

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

Via Webex  
August 3, 2022 – 12:00 p.m. to 1:30 p.m.

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. James Blanch	District Court Judge [Chair]	•		None
Jennifer Andrus	Linguist / Communications	•		
Sharla Dunroe	Defense Counsel	•		
Sandi Johnson	Prosecutor	•		<b>STAFF:</b> Bryson King
Janet Lawrence	Defense Counsel	•		
<i>vacant</i>	Defense Counsel	---	---	
Jeffrey Mann	Prosecutor	•		
Hon. Brendan McCullagh	Justice Court Judge	•		
Debra Nelson	Defense Counsel		•	
<i>vacant</i>	Prosecutor	---	---	
Richard Pehrson	Prosecutor	•		
Hon. Teresa Welch	District Court Judge	•		
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 June 1, 2020 meeting.  
Mr. Mann moved to approve the draft minutes; Judge Welch seconded the motion.  
The committee voted unanimously in support of the motion. The motion passed.

Judge Blanch reported that he has seen the committee's unanimity instructions in use in two different cases already. This suggests that the new proposed instructions are already gaining traction with practitioners.

**(2) COMMITTEE MEMBERSHIP UPDATE:**

Mr. Drechsel provided a brief report on committee membership. There are two vacant positions on the committee (one defense attorney and one prosecutor). Mr. Drechsel reviewed the names of the applicants for these vacant positions and asked the committee members to provide feedback if they have any input on who could bring the most value to the committee. Judge Blanch will be formulating a recommendation to the Judicial Council for appointment of new committee members and this feedback will be helpful in making that recommendation. Judge Blanch reiterated the need to have the right balance of professional experience on this

committee — practitioners with trial experience and practitioners with appellate experience — and will be working to ensure that balance is preserved and maximized.

### (3) ENTRAPMENT:

Judge Blanch introduced this agenda item, including a brief description of the meeting materials for this agenda item, which included an entrapment jury instruction used recently in a criminal trial. He also pointed the committee's attention to the recently published *State v. Dickerson* case (2022 UT App 60), which addresses the objective / subjective standards that are applicable to an entrapment defense. The committee agreed that entrapment is something that is coming up more frequently and as a result an entrapment instruction should be created, even while *Dickerson* may be on appeal. Judge Blanch noted that his review of the *Dickerson* case caused him to reconsider whether the jury instruction in the meeting materials was an accurate statement of the defense. Judge Blanch specifically focused the committee's attention on the second clause of the second sentence of the second paragraph of the proposed instruction in the meeting materials (regarding "a subjective standard"), suggesting that perhaps *Dickerson* means this clause should be deleted: " , rather than a subjective standard focusing on a particular defendant's individual predisposition to commit a crime."

The committee carefully and thoroughly discussed the objective and subjective components of the entrapment inquiry. Ms. Johnson had provided some detailed input on the proposed instruction. The committee reviewed her proposed revisions. After significant discussion and careful review of what *Dickerson* may mean for the statutory entrapment defense, the committee ultimately agreed, subject to discussion regarding the highlighted language (see below) and final review at the next meeting, that the following language would constitute an appropriate entrapment instruction:

#### NEW: CR      ENTRAPMENT.

You must decide whether the defense of entrapment applies in this case. Under that defense, the defendant is not guilty of an offense if (he)(she) acted because (he)(she) was entrapped into committing the offense.

Entrapment occurs when, in order to obtain evidence of the commission for prosecution, a peace officer or a person directed by or acting in cooperation with the peace officer induces a person to commit an offense by methods that create a substantial risk that the offense would be committed by one not otherwise ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

When determining whether the defendant was entrapped, you must decide whether the methods used by law enforcement create a substantial risk that the defendant did not freely and voluntarily commit the offense. In making your decision, you should consider:

- the defendant's reactions to the government inducement, including:
  - whether the defendant hesitated when presented with an illegal opportunity and succumbed only to persistent pressure; or
  - whether the defendant actively pursued the commission of the offense despite opportunities to withdraw;
- whether the case involves:
  - improper police conduct where the government agent applied persistent pressure or persistently pursued the defendant to commit the offense;
  - appeals based on sympathy, pity, close personal friendships, or offers of inordinate sums of money; and

- all other relevant circumstances.

[The defense of entrapment is unavailable when an element of the offense is causing or threatening bodily injury to a person other than a peace officer or the person directed by or acting in cooperation with the peace officer.]

A defendant carries no burden to prove the defense of entrapment. In other words, the defendant is not required to prove the defense of entrapment applies to his conduct. Rather, the prosecution must prove beyond a reasonable doubt that the defendant was not entrapped. If the prosecution has not met this burden, then you must find the defendant not guilty.

#### **REFERENCES**

Utah Code § 76-2-303

State v. Hernandez, 2020 UT App 58

State v. Hatchett, 2020 UT App 61

State v. Dickerson, 2022 UT App 56

State v. Smith, 2022 UT App 82

#### **COMMITTEE NOTES**

When using this instruction, practitioners should add to the relevant elements instruction a final numbered element stating, “The defense of entrapment does not apply.”

Last Revised - 00/00/0000

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No official committee vote was taken at the meeting on this instruction language. There was a difference of opinion among committee members regarding whether to include the highlighted language in the first sentence of the second paragraph. This language is included in the statutory articulation of the entrapment defense (see Utah Code § 76-2-303(1)). As a result, some members of the committee believed the language should be included in this model jury instruction. Other members of the committee were concerned that it may tend to confuse the jury in that if there weren't an intention to obtain evidence for prosecution then why is a case being prosecuted in the first place? The committee members agreed to continue considering whether and how to address this statutory language in the model jury instruction. The committee will resolve this issue and make a final review of the instruction as the first agenda item at the September committee meeting.

#### **(4) PARTIAL DEFENSE INSTRUCTIONS:**

This agenda item was not addressed at this meeting.

#### **(5) ADJOURN**

The meeting adjourned at approximately 1:30 p.m. The next meeting will be held via Webex on September 7, 2022, starting at 12:00 noon.