

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

Via Webex - <https://utcourts.webex.com/meet/michaelcd>
March 2, 2022 – 12:00 p.m. to 1:00 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Blanch
	Specific Jury Unanimity Instructions: - <i>CR430 Single Offense in More Than One Way</i> - <i>CR431 Multiple Offenses with Identical Elements</i>	Reference	Tab 2	Judge Blanch
	CR216 – Jury Deliberations	Action	Tab 3	Judge McCullagh Judge Jones
1:00	Adjourn			

COMMITTEE WEB PAGE: <https://www.utcourts.gov/utc/muji-criminal/>

UPCOMING MEETING SCHEDULE:

Meetings are held at the Matheson Courthouse in the Judicial Council Room (N301), on the first Wednesday of each month from 12:00 noon to 1:30 p.m. (unless otherwise specifically noted):

December 1, 2021
January 5, 2022
February 2, 2022
March 2, 2022
April 6, 2022

May 4, 2022
June 1, 2022
July 6, 2022
August 3, 2022
September 7, 2022

October 5, 2022
November 2, 2022
December 7, 2022

TAB 1

Minutes – February 2, 2022 Meeting

NOTES:

This is an explanation of this item, if necessary

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

Via Webex
February 2, 2022 – 12:00 p.m. to 1:30 p.m.

DRAFT

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. James Blanch	District Court Judge [Chair]	•		None
Jennifer Andrus	Linguist / Communications		•	
Sharla Dunroe	Defense Counsel	•		STAFF:
Sandi Johnson	Prosecutor	•		Michael Drechsel
Janet Lawrence	Defense Counsel	•		
Elise Lockwood	Defense Counsel		•	
Jeffrey Mann	Prosecutor	•		
Hon. Brendan McCullagh	Justice Court Judge	•		
Debra Nelson	Defense Counsel	•		
Stephen Nelson	Prosecutor	•		
Richard Pehrson	Prosecutor	•		
Hon. Teresa Welch	District Court Judge	•		
<i>vacant</i>	Criminal Law Professor		•	
Hon. Linda Jones	<i>Emeritus</i>	•		

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee to the meeting.
The committee considered the minutes from the January 5, 2022 meeting.
Mr. Mann moved to approve the draft minutes; Judge McCullagh seconded the motion.
The committee voted unanimously in support of the motion. The motion passed.

(2) SPECIFIC JURY UNANIMITY INSTRUCTIONS:

Judge Blanch reoriented the committee on the work the committee performed during the last meeting (on what was subsequently numbered as new instruction CR430). Judge Blanch noted that after that last committee meeting, the Utah Court of Appeals issued *State v. Baugh*, 2022 UT App 3. This opinion (along with several other opinions issued in the last few years) highlights the need to adequately address the jury unanimity requirement under circumstances where there are more criminal offenses discussed at trial than actual charges filed or where there are multiple identical charges that are not clearly differentiated in the information, the presentation of the evidence, the closing arguments, the elements instruction(s), or the verdict forms.

Part of the solution is to have sufficiently robust stock instructions. As a result, the meeting materials included the current instructions that speak to jury unanimity (CR216 and CR218) with the intention that the committee make a careful review of those instructions to ensure they adequately address the jury unanimity requirement as part of the current stock instructions. But specific jury unanimity instructions will also assist in this matter.

To build upon the committee's work on CR430 from the last meeting, Judge Blanch prepared a proposed jury unanimity instruction for use in the specific circumstances described above (proposed instruction located on page 27 of the meeting materials; subsequently numbered as new instruction CR431). The committee began a discussion of the language in Judge Blanch's proposal. Judge Blanch explained that his intention was that the committee note and references from CR430 should also be included in CR431. Judge Welch suggested that there ought to be clear language expressing the critical connection between mens rea and actus reus for each count. To address the concern Judge Welch expressed, the committee turned its attention to the committee note CR430. Judge Blanch proposed language in the final paragraph of the current committee note. After discussion, the committee agreed to add the following to the final paragraph of CR430: "The instructions must instruct the jury it must unanimously agree that the applicable mental state(s) and other essential elements have been proven for each count." The committee then made a new review of the entirety of CR430 and made additional changes to the previously approved language (primarily to the use of the word "method," considering how that specific term is discussed in *State v. Hummel*). Once the review and amendments were completed, the committee unanimously re-approved CR430 (motion by Mr. Pehrson; second by Judge Welch), as follows:

CR430 JURY UNANIMITY – SINGLE OFFENSE ~~BY MULTIPLE ALTERNATIVE METHODS~~ SIN MORE THAN ONE WAY

The prosecution has ~~presented evidence charged~~ that the defendant ~~may have~~ committed [Count ____] ~~by multiple alternative methods in more than one way~~. You may not find the defendant guilty of that offense unless you unanimously agree that the prosecution has proved that the defendant committed the offense ~~by at least one of the methods in at least one specific way~~ AND you unanimously agree on the specific ~~method~~way(s) ~~by in~~ which the defendant committed the offense.

REFERENCES

State v. Saunders, 1999 UT 59
State v. Hummel, 2017 UT 19
State v. Alires, 2019 UT App 206
State v. Case, 2020 UT App 81
State v. Whytock, 2020 UT App 107
State v. Covington, 2020 UT App 110
State v. Mendoza, 2021 UT App 79
State v. Paule, 2021 UT App 120
[*State v. Baugh*, 2022 UT App 3](#)

COMMITTEE NOTES

Counsel and trial courts should consider the use of either CR430 or CR431 in certain cases to help eliminate confusion or ambiguity about whether the jury has reached a unanimous conclusion regarding a defendant's guilt. When appropriate, these instructions should be included in addition to the general unanimity principles contained within instructions CR216 and CR218.

Increasingly, Utah's appellate courts are identifying circumstances in which it is not clear, based on instructions given, that juries necessarily reached unanimous agreement as to all elements of a particular charged crime. Examples of such case law are set forth in the references above.

CR430 is meant for use in circumstances in which the prosecution has alleged the defendant committed a particular crime in two or more alternative methods more than one way, such as asserting the defendant committed two or more acts that each would constitute a charged offense of obstruction of justice. See, e.g., *State v. Mendoza*, 2021 UT App 79. The committee encourages the use of a special verdict form or forms to reduce further the possibility of confusion in this context.

CR431 is meant for use in circumstances in which the prosecution has alleged the defendant committed multiple crimes consisting of identical elements on separate occasions, such as asserting the defendant committed multiple acts constituting separate instances of aggravated sexual abuse of a child over a period of time. See, e.g., *State v. Alires*, 2019 UT App 206. In circumstances such as these, use of CR430 or CR431, in addition to the unanimity language in CR216 and CR218, should help reduce confusion or ambiguity over whether the jury has reached unanimous agreement as to whether the defendant committed a particular specific criminal act.

The committee cautions counsel and trial courts against relying exclusively on these instructions to ensure it is clear a jury's verdict is unanimous. To remove ambiguity, it may also be advisable to amend the language of particular elements instructions and verdict forms to ensure it is clear which specific acts relate to which charged offenses. The instructions must instruct the jury it must unanimously agree that the applicable mental state(s) and other essential elements have been proven for each count. The use of special verdict forms is also encouraged. The appellate courts have further encouraged counsel to explain clearly to jurors in closing arguments which specific acts relate to which charged offenses. The committee recommends to counsel and trial courts that they employ such approaches, in addition to use of the instructions described above, to ensure it is sufficiently clear that jury verdicts are unanimous.

Last Revised – 02/02/2022

Having made a review of CR430, the committee turned its attention back to proposed new instruction CR431. The committee made minor revisions to the proposed instruction to bring consistency between CR431 and CR430. The committee focused particular attention on the final sentence of the proposed language in CR431 which stated, "You may find the defendant guilty of some of these counts and not guilty of others, but for each count, your decision must be unanimous." After discussion, the committee agreed that the sentence should be stated: "You may find the defendant guilty of all of these counts, none of these counts, or only some of these counts; but for each count your decision must be unanimous."

Once the review and amendments were completed, the committee unanimously approved new instruction CR431 (motion by Mr. Pehrson; second by Judge Welch), as follows:

CR431 Jury Unanimity – Multiple Offenses with Identical Elements

The prosecution has charged in Count _____ through Count _____ that the defendant committed [INSERT NAME OF OFFENSE] multiple times. Although each of these counts has similar or identical elements, you must consider each count separately and reach unanimous agreement as to whether the defendant is guilty or not guilty of each specific count. You may not find the defendant guilty of any one of these counts unless you unanimously agree on the specific act the prosecution has proven that is within the elements of the offense AND you unanimously agree the prosecution has proven all other elements of the count. You may

find the defendant guilty of all of these counts, none of these counts, or only some of these counts; but for each count your decision must be unanimous.

REFERENCES

State v. Saunders, 1999 UT 59

State v. Hummel, 2017 UT 19

State v. Alires, 2019 UT App 206

State v. Case, 2020 UT App 81

State v. Whytock, 2020 UT App 107

State v. Covington, 2020 UT App 110

State v. Mendoza, 2021 UT App 79

State v. Paule, 2021 UT App 120

State v. Baugh, 2022 UT App 3

COMMITTEE NOTES

Counsel and trial courts should consider the use of either CR430 or CR431 in certain cases to help eliminate confusion or ambiguity about whether the jury has reached a unanimous conclusion regarding a defendant's guilt. When appropriate, these instructions should be included in addition to the general unanimity principles contained within instructions CR216 and CR218.

Increasingly, Utah's appellate courts are identifying circumstances in which it is not clear, based on instructions given, that juries necessarily reached unanimous agreement as to all elements of a particular charged crime. Examples of such case law are set forth in the references above.

CR430 is meant for use in circumstances in which the prosecution has alleged the defendant committed a particular crime in more than one way, such as asserting the defendant committed two or more acts that each would constitute a charged offense of obstruction of justice. See, e.g., State v. Mendoza, 2021 UT App 79. The committee encourages the use of a special verdict form or forms to reduce further the possibility of confusion in this context.

CR431 is meant for use in circumstances in which the prosecution has alleged the defendant committed multiple crimes consisting of identical elements on separate occasions, such as asserting the defendant committed multiple acts constituting separate instances of aggravated sexual abuse of a child over a period of time. See, e.g., State v. Alires, 2019 UT App 206. In circumstances such as these, use of CR430 or CR431, in addition to the unanimity language in CR216 and CR218, should help reduce confusion or ambiguity over whether the jury has reached unanimous agreement as to whether the defendant committed a particular specific criminal act.

The committee cautions counsel and trial courts against relying exclusively on these instructions to ensure it is clear a jury's verdict is unanimous. To remove ambiguity, it may also be advisable to amend the language of particular elements instructions and verdict forms to ensure it is clear which specific acts relate to which charged offenses. The instructions must instruct the jury it must unanimously agree that the applicable mental state(s) and other essential elements have been proven for each count. The use of special verdict forms is also encouraged. The appellate courts have further encouraged counsel to explain clearly to jurors in closing arguments which specific acts relate to which charged offenses. The committee recommends to counsel and trial courts that they employ such approaches, in addition to use of the instructions described above, to ensure it is sufficiently clear that jury verdicts are unanimous.

Approved – 02/02/2022

Before leaving the meeting, Judge McCullagh stated that in advance of the next meeting he would work with Judge Jones to make some proposed revisions to CR216 for the committee's consideration.

(3) ADJOURN

The meeting adjourned at approximately 1:30 p.m. The next meeting will be held on March 2, 2022, starting at 12:00 noon.

TAB 2

**CR430 Jury Unanimity – Multiple Offenses
with Identical Elements**

**CR431 Jury Unanimity – Multiple Offenses
with Identical Elements**

NOTES:

The committee approved these two instructions at the February 2, 2022 meeting. They are included here for reference only.

CR430 Jury Unanimity – Single Offense in More Than One Way.

The prosecution has charged that the defendant committed [Count ____] in more than one way. You may not find the defendant guilty of that offense unless you unanimously agree that the prosecution has proved that the defendant committed the offense in at least one specific way AND you unanimously agree on the specific way(s) in which the defendant committed the offense.

References

State v. Saunders, 1999 UT 59
State v. Hummel, 2017 UT 19
State v. Alires, 2019 UT App 206
State v. Case, 2020 UT App 81
State v. Whytock, 2020 UT App 107
State v. Covington, 2020 UT App 110
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The committee cautions counsel and trial courts against relying exclusively on these instructions to ensure it is clear a jury's verdict is unanimous. To remove ambiguity, it may also be advisable to amend the language of particular elements instructions and verdict forms to ensure it is clear which specific acts relate to which charged offenses. The instructions must instruct the jury it must unanimously agree that the applicable mental state(s) and other essential elements have been proven for each count. The use of special verdict forms is also encouraged. The appellate courts have further encouraged counsel to explain clearly to jurors in closing arguments which specific acts relate to which charged offenses. The committee recommends to counsel and trial courts that they employ such approaches, in addition to use of the instructions described above, to ensure it is sufficiently clear that jury verdicts are unanimous.

Last Revised – 02/02/2022

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References

State v. Saunders, 1999 UT 59
State v. Hummel, 2017 UT 19
State v. Alires, 2019 UT App 206
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Approved – 02/02/2022

TAB 3

CR216 Jury Deliberations

NOTES:

The attached draft contains a rewrite of the current version of instruction CR216 Jury Deliberations.

CR216 Jury Deliberations.

In the jury room, discuss the evidence and speak your minds with each other. Open discussion should help you reach a unanimous agreement on a verdict. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. I recommend that you not commit yourselves to a particular verdict before discussing all the evidence.

Try to reach unanimous agreement, but only if you can do so honestly and in good conscience. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with. In the end, your vote must be your own.

Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found "guilty" or "not guilty." In reaching your verdict you may not use methods of chance, such as drawing straws or flipping a coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment as to whether the evidence presented by the prosecutor proved each charge beyond a reasonable doubt.

Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found "guilty" or "not guilty." That is, you must be unanimous in your verdict for each count charged.

To help you in reaching unanimous agreement, I recommend that you not commit yourselves to a particular verdict before discussing all the evidence. In addition, you may not speculate, and you may not use methods of chance, such as drawing straws or flipping a coin. Rather, in the jury room, consider the evidence and speak your minds with each other. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with.

In the end, your vote must be your own. A unanimous verdict must reflect the individual, careful, and conscientious judgment of each juror as to whether the defendant is guilty or not guilty.

References

Utah Const. Art. I, § 10.
 Utah R. Crim. P. 21(b).
 Utah R. Civ. P. 59(a)(2).
Burroughs v. United States, 365 F.2d 431, 434 (10th Cir. 1966).
State v. Lactod, 761 P.2d 23, 30-31 (Utah Ct. App. 1988).
 75 Am. Jur.2d Trial §§ 1647, 1753, 1781.
State v. Hummel, 2017 UT 19
State v. Alires, 2019 UT App 206
State v. Case, 2020 UT App 81
State v. Whytock, 2020 UT App 107

Committee Notes

Utah's courts have directed that, under certain circumstances, juries must be instructed on something more than simply being unanimous as to the verdict. In cases where different acts and mental states can satisfy the same element, practitioners should add or amend proposed jury instructions and verdict forms to address unanimity concerns.

Utah's appellate courts have tried to distinguish between elements of a crime—on which a jury must be unanimous—and theories of a crime—on which a jury does not have to be unanimous. The line between elements and theories, however, is not clearly defined in the case law. Thus, the nature of the additional required instruction will vary depending upon the crimes charged and the facts and circumstances of a particular case. For these reasons, the Committee has not adopted any specific model unanimity instructions beyond the general instruction in CR216 and CR218. Rather, the Committee encourages the parties to refer to case law on the matter.

Amended Dates

Instruction last revised – 11/01/2017
 Committee note added – 08/05/2020