

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

Hybrid Meeting: Utah Judicial Council Room & Via Webex
June 5, 2024 – 12:00 p.m. to 1:30 p.m.

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. Teresa Welch	District Court Judge [Chair]	•		None
Hon. Brendan McCullagh	Justice Court Judge	•		
[VACANT]	Linguist/Communications Professor	N/A	N/A	STAFF:
Hon. Linda Jones	Emeritus District Court Judge		•	Bryson King
Hon. Matthew Bates	District Court Judge	•		
Sharla Dunroe	Defense Attorney	•		
Janet Lawrence	Defense Attorney	•		
Jeffrey Mann	Prosecutor	•		
[VACANT]	Prosecutor	N/A	N/A	
Dustin Parmley	Defense Attorney	•		
Freyja Johnson	Defense Attorney		•	
McKay Lewis	Prosecutor	•		
Nic Mills	Prosecutor	•		

(1) WELCOME AND APPROVAL OF MINUTES: JUNE 2024 MEETING

Judge Welch welcomed the Committee to the meeting and reviewed the meeting schedule with the Committee. Judge Welch noted that on December 4th, 2024, the Committee would not meet due to Judge Welch attending an “artificial intelligence” conference. Judge McCullagh asked if it was an appellate court conference. Judge Welch said no. Judge Welch then noted that the Committee would not meet in July 2005 either, given the meeting’s close proximity to the Fourth of July holiday.

Judge Welch then reviewed the current vacancies among the Committee for a prosecutor and linguistic expert. Bryson King reviewed the process for appointing new Committee members and explained that an announcement would go out this month to request applications for the pending vacancies. Once the applications have been reviewed, the Judicial Council will announce the appointments to fill those vacancies.

The Committee then reviewed the minutes from the June 2024 meeting. McKay Lewis moved to approve the minutes, with Nic Mills seconding the motion. Without objection, the motion carries and the minutes are approved.

(2) AGENDA ITEM 2: CR1101: FAILURE TO RESPOND TO AN OFFICER’S SIGNAL TO STOP (CLASS A)

Judge Welch then turned the Committees attention to CR1101. At the last meeting, the Committee had left off on a discussion about the language in the Instruction Note. Judge Welch then asked the Committee to consider

State v. Nelson and whether that case answers the question about what mens rea element should be used in the Instruction. Dustin Parmley explained that *Nelson* doesn't address the question because the case was about the sufficiency of evidence presented at trial, and not really a jury instruction appeal. As such, the case's language would be dicta. Additionally, Dustin explained that the case goes against the discussion in *State v. Bird* about what it means to flee. McKay Lewis agreed with Dustin and pointed to the actus reus, fleeing, as potentially requiring a mens rea and the case law not making it clear what that mens rea should be. McKay then reviewed a draft of the Instruction Note he prepared. Judge Welch asked whether *State v. Nelson* should be included in the Instruction's references, and McKay agreed it should. Then, Judge Welch asked whether the question of the mens rea element is really unsettled, as indicated in the Instruction Note. Judge McCullagh offered the suggestion that the Instruction Note should say "the Committee cannot reach a consensus," instead of saying the law is unsettled. That change in the Note was made. Janet Lawrence explained to the Committee that after reviewing briefing from the caselaw, she sees support for a position that the act of fleeing needs a mens rea to show that the defendant did more than just not stop, and that a separate mens rea is required to show that the defendant was avoiding arrest because they thought they could or would be arrested. So, she suggested that intentionally, knowingly, and recklessly be used in the Instruction for the two separate mens rea requirements. The Committee continued its discussion about whether the Instruction should only include the element "intentionally" or the elements "intentionally, knowingly, or recklessly." The Committee made additionally formatting changes to the Instruction. After the discussion and modifications, McKay Lewis moved to approve the instruction and Dustin Parmley seconded the motion. Judge Bates then indicated he voted to approve the instruction with reservations, because the word intentionally does not seem to be necessary. After continued discussion on the format of the Instruction, Nic Mills moved to approve the Instruction language, with Dustin Parmley seconding the motion. Without objection, the motion carries and the Instruction language is approved.

Judge Welch then asked the Committee to address whether any changes to the Instruction Note should be made. Judge Bates suggested removing the word "specific" before the mens rea in the Note. Janet Lawrence suggested including language saying that the Committee cannot reach a consensus on whether the instruction needs a mens rea element at all, and if it does, whether that mens rea should be intentionally, or intentionally, knowingly, or recklessly. After the discussion, Dustin Parmley moved to approve the Note, with McKay Lewis seconding the motion. Without opposition, the motion carries and the Instruction and Note are now approved and will be published for public comment.

(3) AGENDA ITEM 3: CR1005 NEGLIGENTLY OPERATING A VEHICLE RESULTING IN INJURY

Judge Welch then turned the Committee's attention to CR1005 and the subcommittee formed to work on that instruction. Judge Welch asked whether the subcommittee had an update. Judge McCullagh and McKay Lewis indicated that the subcommittee had not met yet. Judge Welch indicated that the Committee would revisit the issue at its next meeting.

(4) AGENDA ITEM 4: PROPOSED CR1007 – UNANIMITY INSTRUCTION ON DUI & SPECIAL VERDICT FORM

Judge Welch then invited Judge McCullagh to discuss his work on CR1007 and the special verdict form. Judge McCullagh asked the Committee whether the Supreme Court or Court of Appeals are reviewing unanimity cases. Jeff Mann indicated that the Supreme Court is considering that issue in *State v. Paule*. Judge Welch also asked whether any caselaw exists or whether the appellate courts are considering the question of whether it is plain error for a trial court not to instruct on the issue of unanimity. Janet Lawrence explained that in *State v. Aires*, the court may have reviewed that issue. Judge Welch then invited Judge McCullagh to continue his review of the DUI unanimity instruction. Judge McCullagh reviewed the relevant statutes with the Committee and the language of the proposed unanimity instruction on the different ways to commit a DUI. After some discussion, Jeff Mann indicated that pending case law, *State v. Cissel*, might affect the Committee's work on this issue. Judge McCullagh suggested that the Committee postpone its work on this instruction until an opinion in that case is published.

(5) ADJOURN

Before adjourning, McKay Lewis asked about the status of CR1006, Driving With a Measurable Controlled Substance, and whether it had been published. That instruction had previously been approved by the Committee, but not published yet. After some discussion, the Committee agreed to publish CR1006 along with CR430, 432, and 1101. The meeting adjourned at approximately 1:30 p.m. The next meeting will be held on August 7th, 2024, starting at 12:00 noon.