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

Hybrid Meeting: Matherson Courthouse Judicial Council Room & Via Webex
June 4th, 2025 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of May Minutes		Tab 1	Judge Welch
	Proposed CR1013: Alcohol Restricted Driver		Tab 2	Breanne Miller
	Proposed CR1012: Ignition Interlock Driver Violation		Tab 3	Judge Bates
	Proposed CR???: Ignorance or Mistake of Fact or Law		Tab 4	Freyja Johnson
	Proposed CR1010: Refusing a Chemical Test or Blood Draw		Tab 5	McKay Lewis
	Proposed CR1010A(???): Definition of DUI Admonition		Tab 6	McKay Lewis
	Proposed CR1011: Refusal as Evidence of Consciousness of Guilt		Tab 7	McKay Lewis
1:30	Adjourn			

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

UPCOMING MEETING SCHEDULE:
Meetings are held via Webex on the first Wednesday of each month from 12:00 noon to 1:30 p.m. (unless otherwise specifically noted):

August 6th, 2025
September 3rd, 2025
October 1st, 2025
November 5th, 2025
December 3rd, 2025

TAB 1

Meeting Minutes – May 7th, 2025

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

Via Webex
May 7th, 2025 – 12:00 p.m. to 1:30 p.m.

DRAFT

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED
Hon. Teresa Welch	District Court Judge [Chair]	•	
Hon. Christopher Bown	Justice Court Judge	•	
Dr. Jay Jordan	Linguist/Communications Professor		•
Hon. Linda Jones	Emeritus District Court Judge		•
Hon. Matthew Bates	District Court Judge		•
Lacey Singleton	Defense Attorney	•	
Janet Lawrence	Defense Attorney	•	
Jeffrey Mann	Prosecutor	•	
Breanne Miller	Prosecutor	•	
Shannon Woulfe	Defense Attorney	•	
Freyja Johnson	Defense Attorney	•	
McKay Lewis	Prosecutor	•	
Nic Mills	Prosecutor	•	

GUESTS:

STAFF:

Bryson King

(1) WELCOME AND APPROVAL OF APRIL 2025 MINUTES

Judge Welch welcomed the Committee and introduced new members Lacey Singleton and Shannon Woulfe. Lacey and Shannon provided more of their work history and background to the Committee. Judge Welch then reviewed the Committee meeting schedule, noting that the Committee would not meet in July because of the holiday. Judge Welch also reviewed the Committee's roadmap showing the Committee's pending and completed projects. Judge Welch then asked for a motion to approve the April 2025 minutes. McKay Lewis moved to approve the minutes and Nic Mills seconded. Without opposition, the motion carries, and the minutes are approved.

(2) AGENDA ITEM 2: REVIEW OF PUBLIC COMMENTS: CR1017 & 1017A

Judge Welch then reviewed public comments for published instructions CR1017 and CR1017A. McKay Lewis then commented that a public comment on CR1017A by Stephen Howard did not need discussion because it falls outside the scope of the Committee's work. Judge Bown also agreed with McKay and expressed the idea that the Committee might step on the toes of the jury by incorporating the issues raised in the public comment. Following the discussion, Judge Welch asked whether anyone had a motion to change CR1017A based on the public comment. Janet Welch indicated that she felt it might be appropriate to add a Committee Note clarifying that practitioners may, in individual cases, need to clarify the term "Passenger Compartment"

when necessary in their cases. The Committee discussed whether to include a Committee Note and then researched both the statute and caselaw to determine whether to supplement the instruction with more language clarifying what a "Passenger Compartment" is. After some discussion, McKay Lewis moved to remove the proposed language in the Committee Note, Breanne Miller seconded the motion. Without opposition, the motion carries and CR1017A will not have a Committee Note.

The Committee then turned its attention to CR1017 and the public comment to that instruction. The Committee then engaged in a bit of discussion on the language and grammar formatting in the instruction to resolve a discrepancy between the statutory language and the language commonly used in MUJI instructions. Committee members suggested several proposals to resolve the discrepancy, including use of the present tense, past tense and added terms to clarify the tense. There was also emphasis on the use of Oxford commas. Following the discussion between Committee members regarding the instruction language, the Committee ultimately landed on changing the word "contained" to "containing." The Committee then decided not to publish the instruction for publish comment and instead amend the instruction as it appears on the website to reflect the change made in the meeting.

(3) AGENDA ITEM 2: PROPOSED CR1013 – ALCOHOL RESTRICTED DRIVER

Judge Welch then turned the Committee's attention to Breanne Miller's work on CR1013 and Breanne reviewed the proposal with the Committee. Janet Lawrence suggested that the Committee Note may need additional definitions or references to definition instructions in the MUJI series. Judge Welch asked Janet what CR number the definition instructions should be assigned in the series. Janet reviewed options with the Committee. Judge Welch asked the Committee whether the series should flush out all the definition needed, based on Janet's recommendation, with multiple versions of CR numbers in the series, or whether the Committee should reference relevant definitions in the instruction Committee note itself. Lacey Singleton expressed confusion about CR1013 missing the element of an individual being an alcohol restricted driver. McKay Lewis agreed and Janet Lawrence indicated that she was working on an instruction that would establish what an alcohol restricted driver is for use in CR1013. There was additional discussion on issues like bifurcation at trial and the Committee reviewed the relevant statutes to the proposed instruction. After some discussion, Breanne volunteered to return with an new proposal at the Committee's next meeting that addresses the concerns raised.

(4) ADJOURN

The meeting adjourned at approximately 1:00p.m. The next Committee meeting will be June 4th, 2025 at 12:00p.m.

TAB 2

Proposed Instruction: CR1013 – Alcohol Restricted Driver

41-6a-530 Alcohol restricted drivers -- Prohibited from operating a vehicle while having any measurable or detectable amount of alcohol in the person's body -- Penalties.

(1) An alcohol restricted driver who operates or is in actual physical control of a vehicle in this state with any measurable or detectable amount of alcohol in the person's body is guilty of a class B misdemeanor.

(2) A "measurable or detectable amount" of alcohol in the person's body may be established by:

(a) a chemical test;

(b) evidence other than a chemical test; or

(c) a combination of Subsections (2)(a) and (b).

(3) For any person convicted of a violation of this section, the court shall order the installation of an ignition interlock system as a condition of probation in accordance with Section 41-6a-518 or describe on the record or in a minute entry why the order would not be appropriate.

Amended by Chapter 261, 2007 General Session

TAB 3

Proposed CR1012: Ignition Interlock Driver Violation

CR1012 Interlock Restricted Driver Violation

(DEFENDANT'S NAME) is charged [in Count _____] with violating an ignition interlock restriction on (DATE). You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME)
    a. On (Date)
    b. Was an interlock restricted driver; and
2. (DEFENDANT'S NAME):
    a. Operated or was in actual physical control of a vehicle without an ignition interlock system; [and]
    b. [The affirmative defense of operating a vehicle in the scope of employment, as defined in Instruction _____, does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

- Utah Code § 41-6a-518.2

Effective 7/1/2024

41-6a-518.2 Interlock restricted driver -- Penalties for operation without ignition interlock system -- Exemptions.

(1) As used in this section:

(a) "Ignition interlock system" means a constant monitoring device or any similar device that:

(i) is in working order at the time of operation or actual physical control; and

(ii) is certified by the Commissioner of Public Safety in accordance with Subsection 41-6a-518(8).

(b)

(i) "Interlock restricted driver" means a person who has been ordered by a court or the Board of Pardons and Parole as a condition of probation or parole not to operate a motor vehicle without an ignition interlock system.

(ii) "Interlock restricted driver" includes, for the time periods described in Subsection (2), a person who:

(A) has been convicted of a violation under Section 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1;

(B) has been convicted of an offense which would be a conviction as defined under Section 41-6a-501, and that offense is committed within 10 years from the date that one or more prior offenses was committed if the prior offense resulted in a conviction as defined in Section 41-6a-501;

(C) has been convicted of a violation of this section;

(D) has been convicted of a violation of Section 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1 and was under 21 years old at the time the offense was committed;

(E) has been convicted of a felony violation of Section 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1;

(F) has been convicted of a violation of Section 76-5-207; or

(G) has had the person's driving privilege revoked through an administrative action for refusal to submit to a chemical test under Section 41-6a-520.

(iii) "Interlock restricted driver" does not include a person:

(A) whose current conviction described in Subsection (1)(b)(ii)(B) is a conviction under Section 41-6a-502 that does not involve alcohol or a conviction under Section 41-6a-517 and whose prior convictions described in Subsection (1)(b)(ii)(B) are all convictions under Section 41-6a-502 that did not involve alcohol or convictions under Section 41-6a-517;

(B) whose conviction described in Subsection (1)(b)(ii)(A) or (E) is a conviction under Section 41-6a-502 that does not involve alcohol and the convicting court notifies the Driver License Division at the time of sentencing that the conviction does not involve alcohol; or

(C) whose conviction described in Subsection (1)(b)(ii)(A), (B), or (D) is a conviction under Section 41-6a-502 that does not involve alcohol and the ignition interlock restriction is removed as described in Subsection (8).

(2)

(a) The ignition interlock restriction period for an ignition interlock restricted driver under Subsection (1)(b)(ii) begins on:

(i) for a violation described in Subsections (1)(b)(ii)(A) through (F), the date of conviction; or

(ii) for a person described in Subsection (1)(b)(ii)(G), the effective date of the revocation.

(b) The ignition interlock restriction period for an ignition interlock restricted driver under Subsection (1)(b)(ii) ends:

(i) for a violation described in Subsection (1)(b)(ii)(A), 18 months from the day the ignition interlock restricted driver:

(A) provides proof of installation of the ignition interlock system; and
(B) reinstates their driving privilege;
(ii) for a violation described in Subsections (1)(b)(ii)(B) through (D) and Subsection (1)(b)(ii)(G), two years from the date the ignition interlock restricted driver:
(A) provides proof of installation of the ignition interlock system; and
(B) reinstates their driving privilege;
(iii) for a violation described in Subsection (1)(b)(ii)(E), three years from the date the ignition interlock restricted driver:
(A) provides proof of installation of the ignition interlock system; and
(B) reinstates their driving privilege; and
(iv) for a violation described in Subsection (1)(b)(ii)(F), four years from the date the ignition interlock restricted driver:
(A) provides proof of installation of the ignition interlock system; and
(B) reinstates their driving privilege.
(c) If an ignition interlock system is removed from the vehicle before the restriction period under Subsection (2)(b) has ended, the ignition interlock restriction period is extended by the number of days the ignition interlock system was removed from the person's vehicle.
(d) An ignition interlock restricted driver may petition the Driver License Division for removal of the ignition interlock restriction related to a first offense under Section 41-6a-502, and the Driver License Division may grant the petition, if:
(i) the ignition interlock restricted driver was 21 years old or older at the time of the offense;
(ii) the individual does not have a prior conviction, as defined in Section 41-6a-501, that is within 10 years of the current conviction under Section 41-6a-502 or the commission of the offense upon which the current conviction is based;
(iii) at least two years have elapsed since the date of the conviction under Section 41-6a-502; and
(iv) during the time frame from the date of conviction under Section 41-6a-502 to the date the person petitions the Driver License Division for removal of the ignition interlock restriction:
(A) the ignition interlock restricted driver certifies to the division that the ignition interlock restricted driver has not operated a motor vehicle;
(B) there is no evidence of a traffic or driving related violation on the ignition interlock restricted driver's driving record; and
(C) there is no evidence of a motor vehicle crash involving the interlock restricted driver where the interlock restricted driver was operating a motor vehicle.
(3) The division shall post the ignition interlock restriction on a person's electronic record that is available to law enforcement.
(4) For purposes of this section, a plea of guilty or no contest to a violation of Section 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.
(5) An interlock restricted driver who operates or is in actual physical control of a vehicle in the state without an ignition interlock system is guilty of a class B misdemeanor.
(6) It is an affirmative defense to a charge of a violation of Subsection (5) if:
(a) the interlock restricted driver operated or was in actual physical control of a vehicle owned by the interlock restricted driver's employer;
(b) the interlock restricted driver had given written notice to the employer of the interlock restricted driver's interlock restricted status prior to the operation or actual physical control under Subsection (6)(a);

(c) the interlock restricted driver had on the interlock restricted driver's person, or in the vehicle, at the time of operation or physical control employer verification, as defined in Subsection 41-6a-518(1); and

(d) the operation or actual physical control described in Subsection (6)(a) was in the scope of the interlock restricted driver's employment.

(7) The affirmative defense described in Subsection (6) does not apply to:

(a) an employer-owned motor vehicle that is made available to an interlock restricted driver for personal use; or

(b) a motor vehicle owned by a business entity that is entirely or partly owned or controlled by the interlock restricted driver.

(8)

(a) An individual with an ignition interlock restriction may petition the division for removal of the restriction if the individual's offense did not involve alcohol.

(b) If the division is able to establish that an individual's offense did not involve alcohol, the division may remove the ignition interlock restriction.

(9)

(a)

(i) An individual with an ignition interlock restriction may petition the division for removal of the restriction if the individual has a medical condition that prohibits the individual from providing a deep lung breath sample.

(ii) In support of a petition under Subsection (9)(a)(i), the individual shall provide documentation from a physician that describes the individual's medical condition and whether the individual's medical condition would prohibit the individual from being able to provide a deep breath lung sample.

(b) If the division is able to establish that an individual is unable to provide a deep breath lung sample as a result of a medical condition, the division may remove the ignition interlock restriction.

Amended by Chapter 197, 2024 General Session

TAB 4

Proposed CR???: Ignorance of Mistake of Fact or Law

CR??? Ignorance or Mistake of Fact

[Defendant] is not guilty of [list offense(s)] if [he/she] did not have the mental state required to commit the crime[s] because of [his/her] ignorance or mistake about a fact.

If you have reasonable doubt about whether [Defendant] had the mental state required for [offenses] due to [his/her] ignorance or mistake of fact, you must find [him/her] not guilty of [offenses].

[The defendant may be convicted of [lesser included offense] if [he/she] would be guilty of [lesser included offense] if the facts were as [he/she] believed them to be.]

References

- Utah Code Section 76-2-204

Committee Notes:

Ignorance or mistake of fact is an affirmative defense. Utah Code § 76-2-204(1).

If the evidence supports giving this instruction, the trial court must modify the elements instruction to include disproving this defense as an additional element. *See State v. Low*, 2008 UT 58; 192 P.3d 867. [See Note to CR502]

CR??? Ignorance or Mistake of Law

[Defendant] is not guilty of [list offense(s)] if

1. [Defendant] reasonably believed [his/her] conduct did not constitute an offense, and
2. [Defendant's] ignorance or mistake resulted from [his/her] reasonable reliance on:
   (a) An official statement of law contained in a written order or grant of permission from an administrative agency charged with the responsibility of interpreting the law in question;
   (b) A written interpretation of law contained in an opinion of a court of record; or
   (c) A written interpretation of the law made by a public servant charged with the responsibility for interpreting the law in question.

[The defendant may be convicted of [lesser included offense] if [he/she] would be guilty of [lesser included offense] if the law was as [he/she] believed it to be.]

References

- Utah Code Section 76-2-204

Committee Notes:

Ignorance or mistake of law is an affirmative defense. Utah Code § 76-2-204(2).

If the evidence supports giving this instruction, the trial court must modify the elements instruction to include disproving this defense as an additional element. *See State v. Low*, 2008 UT 58; 192 P.3d 867.

The statement or interpretation of the law must be in writing for this defense to apply. Utah Code § 76-2-204(2); *see State v. Norton*, 2003 UT App 88, ¶ 15, 67 P.3d 1050.

West's Utah Code Annotated
Title 76. Utah Criminal Code
Chapter 2. Principles of Criminal Responsibility (Refs & Annos)
Part 3. Defenses to Criminal Responsibility

U.C.A. 1953 § 76-2-304

§ 76-2-304. Ignorance or mistake of fact or law

Currentness

(1) Unless otherwise provided, ignorance or mistake of fact which disproves the culpable mental state is a defense to any prosecution for that crime.

(2) Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless:

(a) Due to his ignorance or mistake, the actor reasonably believed his conduct did not constitute an offense, and

(b) His ignorance or mistake resulted from the actor's reasonable reliance upon:

(i) An official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(ii) A written interpretation of the law contained in an opinion of a court of record or made by a public servant charged by law with responsibility for interpreting the law in question.

(3) Although an actor's ignorance or mistake of fact or law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the fact or law were as he believed.

Credits
Laws 1973, c. 196, § 76-2-304; Laws 1974, c. 32, § 5.

Notes of Decisions (9)

U.C.A. 1953 § 76-2-304, UT ST § 76-2-304
Current with laws of the 2024 General Session eff. through April 30, 2024. Some statutes sections may be more current, see credits for details.

End of Document

67 P.3d 1050
Court of Appeals of Utah.

STATE of Utah, Plaintiff and Appellee,
v.
Michael Allen NORTON, Defendant and Appellant.

No. 20020109–CA.
|
March 27, 2003.

Synopsis

Defendant was convicted in the District Court, Logan Department, Clint S. Judkins, J., of violating the Bail Bond Recovery Act, assault, and unlawful detention. Defendant appealed. The Court of Appeals, Pamela T. Greenwood, J., held that: (1) trial court was not required to allow defendant to argue a mistake of law defense; (2) Bail Bond Recovery Act was not applied as an unconstitutional strict liability offense against defendant; and (3) defendant's due process right to a fair trial was not violated when he was prohibited from testifying about his efforts to research the legality of revoking the victim's bail bond.

Affirmed.

West Headnotes (12)

[1] **Criminal Law** Statutory issues in general

A question of statutory interpretation is reviewed for correctness, granting no deference to the trial court's ruling.

1 Case that cites this headnote

[2] **Criminal Law** Questions of Fact and Findings

A trial court's findings of fact are reviewed under a clearly erroneous standard.

1 Case that cites this headnote

[3] **Criminal Law** Presentation of questions in general

Criminal Law Necessity of Objections in General

An appellate court may address an issue raised for the first time on appeal if plain error or exceptional circumstances is established.

2 Cases that cite this headnote

[4] **Criminal Law** Instructions

Challenges to jury instructions are reviewed under a correctness standard.

[5] **Criminal Law** Reception and Admissibility of Evidence

Criminal Law Evidence in general

The admissibility of evidence is reviewed for abuse of discretion or reasonability; even where error is found, reversal is appropriate only in those cases where, after review of all the evidence presented at trial, it appears that absent the error, there is a reasonable likelihood that a different result would have been reached.

1 Case that cites this headnote

[6] **Statutes** Language and intent, will, purpose, or policy

Statutes Plain Language; Plain, Ordinary, or Common Meaning

Statutes In general; factors considered

When interpreting a statute, the court's primary goal is to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve; the court need look beyond the plain language only if it finds some ambiguity.

[7] **Criminal Law** Ignorance or mistake of law

Trial court was not required to allow defendant to argue a mistake of law defense in trial for assault and unlawful detention; the ignorance of law defense required that the official statement or interpretation of the law be in writing, and defendant did not rely on a written interpretation of the law, but rather on a casual and informal

conversation with a prosecutor. U.C.A.1953, 76-2-304(2)(b)(ii), 76-5-102.

1 Case that cites this headnote

[8] **Criminal Law** Presentation of questions in general

The appellate court does not address issues raised for the first time on appeal unless specific grounds for doing so are presented to the appellate court.

2 Cases that cite this headnote

[9] **Criminal Law** Constitutional questions

Defendant failed to preserve for appeal his claim that the trial court's pretrial ruling rejecting his mistake of law defense resulted in application of the Bail Bond Recovery Act as an unconstitutional strict liability offense, by failing to raise that issue in the trial court. U.C.A.1953, 53-11-107, 76-2-304(2)(b)(ii).

[10] **Bail** Sureties

Bail Bond Recovery Act was not applied as an unconstitutional strict liability offense against defendant charged with two counts of violating Act; jury instructions defined the mental states of intentionally and knowingly, and instructed the jury that it needed to find defendant acted with one of those mental states, and the State argued at trial that defendant's conscious objective was to detain victim, spray him with pepper spray, tackle him, and return him to jail. U.C.A.1953, 53-11-107, 76-2-103(1), 76-2-304(2)(b)(ii), 76-5-102.

1 Case that cites this headnote

[11] **Criminal Law** Relevancy in General

Criminal Law Relevance

While relevant evidence is generally admissible, a trial court has broad discretion to determine whether proffered evidence is relevant, and the appellate court will find error in a relevancy ruling only if the trial court has abused its discretion. Rules of Evid., Rule 402.

[12] **Constitutional Law** Other particular kinds or items of evidence

Criminal Law Excuse or justification

Defendant's due process right to a fair trial was not violated when he was prohibited from testifying about his efforts to research the legality of revoking the victim's bail bond; defendant's testimony was only relevant to a mistake of law defense, and the trial court had properly determined that the mistake of law defense was not available to defendant. U.S.C.A. Const.Amend. 14; Rules of Evid., Rule 402.

Attorneys and Law Firms

***1051** Gary L. Bell, Salt Lake City, for Appellant.

Dean Saunders, Weber County Attorney's Office, Ogden, for Appellee.

Before JACKSON, P.J., GREENWOOD, and ORME, JJ.

OPINION

GREENWOOD, Judge:

¶ 1 Michael Norton (Defendant) appeals his conviction for two counts of violating the Bail Bond Recovery Act, Utah Code Ann. § 53–11–107 (2002); one count of Assault, in violation of Utah Code Ann. § 76–5–102 (1999); and two counts of Unlawful Detention, in violation of Utah Code Ann. § 76–5–304 (1999). Defendant contends: (1) the trial court erred in rejecting his mistake of law defense, (2) the Bail Bond Recovery Act was applied as an unconstitutional strict liability offense, and (3) the trial court's refusal to hear requested testimony violated his due process right to a fair trial. We affirm.

BACKGROUND

¶ 2 On March 10, 2000, Defendant, as an agent of "A+24 Hour Bail Bonds," posted a $50,000 bond for Deloy Lindley (Lindley), resulting in Lindley's release from jail. Lindley signed a written contract pledging his truck, a stock trailer, and a snowmobile as collateral for the bond. Lindley agreed to pay Defendant $5,000 within two weeks. If Lindley did not or could not pay, Defendant was to sell whatever collateral necessary to satisfy the debt.

¶ 3 On or about March 20, Lindley called Defendant and told him to sell the truck, because he did not have the $5,000. Defendant became concerned about the value of Lindley's collateral.

¶ 4 Defendant maintains that he then researched, on the Internet, the law about revoking a bond and also contacted the Cache County Attorney's Office. Defendant read Utah Code Ann. § 77–20–8.5 (1999), entitled "Sureties—Surrender of defendant—Arrest of defendant." This section referenced "Title 53, Chapter 10, Bail Bond Recovery." *Id.* § 77–20–8.5(3). However, the Bail Bond Recovery Act (the Act) had been renumbered as Chapter 11, because another Chapter 10 was enacted at the same legislative session. *See id.* compiler's notes. Based on this change, Defendant alleges that he did not find or read the Act. Defendant also claims he spoke to a Deputy County Attorney about revoking Lindley's bond.

***1052** ¶ 5 Allegedly believing he could legally revoke Lindley's bond,[1] on April 4, 2000, Defendant went to Lindley's residence, handcuffed him, and returned him to jail. Two days later, Lindley was released by the court.[2] The judge who released Lindley commented that the "bail bondsman doesn't have any right to haul you off to jail." Apparently, Defendant made no effort to discover why the court had released Lindley, and never asked the court to revoke Lindley's bond.

¶ 6 On April 16, Defendant and a co-worker returned to Lindley's residence, handcuffed him, and took custody of him after spraying him with pepper spray and "tackling" him when he attempted to flee. Lindley testified that he was punched, kicked, and hit with a rock. Lindley also testified that Defendant told him he was going to kill him. Law enforcement officers intervened and took Lindley to the hospital because of the effects of the pepper spray and complaints of being beaten by Defendant and his co-worker.

¶ 7 It is undisputed that Defendant was not licensed as a Bail Recovery Agent or Bail Enforcement Agent, as required under the Act. *See id.* § 53–11–107 (2002). The State filed charges against Defendant for the two incidents of returning Lindley to jail in violation of the Act because Defendant was not properly licensed, two counts of Unlawful Detention, and one count of Assault.

¶ 8 During the course of the proceedings, Defendant submitted a pretrial motion arguing he should be permitted to assert a mistake of law defense. *See id.* § 76–2–304 (1999). After an evidentiary hearing, the court denied Defendant's motion. A jury trial was held November 14–15, 2001. During the jury trial, Defendant and his co-worker testified about their efforts to research the legality of revoking Lindley's bond. At the close of testimony, Defendant's counsel asked to recall Defendant; the request was denied. Defendant was found guilty on all counts and this appeal followed.

ISSUES AND STANDARDS OF REVIEW

[1] **[2]** ¶ 9 First, Defendant asserts the trial court erred when it ruled that Defendant was not entitled to assert a mistake of law defense under Utah Code Ann. § 76–2–304(2)(b)(ii) (1999). A question of statutory interpretation is reviewed "for correctness, granting no deference to the trial court's ruling." *In re W.C.P.,* 1999 UT App 35, ¶ 5, 974 P.2d 302. After hearing testimony on this issue, the trial court found that Defendant did not rely on a written interpretation of the statute. "A trial court's findings of fact are reviewed under a clearly erroneous standard." *Mule–Hide Prods. Co. v. White,* 2002 UT App 1, ¶ 11, 40 P.3d 1155.

[3] **[4]** ¶ 10 Second, Defendant argues the trial court erred in applying the Act as an unconstitutional strict liability offense. This issue is raised for the first time on appeal. An appellate court may address an issue raised for the first time on appeal if " 'plain error' " or " 'exceptional circumstances' " is established. *State v. Irwin,* 924 P.2d 5, 7 (Utah Ct.App.1996) (citations omitted). If neither applies, the court may decline to consider the issue. However, necessarily included in Defendant's argument is his claim that the jury was improperly instructed. Challenges to jury instructions are reviewed " 'under a "correctness" standard.' " *Cheves v. Williams,* 1999 UT 86, ¶ 20, 993 P.2d 191 (citation omitted).

[5] ¶ 11 Third, Defendant argues the trial court violated his due process right to a fair trial when it prohibited his further testimony. The admissibility of evidence is reviewed for "abuse of discretion or reasonability. '[E]ven where error

is found, reversal is appropriate only in those cases where, after review of all the evidence presented at trial, it appears that "absent the error, there is a reasonable likelihood that a different result would have been reached." ' " *Mule–Hide* ***1053** *Prods. Co.,* 2002 UT App 1 at ¶ 12, 40 P.3d 1155 (citations omitted).

ANALYSIS

I. Mistake of Law Defense

¶ 12 Defendant argues the trial court erred when it rejected his mistake of law defense. The State counters that, based on Utah Code Ann. § 76–2–304(2)(b)(ii) (1999), the trial court properly rejected the defense. At issue, therefore, is whether the trial court correctly interpreted section 76–2–304 when it concluded, "The ignorance of law defense requires that the official statement or interpretation of the law be in writing."

[6] ¶ 13 Because Defendant did not rely on a written interpretation of the law, the trial court held that the necessary elements of a mistake of law defense had not been shown and the defense was inapplicable. Utah's ignorance or mistake of law statute states:

> (2) Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless:
>
> ....
>
> (b) His ignorance or mistake resulted from the actor's reasonable reliance upon:
>
> ....
>
> (ii) *A written interpretation* of the law contained in an opinion of a court of record or made by a public servant charged by law with responsibility for interpreting the law in question.

Utah Code Ann. § 76–2–304 (emphasis added). When interpreting a statute, the court's "primary goal ... is to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve. [The court] need look beyond the plain language only if [it] find [s] some ambiguity." *State v. Lusk,* 2001 UT 102, ¶ 19, 37 P.3d 1103 (quotations and citation omitted). The language of section 76–2–304 clearly and unambiguously requires a written interpretation, by either a court of record or a public servant, in order for mistake of law to be an available defense.

[7] ¶ 14 The trial court heard testimony concerning Defendant's claim that mistake of law was an applicable defense. A Deputy Cache County Attorney testified about his conversation with a police officer, who had received a complaint from Defendant about Lindley's bond agreement. The Deputy Attorney testified, "To the best of my recollection, I didn't ever have a substantive conversation with [Defendant] individually about the issue of whether or not he could pick up Mr. Lindley." Accordingly, the court found that, while Defendant may have had a conversation about revoking bail with the Deputy Attorney, the conversation was casual and informal. The court also found the Deputy Attorney did not have all the relevant facts to make a formal interpretation of the law and did not reduce his statements to writing. The court held that section 76–2–304 requires a written interpretation of the law, and therefore the defense was not available to Defendant. We see no error in the court's conclusions.

¶ 15 Because Defendant did not rely on a written interpretation of the law, the trial court did not err when it held that the defense was inapplicable.

II. Bail Bond Recovery Act as an Unconstitutional Strict Liability Offense

[8] **[9]** ¶ 16 Defendant argues for the first time on appeal that the trial court's pretrial ruling rejecting his mistake of law defense resulted in application of the Act as an unconstitutional strict liability offense. [3] "We do not address issues raised for the first time on appeal unless specific grounds for doing so are presented to this court." *Utah Med. Prod., Inc. v. Searcy,* 958 P.2d 228, 233–34 (Utah 1998). Defendant also fails to argue that the trial court committed plain error or that exceptional circumstances exist. *See State v. Irwin,* 924 P.2d 5, 7 (Utah Ct.App.1996) (stating that an appellate court may address an issue raised for the first time on ***1054** appeal if " 'plain error,' " " 'exceptional circumstances,' " or, in some situations, ineffective assistance of counsel is established (citations omitted)).

¶ 17 However, Defendant seems to also claim that the jury was improperly instructed to apply a strict liability standard. He maintains that the State was permitted "to carry its burden by simply showing the prohibited conduct occurred"; that had

the jury been properly instructed, the State would have been required to carry its burden of proof of Defendant's mens rea.

¶ 18 Defendant's argument that he did not intend to violate the Act, and that the jury was not properly instructed as to his intent, is based on the " 'basic proposition that a person cannot be found guilty of a criminal offense unless he [or she] harbors a requisite criminal state of mind or unless the prohibited act is based on strict liability.' " *State v. W.C.P.,* 1999 UT App 35, ¶ 6, 974 P.2d 302 (alteration in original) (quoting *State v. Elton,* 680 P.2d 727, 728 (Utah 1984)). Utah Code Ann. § 76–2–101 (1999) states:

> No person is guilty of an offense unless his conduct is prohibited by law and:
>
> (1) He acts intentionally, knowingly, recklessly, with criminal negligence, or with a mental state otherwise specified in the statute defining the offense, as the definition of the offense requires; or
>
> (2) His acts constitute an offense involving strict liability.

Further, section 76–2–102 states that offenses "involve strict liability if the statute defining the offense clearly indicates a legislative purpose to impose criminal responsibility for commission of the conduct prohibited by the state without requiring proof of any culpable mental state." *Id.* § 76–2–102. In this case, there is no indication of legislative intent to impose strict liability for violation of the Act. Therefore, the culpable mental state required is "intent, knowledge, or recklessness." *Id.*

¶ 19 The trial court's jury instructions defined the mental states of intentionally and knowingly, and instructed the jury that it needed to find Defendant acted with one of these mental states. For instance, instruction number eight states:

> Before you can convict the Defendant ... of the crime of Operating as a Bail Enforcement Agent or Bail Recovery Agent Without a License, you must find from the evidence beyond a reasonable doubt all of the following elements of the crime: One, that said Defendant ... (c) *intentionally or knowingly,* without authority of law, (d) acted or assumed to act or represented himself to be licensed ... when, in fact, he was not licensed.

(Emphasis added.) Instructions ten and eleven define knowing and intentional.

¶ 20 Defendant confuses the intent to violate the law with the intent or requisite mental state to do the prohibited act. Only the latter is required—not a specific intent to violate the law. Under the instructions given, the jury could find that Defendant intended "to engage in the conduct or cause the result," as the definition of "intentional" requires. Utah Code Ann. § 76–2–103(1) (1999).

[10] ¶ 21 The jury was not instructed that the State did not have to prove the appropriate mental state. Rather, the jury instructions defined the requisite mental states. Moreover, the State argued at trial that Defendant's conscious objective was to detain Lindley, spray him with pepper spray, tackle him, and return him to jail. The jury was correctly instructed. Defendant's argument that the Act was applied as an unconstitutional strict liability offense thus fails.

III. Due Process Violation

[11] **[12]** ¶ 22 Finally, Defendant argues that his due process right to a fair trial was violated when he was prohibited from testifying about his efforts to research the legality of revoking the bond. "While relevant evidence is generally admissible ... a trial court has broad discretion to determine whether proffered evidence is relevant, and we will find error in a relevancy ruling only if the trial court has abused its discretion." *State v. Kohl,* 2000 UT 35, ¶ 17, 999 P.2d 7 (alteration in original) (quotations and citation omitted). Because the trial court properly held that the mistake of law defense was not available to Defendant, testimony relevant only to that defense was properly excluded. ***1055** *See State v. Harding,* 635 P.2d 33, 34 (Utah 1981) (stating where "there is no reasonable basis in the evidence to support the defense or its essential components, it is not error for the trial judge to ... refuse to instruct the jury as to the defense"); *see also* Utah R. Evid. 402 (stating "evidence which is not relevant is not admissible").

¶ 23 Moreover, despite the trial court's ruling that the mistake of law defense was not applicable, some testimony about Defendant's efforts to understand the law was received.

Specifically, Defendant testified that he looked up the law regarding bond revocation on the Internet, and then called the Cache County Attorney's office. Defendant's co-worker testified that they read the law together, and that Defendant spoke with an attorney about the law. Counsel for Defendant discussed, in his opening and closing statements, the steps Defendant took to determine the legality of revoking the bond.

¶ 24 We conclude that the trial court did not abuse its discretion when it prevented Defendant's further testimony, which was cumulative and relevant only to his rejected mistake of law defense.

CONCLUSION

¶ 25 The trial court did not err when it ruled Defendant was not entitled to raise a mistake of law defense, under Utah Code Ann. § 76–2–304(2)(b)(ii) (1999), because Defendant did not rely on a written interpretation of the law. Second, although we may decline to consider Defendant's argument that the Act as applied by the trial court was an unconstitutional strict liability offense because it was raised for the first time on appeal, we conclude there was no error because the trial court properly instructed the jury. Third, the trial court did not violate Defendant's due process rights when it prohibited Defendant from giving further testimony. We therefore affirm.

¶ 26 WE CONCUR: NORMAN H. JACKSON, Presiding Judge, and GREGORY K. ORME, Judge.

All Citations

67 P.3d 1050, 470 Utah Adv. Rep. 9, 2003 UT App 88

Footnotes

1 At trial, Defendant testified that he believed he was making a legal citizen's arrest.

2 At some point after Lindley's release, Defendant called 911 requesting help from officers in returning Lindley to jail. Two sheriff's deputies met him for this purpose, but Lindley was not home.

3 Defendant states that this issue was preserved for appeal during the March 30, 2001 evidentiary hearing, and during the November 14–15, 2001 jury trial. However, this argument is not mentioned in either of these hearings.

TAB 5

Proposed CR1010: Refusing a Chemical Test or Blood Draw

CR1010: Refusing a Chemical Test

(DEFENDANT'S NAME) is charged [in Count _____] with committing Refusing a Chemical Test [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. [DEFENDANT];
2. Was issued the DUI Admonition;
3. A court issued a warrant to draw and test [his] [her] blood; and
4. [DEFENDANT] nonetheless refused to submit to a test of [his] [her] blood.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References:

- Utah Code Ann. § 41-6a-520.1
- Utah Code Ann. § 41-6a-520(2)(a)

Committee Notes:

This instruction is intended to be used in prosecuting the crime of Refusing a Chemical Test. Whether that offense constitutes a Class B Misdemeanor, a Class A Misdemeanor, or a Third-Degree Felony depends on various factors. *See* Utah Code Ann. § 41-6a-520.1(2)(a)–(c). Practitioners should adjust this instruction accordingly. Similar to the offense of Driving Under the Influence, Refusing a Chemical Test is a strict liability offense. *See* Utah Code Ann. § 76-2-101(2) (no mental state generally required for traffic offenses). An element of this crime is that the defendant was issued "the warning required in Subsection 41-6a-520(2)(a)." *See* Utah Code Ann. § 41-6a-520.1(1)(a). The committee has chosen to use the phrase "DUI Admonition" as shorthand to refer to this warning. The committee believes that including the entirety of the DUI Admonition in the elements of the crime would render this instruction unwieldy. As such, the committee suggests also giving CR_____, which defines the content of the DUI Admonition.

Effective 7/1/2024

41-6a-520.1 Refusing a chemical test.

(1) An actor commits refusing a chemical test if:
  (a) a peace officer issues the warning required in Subsection 41-6a-520(2)(a);
  (b) a court issues a warrant to draw and test the blood; and
  (c) after Subsections (1)(a) and (b), the actor refuses to submit to a test of the actor's blood.

(2)
  (a) A violation of Subsection (1) is a class B misdemeanor.
  (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A misdemeanor if the actor:
    (i) has a passenger younger than 16 years old in the vehicle at the time the officer had grounds to believe the actor was driving under the influence;
    (ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle at the time the officer had grounds to believe the actor was driving under the influence;
    (iii) also violated Section 41-6a-712 or 41-6a-714 at the time of the offense; or
    (iv) has one prior conviction within 10 years of:
      (A) the current conviction under Subsection (1); or
      (B) the commission of the offense upon which the current conviction is based.
  (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree felony if:
    (i) the actor has two or more prior convictions, each of which is within 10 years of:
      (A) the current conviction; or
      (B) the commission of the offense upon which the current conviction is based; or
    (ii) the current conviction is at any time after:
      (A) a felony conviction; or
      (B) any conviction described in Subsection (2)(c)(ii)(A) for which judgment of conviction is reduced under Section 76-3-402.

(3) As part of any sentence for a conviction of violating this section, the court shall impose the same sentencing as outlined for driving under the influence violations in Section 41-6a-505, based on whether this is a first, second, or subsequent conviction, with the following modifications:
  (a) any jail sentence shall be 24 consecutive hours more than is required under Section 41-6a-505;
  (b) any fine imposed shall be $100 more than is required under Section 41-6a-505; and
  (c) the court shall order one or more of the following:
    (i) the installation of an ignition interlock system as a condition of probation for the individual, in accordance with Section 41-6a-518;
    (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring device as a condition of probation for the individual; or
    (iii) the imposition of home confinement through the use of electronic monitoring, in accordance with Section 41-6a-506.

(4)
  (a) The offense of refusing a chemical test under this section does not merge with any violation of Section 32B-4-409, 41-6a-502, 41-6a-517, or 41-6a-530.
  (b) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense of refusal to submit to a chemical test under this section may not be held in abeyance.

(5) An actor is guilty of a separate offense under Subsection (1) for each passenger in the vehicle that is younger than 16 years old at the time the officer had grounds to believe the actor was driving under the influence.

Amended by Chapter 197, 2024 General Session

TAB 6

Proposed CR1010A(???): Definition of DUI Admonition

CR1010A(???) Definition of DUI Admonition

Under Utah law, a peace officer requesting a chemical test shall issue the DUI Admonition, which states that refusal to submit to the test or tests may result in criminal prosecution, revocation of the person's license to operate a motor vehicle, a five or 10 year prohibition of driving with any measurable or detectable amount of alcohol in the person's body depending on the person's prior driving history, and a three-year prohibition of driving without an ignition interlock device.

References

- Utah Code Ann. § 41-6a-520(2)(a)

Committee Note

This instruction is intended to be given in conjunction with CR1010 (Refusing a Chemical Test), as it defines the content of the DUI Admonition a peace officer is required to give before a defendant can be charged with Refusing a Chemical Test.

Effective 5/3/2023

41-6a-520 Implied consent to chemical tests for alcohol or drug -- Number of tests -- Refusal -- Warning, report.

(1)

(a) A person operating a motor vehicle in this state is considered to have given the person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for the purpose of determining whether the person was operating or in actual physical control of a motor vehicle while:

(i) having a blood or breath alcohol content statutorily prohibited under Section 41-6a-502, 41-6a-530, or 53-3-231;

(ii) under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6a-502; or

(iii) having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517.

(b) A test or tests authorized under this Subsection (1) must be administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while in violation of any provision under Subsections (1)(a)(i) through (iii).

(c)

(i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) If a peace officer requests more than one test, refusal by a person to take one or more requested tests, even though the person does submit to any other requested test or tests, is a refusal under this section.

(d)

(i) A person who has been requested under this section to submit to a chemical test or tests of the person's breath, blood, or urine, or oral fluids may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2)

(a) A peace officer requesting a test or tests shall warn a person that refusal to submit to the test or tests may result in criminal prosecution, revocation of the person's license to operate a motor vehicle, a five or 10 year prohibition of driving with any measurable or detectable amount of alcohol in the person's body depending on the person's prior driving history, and a three-year prohibition of driving without an ignition interlock device if the person:

(i) has been placed under arrest;

(ii) has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1); and

(iii) refuses to submit to any chemical test requested.

(b)

(i) Following the warning under Subsection (2)(a), if the person does not immediately request that the chemical test or tests as offered by a peace officer be administered, a peace officer shall, on behalf of the Driver License Division and within 24 hours of the arrest, give notice of the Driver License Division's intention to revoke the person's privilege or license to operate a motor vehicle.

(ii) When a peace officer gives the notice on behalf of the Driver License Division, the peace officer shall supply to the operator, in a manner specified by the Driver License Division, basic information regarding how to obtain a hearing before the Driver License Division.

(c) As a matter of procedure, the peace officer shall submit a signed report, within 10 calendar days after the day on which notice is provided under Subsection (2)(b), that:

(i) the peace officer had grounds to believe the arrested person was in violation of any provision under Subsections (1)(a)(i) through (iii); and

(ii) the person had refused to submit to a chemical test or tests under Subsection (1).

(3) Upon the request of the person who was tested, the results of the test or tests shall be made available to the person.

(4)

(a) The person to be tested may, at the person's own expense, have a physician or a physician assistant of the person's own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(5) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(6) Notwithstanding the provisions in this section, a blood test taken under this section is subject to Section 77-23-213.

Amended by Chapter 415, 2023 General Session

TAB 7

Proposed CR1011: Refusal as Evidence of Consciousness of Guilt

CR1011: Refusal as Evidence of Consciousness of Guilt

Evidence was introduced at trial that [Defendant] refused to submit to a chemical test or tests. This evidence alone is not enough to establish guilt. However, if you believe that evidence, you may consider it along with the rest of the evidence in reaching a verdict. It's up to you to decide how much weight to give that evidence.

References

- Utah Code Ann. § 41-6a-524
- *State v. Van Dyke*, 2009 UT App 369, 223 P.3d 465

Effective 5/9/2017

41-6a-524 Refusal as evidence.

If a person under arrest refuses to submit to a chemical test or tests or any additional test under Section 41-6a-520, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while:

(1) under the influence of:
  (a) alcohol;
  (b) any drug; or
  (c) a combination of alcohol and any drug;
(2) having any measurable controlled substance or metabolite of a controlled substance in the person's body; or
(3) having any measurable or detectable amount of alcohol in the person's body if the person is an alcohol restricted driver as defined under Section 41-6a-529.

Amended by Chapter 181, 2017 General Session