

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

Via Webex
September 7, 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		•	STAFF:
Sandi Johnson	Prosecutor	•		Michael Drechsel
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 August 5, 2020 meeting.
Judge Welch moved to approve the draft minutes; Ms. Johnson seconded the motion.
The committee voted unanimously in support of the motion. The motion passed.

Judge Blanch then directed the committee’s attention to another recent jury unanimity case (State v. Garcia-Lorenzo, 2022 UT App 101), and noted that it appears there are a few unanimity cases pending before the Utah Supreme Court. He also noted that he is aware that some practitioners are using the newly created instructions. He thanked the committee members again for their recent work on these instructions.

(2) ENTRAPMENT:

Judge Blanch then turned the committee’s attention to the entrapment instruction. He reviewed with the committee where the committee left off at the last meeting and then engaged the committee in a discussion on the proposed draft instruction in the meeting materials (page 7). The committee began its review with proposed revisions prepared by Ms. Lawrence. Ms. Lawrence provided explanation on her proposed revisions, including that she had borrowed some of the language and structure for her proposals from the *Long* eyewitness

instruction in an effort to move this entrapment instruction in the direction of a non-exhaustive list of factors and to avoid *Shickles* issues. The committee discussed the revisions proposed by Ms. Lawrence. Judge Welch asked if the entrapment instruction adequately captures the objective and subjective components of the inquiry, as articulated in the *Dickerson* case that the committee discussed at the last meeting. Judge Blanch noted that there are arguably objective and subjective clauses of the current draft instruction and that it may not be necessary to explicitly include the words “objective” or “subjective” in the instruction. This would be consistent with the committee’s discussion at the last meeting. Judge Welch was convinced that omitting the terms “objective” and “subjective” is wise. Ms. Johnson also agreed that not including those terms is the right path forward.

The committee then word-smithed the language in the draft provided by Ms. Lawrence. In doing so, the committee reviewed other MUJI instructions to harmonize the language with existing instructions. At the conclusion of the committee’s discussions, Mr. Pehrson made a motion to approve the following language:

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CR440 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. 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)(her) conduct. Rather, the prosecution must prove beyond a reasonable doubt that entrapment does not apply.

Entrapment occurs when, in order to obtain evidence, 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.

Many circumstances may affect the defense of entrapment. In considering whether the prosecution has proven beyond a reasonable doubt that entrapment does not apply, you should consider the following:

- the defendant’s reactions to the peace officer’s [or peace officer’s agent’s] 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 crime despite opportunities to withdraw;
- whether the case involves:
 - improper police conduct where the peace officer [or peace officer’s 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
- any other circumstances you find helpful in evaluating whether the defendant freely and voluntarily committed the offense.

Keep in mind that not all the listed circumstances will apply in every case, and some cases might have circumstances that are not listed here.

[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].]

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.”

Adopted – 09/07/2022

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Ms. Lawrence seconded that motion. The committee voted unanimously in favor of the motion. Staff was instructed to place the approved instruction on the website (and did so as new instruction CR440).

(3) PARTIAL DEFENSE INSTRUCTIONS (CONTINUED):

This agenda item was not considered at this meeting.

(7) ADJOURN

The meeting adjourned at approximately 1:00 p.m. The next meeting will be held on October 5, 2022, starting at 12:00 noon.