

AGENDA

Standing Committee on the Model Utah Criminal Jury Instructions

April 4, 2018

12:00 - 1:30 p.m.

Council Room - 3rd Floor, N31

Matheson Courthouse

450 S. State St., Salt Lake City, UT

12:00	Welcome and Approval of Minutes	Action	Tab 1	Judge James Blanch
12:05	Defense of Person(s) • Instructions 39 & 40	Discussion/ Action	Tab 2	Judge James Blanch
12:35	Defense of Property	Discussion/ Action	Tab 3	Judge James Blanch
1:00	Overview of Statutory Changes	Discussion/ Action	Handout	Keisa Williams
1:30	Adjourn	Action		Judge James Blanch

	References			
	<ul style="list-style-type: none"> • Utah Code 76-2-103 • Utah Code 76-2-402 • Utah Code 76-2-405 • Utah Code 76-2-406 • Utah Code 76-2-407 • <i>State v. Karr</i> • <i>State v. Berriel</i> • <i>State v. Walker</i> • <i>State v. Mitcheson</i> • <i>State v. Moritzsky</i> • <i>State v. Patrick</i> 		Tab 4	

Committee Web Page: <https://www.utcourts.gov/utc/muji-criminal/>

Meeting Schedule: Meetings are held the 1st Wednesday of each month in the Matheson Courthouse, Judicial Council Room, from 12:00 to 1:30 unless otherwise stated.

2018 Meetings:

May 2, 2018	September 12, 2018
June 6, 2018	October 3, 2018
July 11, 2018	November 7, 2018
August 1, 2018	December 5, 2018

Tab 1

MINUTES
DRAFT
STANDING COMMITTEE ON
THE MODEL UTAH CRIMINAL JURY INSTRUCTIONS

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Wednesday, March 7, 2018
12:00 p.m. to 1:30 p.m.
Judicial Council Room

PRESENT

Judge James Blanch, Chair
Judge Brendon McCullagh
Mark Field
Sandi Johnson
Judge Linda Jones
Karen Klucznik
Steve Nelson
Scott Young
Nathan Phelps
Keisa Williams, Staff

EXCUSED

Professor Jenny Andrus
Jesse Nix
David Perry
Judge Michael Westfall

1. Welcome

Judge Blanch

Judge Blanch welcomed everyone to the meeting.

Judge Jones moved to approve the minutes from the February 7, 2018 meeting. Judge McCullagh seconded. The motion passed unanimously.

2. Opening and Closing Instructions

Committee

Ms. Williams noted that the revised Opening and Closing Instructions received one public comment on CR105 and one comment on CR109B. After reviewing several instructions, the committee found that CR109A includes language regarding investigations. The committee discussed the comments at length and determined that no changes would be made.

Judge Jones moved to publish the version of CR109B previously amended by the committee at the February 7, 2018 meeting for public comment without additional changes and to make no changes to CR105. Ms. Johnson seconded. The instruction was approved.

3. Defense of Habitation

Committee

The committee continued its amendment of Instruction #41 on Defense of Habitation that it began at the February 7, 2018 meeting. After an in-depth discussion including a review of statutes and civil jury instructions, the committee changed the title, made the instruction more concise and generally applicable, and amended the references. The committee discussed a potential committee note identifying an exception regarding special mitigation due to mental illness (Utah Code 76-5-205.5(1)(a)), because those individuals’ may not have the ability to form intent. However, the committee determined that it doesn’t apply to the determination of reasonableness and chose not to include a note.

CR___. Defense of Habitation, Self or Others, Property – Reasonableness. Approved 3/7/18

Reasonableness shall be determined from the viewpoint of a reasonable person under the then-existing circumstances.

References:

- Utah Code § 76-2-103
- Utah Code § 76-2-402
- Utah Code § 76-2-405
- Utah Code § 76-2-406
- Utah Code § 76-2-407

Committee Note:

This instruction should be used with instructions 33, 34, 35, and 36 (Need to update with actual instruction numbers)

Judge McCullagh moved to approve the instruction as amended. Scott Young seconded. The motion passed unanimously.

4. Defense of Person(s)

The committee reviewed Judge Blanch’s instructions prepared prior to the meeting.

Defense of Self or Other (No. 37)

The committee added the term “forcible felony” to ensure parties understand it is required and included a reference to the elements instructions. The committee added sections indicating when a defendant is not justified in using force and defining what is not combat by agreement.

CR___. Defense of Self or Other. Approved 3/7/18

You must decide whether the defense of Defense of Self or Other applies in this case. Under that defense, the defendant is justified in using force against another when and to the extent that the defendant reasonably

believes that force is necessary to defend [himself] [herself], or a third party, against another person's imminent use of unlawful force.

The defendant is justified in using force intended or likely to cause death or serious bodily injury only if the defendant reasonably believes that:

1. Force is necessary to prevent death or serious bodily injury to the defendant or a third person as a result of another person's imminent use of unlawful force; or,
2. To prevent the commission of [Forcible Felony], the elements of which can be found under jury instruction [_____].

The defendant is not justified in using force if the defendant:

1. Initially provokes the use of force against another person with the intent to use force as an excuse to inflict bodily harm upon the assailant;
2. Is attempting to commit, committing, or fleeing after the commission or attempted commission of [Felony], the elements of which can be found under jury instruction [_____]; or
3. Was the aggressor or was engaged in a combat by agreement, unless the defendant withdraws from the encounter and effectively communicates to the other person the defendant's intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force.

The following do not, by themselves, constitute "combat by agreement":

1. Voluntarily entering into or remaining in an ongoing relationship; or
2. Entering or remaining in a place where one has a legal right to be.

References

Utah Code § 76-2-402(1), and (5)

Judge McCullagh moved to approve the instruction as amended. Sandi Johnson seconded. The motion passed unanimously.

Defense of Self or Other - Imminence (No. 38)

The committee created a title and added "any other relevant factor" to highlight that the list is not exclusive and to be consistent with other instructions.

CR____. Defense of Self or Other – Imminence. Approved 3/7/18.

In determining imminence or reasonableness you may consider any of the following factors:

1. The nature of the danger;
2. The immediacy of the danger;

3. The probability that the unlawful force would result in death or serious bodily injury;
4. The other's prior violent acts or violent propensities;
5. Any patterns of abuse or violence in the parties' relationship; or
6. Any other relevant factor.

References

Utah Code § 76-2-402(1), and (5)

Scott Young moved to approve the instruction. Steve Nelson seconded. The instruction was unanimously approved.

5. Other Business

The committee discussed the frequency of statutory amendments and caselaw changes which may cause an instruction to be outdated. Ms. Johnson described the process at the SL DA's office for ensuring they are using the correct jury instructions. Ms. Johnson stated that currently, the office uses an information system maintained at the state level. The state updates the elements, etc. based on legislative changes. Soon, the SL DA's office will implement a new information system, at which point the DA's office will be responsible for updating it themselves. Prosecutors are ultimately responsible for ensuring they are using the correct elements and instructions.

The committee confirmed that the instructions posted on the website warn attorneys that the instructions may be outdated. However, to make it even more clear, the committee determined that the dates upon which the instructions were approved should be added to all instructions.

Judge Blanch asked Ms. Williams to add Instruction No. 39 and the Deadly Force in Defense of Real Property instructions to the next meeting agenda. Judge Blanch instructed Ms. Williams to ask Jacey Skinner to provide an overview of legislative changes which may affect criminal instructions.

6. Adjourn

Committee

The meeting was adjourned at 1:30 p.m. The next meeting is Wednesday, April 4, 2018.

Tab 2

INSTRUCTION NO. 39

In determining whether the defendant acted in Defense of Self or Other, the defendant is not required to prove he was justified in using force or force likely to cause serious bodily injury or death. Rather, the prosecution must prove beyond a reasonable doubt that the defendant was not justified in using force or force likely to cause death or serious bodily injury. If the prosecution has not carried this burden, then you must find the defendant not guilty.

INSTRUCTION NO. 40

A person does not have a duty to retreat from force or threatened force, or commission of a burglary, before using force in defense of himself or a third party as long as that person is in a place where he has lawfully entered or remained.

Tab 3

DEFENSE OF PROPERTY

DRAFT 1 – Judge Taylor’s Subcommittee

CR _____. Use of Force to Prevent or Terminate Another Person’s criminal interference with real property or personal property.

It is a defense in this case if the defendant’s use of force was legally justified. If the defendant’s conduct was legally justified, you must enter a verdict of not guilty.

The use of force, other than deadly force, is justified when and to the extent the defendant reasonably believed force was necessary to prevent or terminate another person’s criminal interference with real property or personal property if the property:

1. was lawfully in the defendant's possession;
2. was lawfully in the possession of a member of the defendant's immediate family; or
3. belonged to a person whose property the defendant had a legal duty to protect.

In determining whether the defendant’s use of force was reasonable, you must consider any relevant facts proven in this case. In addition, you must consider:

1. the apparent or perceived extent of the damage to the property;
2. property damage previously caused by the other person;
3. threats of personal injury or damage to property that have been made previously by the other person; and
4. any patterns of abuse or violence between the defendant and the other person.

References

Utah Code § 76-2-406

DRAFT 2 – Statutory w/ KW’s edits

CR _____. Use of Force in Defense of Property.

The defendant is justified in using force, other than deadly force, against another person to defend [his][her] real or personal property when and to the extent [he][she] reasonably believes the force is necessary to:

- Prevent the other person’s criminal interference with real or personal property; or
- Terminate the other person’s criminal interference with real or personal property.

The property must have been:

- lawfully in the defendant's possession; or
- lawfully in the possession of a member of the defendant's immediate family; or
- belonging to a person whose property the defendant has a legal duty to protect.

In determining reasonableness, the trier of fact shall consider:

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- the apparent or perceived extent of the damage to the property;
- property damage previously caused by the other person;
- threats of personal injury or damage to property that have been made previously by the other person;
- any patterns of abuse or violence between the defendant and the other person; and
- any other relevant factor.

References

Utah Code § 76-2-406

Tab 4

West's Utah Code Annotated
Title 76. Utah Criminal Code
Chapter 2. Principles of Criminal Responsibility (Refs & Annos)
Part 4. Justification Excluding Criminal Responsibility

U.C.A. 1953 § 76-2-402

§ 76-2-402. Force in defense of person--Forcible felony defined

Currentness

(1)(a) A person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person's imminent use of unlawful force.

(b) A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2)(a) A person is not justified in using force under the circumstances specified in Subsection (1) if the person:

(i) initially provokes the use of force against the person with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(ii) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(iii) was the aggressor or was engaged in a combat by agreement, unless the person withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force.

(b) For purposes of Subsection (2)(a)(iii) the following do not, by themselves, constitute "combat by agreement":

(i) voluntarily entering into or remaining in an ongoing relationship; or

(ii) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(a)(iii).

(4)(a) For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape

of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property.

(b) Any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury also constitutes a forcible felony.

(c) Burglary of a vehicle, defined in [Section 76-6-204](#), does not constitute a forcible felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

(5) In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors:

(a) the nature of the danger;

(b) the immediacy of the danger;

(c) the probability that the unlawful force would result in death or serious bodily injury;

(d) the other's prior violent acts or violent propensities; and

(e) any patterns of abuse or violence in the parties' relationship.

Credits

Laws 1973, c. 196, § 76-2-402; Laws 1974, c. 32, § 6; [Laws 1991, c. 10, § 5](#); [Laws 1994, c. 26, § 1](#); [Laws 2010, c. 324, § 126, eff. May 11, 2010](#); [Laws 2010, c. 361, § 1, eff. May 11, 2010](#).

U.C.A. 1953 § 76-2-402, UT ST § 76-2-402
Current through 2016 Third Special Session

West's Utah Code Annotated
Title 76. Utah Criminal Code
Chapter 2. Principles of Criminal Responsibility (Refs & Annos)
Part 4. Justification Excluding Criminal Responsibility

U.C.A. 1953 § 76-2-405

§ 76-2-405. Force in defense of habitation

Currentness

(1) A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:

(a) the entry is made or attempted in a violent and tumultuous manner, surreptitiously, or by stealth, and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling, or being in the habitation and he reasonably believes that the force is necessary to prevent the assault or offer of personal violence; or

(b) he reasonably believes that the entry is made or attempted for the purpose of committing a felony in the habitation and that the force is necessary to prevent the commission of the felony.

(2) The person using force or deadly force in defense of habitation is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the entry or attempted entry is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or surreptitiously or by stealth, or for the purpose of committing a felony.

Credits

Laws 1973, c. 196, § 76-2-405; Laws 1985, c. 252, § 1.

U.C.A. 1953 § 76-2-405, UT ST § 76-2-405
Current through 2016 Third Special Session

West's Utah Code Annotated
Title 76. Utah Criminal Code
Chapter 2. Principles of Criminal Responsibility (Refs & Annos)
Part 4. Justification Excluding Criminal Responsibility

U.C.A. 1953 § 76-2-406

§ 76-2-406. Force in defense of property--Affirmative defense

Currentness

(1) A person is justified in using force, other than deadly force, against another when and to the extent that the person reasonably believes that force is necessary to prevent or terminate another person's criminal interference with real property or personal property:

- (a) lawfully in the person's possession;
- (b) lawfully in the possession of a member of the person's immediate family; or
- (c) belonging to a person whose property the person has a legal duty to protect.

(2) In determining reasonableness under Subsection (1), the trier of fact shall, in addition to any other factors, consider the following factors:

- (a) the apparent or perceived extent of the damage to the property;
- (b) property damage previously caused by the other person;
- (c) threats of personal injury or damage to property that have been made previously by the other person; and
- (d) any patterns of abuse or violence between the person and the other person.

Credits

Laws 1973, c. 196, § 76-2-406; [Laws 2010, c. 377, § 1, eff. May 11, 2010](#).

U.C.A. 1953 § 76-2-406, UT ST § 76-2-406
Current through 2016 Third Special Session

West's Utah Code Annotated
Title 76. Utah Criminal Code
Chapter 2. Principles of Criminal Responsibility (Refs & Annos)
Part 4. Justification Excluding Criminal Responsibility

U.C.A. 1953 § **76-2-407**

§ **76-2-407**. Deadly force in defense of persons on real property

Currentness

(1) A person is justified in using force intended or likely to cause death or serious bodily injury against another in his defense of persons on real property other than his habitation if:

(a) he is in lawful possession of the real property;

(b) he reasonably believes that the force is necessary to prevent or terminate the other person's trespass onto the real property;

(c) the trespass is made or attempted by use of force or in a violent and tumultuous manner; and

(d)(i) the person reasonably believes that the trespass is attempted or made for the purpose of committing violence against any person on the real property and he reasonably believes that the force is necessary to prevent personal violence; or

(ii) the person reasonably believes that the trespass is made or attempted for the purpose of committing a forcible felony as defined in [Section 76-2-402](#) that poses imminent peril of death or serious bodily injury to a person on the real property and that the force is necessary to prevent the commission of that forcible felony.

(2) The person using deadly force in defense of persons on real property under Subsection (1) is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the trespass or attempted trespass is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or for the purpose of committing a forcible felony.

Credits

[Laws 2002, c. 273, § 1, eff. May 6, 2002.](#)

U.C.A. 1953 § **76-2-407**, UT ST § **76-2-407**

Current through 2017 First Special Session.