

Criminal Jury Instructions Committee

Minutes November 18, 2022

Attending:

Hon. Jennifer Green – Chair
Comm. Elizabeth Bingert (Proxy vote for Judge Lacy Gard)
Daniel Carrion
David Euchner
Jillian Francis
Robb Holmes
Alice Jones
Samantha Kluger
Karen Komrada (Proxy vote for: Shawn Steinberg, Ellen Dahl, James Baumann, Jennifer Linn
Michael Minicozzi & Todd Lawson
Sarah Mayhew
Mikel Steinfeld
Greta Vietor
William Wallace

Absent:

Bruce Chalk
Kush Govani
Jarom Harris
Comm. Steve McCarthy

1. Call to Order by Judge Green 1:38 p.m.
2. Approval of meeting minutes from September 30, 2022
 - a. Jones moves to approve, Francis seconds. **Motion passes unanimously.**
3. Proposed Revisions to Use of Deadly Physical Force – Karen Komrada
 - a. Euchner submitted a memo attached as an agenda item for committee's review.
 - b. Discussion held between Euchner and Komrada about memo and relevant case law.
 - c. Steinfeld mentions case he found from 2012, will send to Komrada.
 - d. Komrada asks to table matter for time to review Euchner memo and Steinfeld case. Committee has no objection.
 - e. Holmes asks Steinfeld to provide case cite to everyone.
 - f. Case citation put into the chat: *State v. Demery*, 2012 WL 6601386, 1-CA-CR 11-0908 (App. 2012, Unpub.)
4. Proposed Revisions to Standard Instructions 45 and 47 – Linn (absent)
 - a. Komrada is proxy for Linn

- b. Komrada does not have sufficient information to discuss issues.
 - c. Committee agrees to table until next meeting.
5. Proposed Revision to Standard 35 – Mayhew¹
- a. Include new language re: voluntary act.
 - b. No discussion.
 - c. Mayhew moves to adopt, Euchner seconds.
 - d. **Motion passes unanimously.**
6. Proposed Revisions to RAJI 15.07 (Burglary in the Second Degree) - Francis
- a. Francis does not agree with Euchner’s proposed changes because there is a new case currently on appeal where the defendant is raising the same issue re: jury instruction.
 - b. Euchner notes that the Court does not say that this is how a the RAJI should be given, generally, but rather addresses an individual case. Discussion with Euchner and Komrada. Euchner notes that nothing in *Reaves* says that these are the “magic words” that should be used in future cases.
 - c. Steinfeld proposes to leave language or adopt his proposed language. Proposed language put into the chat:
 - i. “The court of appeals has upheld an instruction that has read: “A person who has an absolute and unlimited right to be in a dwelling cannot commit a burglary thereof,” [*Reaves* citation]; *see also* [*Altamirano* citation] (holding that there was no factual basis for attempted second-degree burglary where the defendant sexually abused his daughter in his own home.”
 - d. Committee confirms that the “Note” at the bottom of Francis’s proposal is a note to the committee, not a proposed substantive change to the instruction.
 - e. Bingert moves to adopt changes, Steinfeld seconds. **Motion passes unanimously.**
7. Revisions to Standard 47
- a. Discussion about adding new paragraph and moving other paragraph to Standard 46. Discussion held that deleting the paragraph from alibi was likely a mistake from when the committee renumbered the standard instructions several years ago.
 - b. Steinberg believes that she can find materials from that period that would shine light on the change.
 - c. Steinberg moves to table, Euchner seconds. Motion passes unanimously.
 - d. The committee contemplates adding revisions to Standards 46 and 47 to a future agenda.
8. Proposed Revision to Standard 36 – Lesser-Included Offenses - Jones

¹ Committee revisited this agenda item, see item #9.

- a. Discussion held. Euchner thinks he proposed language from *Lua* and agrees that it has evolved and doesn't object to removing the language. Jones says that it isn't meant to change much, just to clarify new law.
 - b. Francis moves to adopt proposed changes. Euchner seconds. **Motion passes unanimously.**
9. Committee Revisits Standard 35 - Mayhew
 - a. Mayhew asks to go back to review Voluntary Act instruction (was mistaken about which agenda item the committee was discussing).
 - b. Committee proposes to include 105 subsection in the source citation below the line.
 - c. Committee proposes to update source language with accurate date that the law went into effect (September 24, 2022).
 - d. Steinfeld moves to adopt changes, Euchner seconds. **Motion passes unanimously.**
10. Abortion and Gestational Age – Carrion
 - a. Discussion held.
 - i. Euchner not in favor or addressing this now because the territorial law is currently stayed pending litigation. Historically, committee does not work on issues when the constitutionality is being litigated.
 - ii. Committee clarifies that this is the 15-weeks law, not territorial law.
 - iii. Francis would like to move forward because it has been enacted and an instruction needs to be available for practitioners.
 - iv. Euchner argues that judges and practitioners can look up the statute and that the instruction does not provide any other information (Use Note, Comment, etc.).
 - v. Steinfeld does not have an issue with the instruction because it is a statutory statement.
 - vi. Green likes having an instruction available for judges and practitioners.
 - vii. Euchner asks Francis if this instruction would be helpful to a new judge. Euchner says that the purpose of the RAJIs is to help all of the parties and all we have is the source of the statute, practitioners already know how to find that because it will be in the charging document, there are no issues with mens rea that need clarification.
 - viii. Bingert says that practitioners will likely turn to the RAJIs first for guidance when they go to trial on this type of case.
 - ix. Steinfeld looks up statute and points out that Carrion has gone further than just restating the statute.
 - x. Jones agrees with Steinfeld and points out that there are other RAJIs that only cite the statutory language.
 - b. Euchner moves to not go forward with any instruction at this time, Holmes seconds.

- i. Yeas: 3
 - ii. Nays: 15
 - iii. Motion fails.**
- c. Discussion held about proposed changes to the instruction.
 - i. Francis suggests changing the title to “Abortion After 15 Weeks.”
 - ii. Committee agrees that definitions for the following terms should be included: “medical emergency,” “abortion,” “physician,” “major bodily function,” and “human being.”
- d. Discussion held between Steinfeld, Euchner, and Carrion about whether medical emergency is an affirmative defense, they agree that it’s not. Possibly include language in instruction, “and there was no medical emergency.”
- e. Green says that there is also language about attempting to induce an abortion, suggests including that.
- f. Euchner points out that there needs to be the word “or” included after “induced” in the first element of the offense.
- g. Carrion agrees to rewrite and table until next meeting.

11. Scheduling of Next Meeting

- a. Discussion held regarding next meeting and whether we will have enough time to get these instructions to organizations for comment.
- b. Next meeting is January 27, 2023, at 1:30 p.m.

12. New Business

- a. Bar convention – Green will send Bingert and Carrion emails with deadlines and information. Deadline to submit proposal is December 16, 2022.
- b. Discussion about proxy votes. Bingert raises concern that committee has not been complying with our rules for proxy votes, specifically the written form. Ilona says that emailing her seems to be sufficient notification.
- c.

13. Call To the Public

- a. No response.
- b. D

14. Adjournment

- a. Euchner moves, Steinfeld seconds. **Motion passes unanimously.**
- b. Meeting adjourns at 2:52 p.m.