing those into each other because in her view “bodily injury” speaks to the mental state behind a person’s conduct, while “serious bodily injury” speaks to the result of the persons conduct. Judge Blanch agreed, noting that the current instruction seems to be an accurate statement of the law. Ms. Johnson stated that from her perspective the current instruction is not so confusing to a jury that it would create issues. Neither does the current instruction suggests that a person could be convicted without having caused serious bodily injury.

The committee reviewed and discussed how Utah Code § 76-5-210 (“Targeting a law enforcement officer defined”) complicates the structure of this instruction. This was not something that was raised in the public comments. That statute uses the words “in furtherance of,” which caused Judge McCullagh to suggest that there is a mens rea (i.e., “in furtherance of” suggests taking action for a specific reason) associated with the “serious bodily injury” element in CR1322. The committee members struggled to agree on a single interpretation of Utah Code § 76-5-210, but did agree that two possible reasonable interpretations could be read in the statute:

- 1) one reading is that it is the result (“serious bodily injury or death”) that must be “in furtherance of” the listed objective; and
- 2) the other reading is that it is the conduct (“defendant’s actions”) that must be “in furtherance of” the listed objective.

These two readings drastically impact the way in which this instruction would be drafted. Judge McCullagh suggested that one option would be to create a committee note that indicated CR1322 was prepared with the view that it is the conduct must be in furtherance of the listed objective (i.e., the second reading listed above) AND that the conduct must result in serious bodily injury (regardless of whether that result was “in furtherance of”). Having such a committee note would highlight this distinction for parties so they can intentionally address the issue as instructions are prepared and submitted in each particular case.

Ms. Klucznik returned the committee to the topic raised in the public comment, noting that it doesn’t seem possible to collapse “bodily injury” into “serious bodily injury” without changing what, in her opinion, is the clear intent of the statute. She explained that the elements of assault could be written to state that the mental state applies to the commission of the act, and that the result must be the causing of serious bodily. Currently, the instruction is not written in that way and instead combines the mental state AND the result in element 1).

The committee explored this by briefly discussing a hypothetical, including if a person intends to hit someone (and does), but does not intend serious bodily injury. Once hit, if the person falls back and hits their head on a curb and sustains serious bodily injury (as a result of being hit), should the person be convicted or acquitted of aggravated assault? Some committee members felt the person should be convicted. Does the same result follow if you layer on the “targeting a law enforcement officer” considerations? That question was not answered by the committee.

The committee also discussed whether, for purposes of CR1322, a person could “make a threat” which results in serious bodily injury (i.e., threaten to hit an officer at a protest with a sign, the officer steps back causing another officer to discharge a firearm that hits the officer who stepped back, causing the serious bodily injury . . . is that what this type of aggravated assault was intended to address?).

The structure of this instruction is contingent on how Utah Code § 76-5-201 “in furtherance of” is interpreted. Judge Blanch expressed concern about publishing an instruction that ultimately relies upon the wrong interpretation of Utah Code § 76-5-201. More than one committee member was of the opinion that the statute was not written to require proof of an intent to cause serious bodily injury. If there committee were to follow the recommendation in the public comment and replace “bodily injury” in element 1) with “serious bodily injury”, it would change the current meaning of the statute. Ms. Klucznik suggested that perhaps this statute should be referred back to the legislature for clarification prior to drafting the instruction.

After significant discussion, the committee determined CR1322 needs additional careful attention before action is taken. This instruction is tabled and will be reconsidered at the next meeting after committee members have additional time ruminate on the discussion.

None of the other public comments in Tab 3 were addressed by the committee during the meeting.

(5) DUI AND RELATED TRAFFIC INSTRUCTIONS

These materials were not considered at this meeting.

(6) ADJOURN

The meeting adjourned at approximately 1:25 p.m. The next meeting will be held on November 4, 2020, starting at 12:00 noon.