

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

Via WebEx
December 2, 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	•		
Karen Klucznik	•		
Elise Lockwood		•	
Judge Brendan McCullagh	•		
Debra Nelson	•		
Stephen Nelson		•	
Nathan Phelps	•		
Judge Michael Westfall	•		
Scott Young		•	
<i>EMERITUS:</i> Judge Linda Jones		•	

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee to the meeting.
The committee considered the minutes from the October 7, 2020 meeting.
Mr. Phelps moved to approve the draft minutes; Ms. Johnson seconded the motion.
The committee voted unanimously in support of the motion. The motion passed.

(2) DISCUSSION RE: PLEASANT GROVE CITY V. TERRY, 2020 UT 69:

The committee discussed *Pleasant Grove City v. Terry*, 2020 UT 69. Judge Blanch provided a brief synopsis of the case, including the Utah Supreme Court’s holding regarding impossible verdicts. Judge Blanch asked the committee members whether there was a need for jury instructions in this area. Judge McCullagh suggested that once the committee drafts an instruction addressing the offense of domestic violence in the presence of a child, there should be a committee note included that advises practitioners of the issue addressed in the *Pleasant Grove* case. Ms. Johnson noted that she had heard word that the supreme court’s Advisory Committee on the Rule of Criminal Procedure may be considering some rule to address this issue. In her opinion, if the choice is between a rule or a jury instruction on this issue, a jury instruction is the preferable approach. She offered to work with Ms. Lockwood on preparing a proposed instruction. Ms. Klucznik noted that this situation

may not be limited to DV cases. The issue may arise in a number of other contexts and so may have broader application. Judge Blanch asked Ms. Johnson to work with Ms. Lockwood to prepare a proposed instruction to be considered at the next meeting. She agreed to do so and will reach out to Ms. Lockwood (who wasn't able to be present today) to coordinate.

(3) PUBLIC COMMENT REVIEW:

The committee then turned its attention to continued review of public comments.

Targeting a Law Enforcement Officer (continued discussion from October 7)

The committee began by picking up where it left off at the October 7 meeting on CR3122 (Aggravated Assault – Targeting a Law Enforcement Officer). Since the last meeting, Ms. Johnson had provided some new materials on this issue (pages 55-56 of the meeting materials). Ms. Johnson explained that she had prepared a version of an elements instruction based upon the discussion at the October 7 meeting. She also explained that in her view it would be better to instead use a special verdict instruction and form in combination with the standard aggravated assault instruction (CR1320). This would replace the current published version of CR1322. She reviewed the various materials with the committee. The committee then turned its attention to consideration of the materials. Judge Blanch solicited feedback from the committee on which approach the committee wanted to take. The committee members agreed that the special verdict form approach made the most sense in light of the issues that had been previously discussed in October and again today. The committee discussed the proposed language Ms. Johnson had prepared and made the following changes to what was included on page 56 of the meeting materials:

CR1322 Aggravated Assault – Targeting a Law Enforcement Officer – Special Verdict Instructions

If you find (DEFENDANT'S NAME) guilty of Aggravated Assault, you must determine whether (DEFENDANT'S NAME) Targeted a Law Enforcement Officer ~~and caused Serious Bodily Injury~~ at the time of this offense. To find (DEFENDANT'S NAME) Targeted a Law Enforcement Officer ~~and caused Serious Bodily Injury~~, you must find all three elements below beyond a reasonable doubt:

- 1) the aggravated assault resulted in serious bodily injury;
- 2) the defendant knowingly used force against a law enforcement officer; and
- 3) the defendant's use of force was 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.

The State must prove beyond a reasonable doubt that (DEFENDANT'S NAME) Targeted a Law Enforcement Officer ~~and caused Serious Bodily Injury~~. Your decision must be unanimous and should be reflected on the special verdict form.

References

Utah Code § 76-5-103(2)(b)
Utah Code § 76-5-210

Committee Note:

When relevant to the facts of the case, this instruction should be used in connection with CR1320 Aggravated Assault and SVF 1302 Aggravated Assault – Targeting a Law Enforcement Officer.

The committee then turned its attention to the companion special verdict form (SVF1302 Aggravated Assault – Targeting a Law Enforcement Officer):

We, the jury, have found the defendant, (DEFENDANT’S NAME), guilty of Aggravated Assault, as charged in Count(s) [#,#,#]. We also unanimously find the State:

- has
- has not

proven beyond a reasonable doubt (DEFENDANT’S NAME) Targeted a Law Enforcement Officer ~~and caused Serious Bodily Injury~~ at the time of [this][these] offense(s).

Judge McCullagh made motion to approve the instruction and special verdict form. Ms. Klucznik seconded the motion. The motion was unanimously approved.

Additional / Modified Assault Definitions in CR1301

The committee had received a number of public comments related to CR1301 Definitions. The committee carefully considered each comment. After discussion, the committee determined not to take any action on a number of the requests to include additional definitions in CR1301. The reason for this is because it is not the goal of the committee to include in MUJI every statutory definition. Practitioners should understand that certain general definitions exist within the Utah Code and should reference those in their instructions as appropriate. In the future, if new MUJI instructions are drafted that involve the definitions identified in these comments, the committee will consider adding a reference citation to the definition to point practitioners to the appropriate statutory source.

The committee did, however, agree that updates to some of the existing definitions are in order (specifically the definition of “Peace Officer” and “Military Servicemember in Uniform”). These definitions have previously been included in MUJI as part of existing elements instructions. The committee members made the following revisions to the existing definition of “Peace Officer”:

[“Peace officer” means:

1. a law enforcement officer, ~~certified~~ defined as [insert appropriate definition] under Section 53-13-103];
2. a correctional officer, defined as [insert appropriate definition] under Section 53-13-104];
3. a special function officer, defined as [insert appropriate definition] under Section 53-13-105]; or
4. a federal officer, defined as [insert appropriate definition] under Section 53-13-106.]]

Reference: Utah Code § 76-5-102.4(1)(c)

Ms. Johnson made motion to approve these changes; Ms. Klucznik seconded. The motion passed unanimously. Staff asked if the committee intended to make a similar change to the definition for “Military servicemember in

uniform.” Ms. Johnson made motion; the motion was seconded by Ms. Nelson. The motion passed unanimously.

[Consistent with direction from the committee during the meeting, staff prepared the following definition after the meeting:]

[“Military servicemember in uniform” means:

1. a member of any branch of the United States military who is wearing a uniform as authorized by the member’s branch of service; or
2. a member of the National Guard ~~servicing as provided in Section 39-1-5 or 39-1-9.~~ordered into active service by the governor~~[called into service by the President of the United States].~~

Reference: Utah Code § 76-5-102.4(1)(b)

Assault instruction Committee Notes re: Cohabitancy Status and Mental State

The committee members discussed the comments regarding the committee’s previous decision to include a committee note in two of the assault instructions (CR1302 and CR1320) that reads: “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.” The committee reviewed the reasons why that committee note was first added to those instructions. After discussion, no committee member was willing to make a motion to revise or remove the language from the two committee notes.

Staff noted for the committee that the committee had now completed its review of public comments related to the assault instructions published in June 2020. Many revisions have been approved by the committee in response to the comments. There still remain public comments to address regarding DUI, Homicide, Sexual Offenses, Defense of Habitation/Self/Others, and Miscellaneous instructions.

Ms. Klucznik noted that she had prepared some materials in connection with the homicide instructions, as well as on battered person mitigation. Judge Blanch asked Ms. Klucznik to provide an overview of those materials to orient the committee in advance of the January meeting. Ms. Klucznik provided some explanation for the materials, which will be provided to the committee via email (and included in the agenda packet for the next meeting).

After Ms. Klucznik’s explanation, Judge Blanch took opportunity to again thank members of the public for making such detailed comments during the June-July 2020 public comment period. Staff was instructed to reach out to those who commented to communicate the committee’s sincere appreciation.

(4) ADJOURN

The meeting adjourned at approximately 1:23 p.m. The next meeting will be held on January 6, 2021, starting at 12:00 noon via Webex.