

Criminal Jury Instructions Committee
Meeting Minutes October 20, 2023

Attending:

Hon. Jennifer Green – Chair
Ryan Alcorn
Jamal Allen
James Baumann
Gregory Benson
Joseph Butner
Hon. Elizabeth Bingert (Proxy vote for Hon. Jeffrey Altieri)
Daniel Carrion
Sasha Charles
David Euchner
Hon. Jillian Francis
Kristian Garibay
Hon Lacy Gard
Alice Jones
Samantha Kluger
Karen Komrada (Proxy vote for Jennifer Linn)
Todd Lawson Proxy vote for Bruce Chalk)
Michael Minicozzi
Joshua Spears
Shawn Steinberg
Kristen Reller (Proxy vote for Mikel Steinfeld)

Absent:

Jarom Harris
Robb Holmes
Sarah Mayhew
Hon. Steve McCarthy

1. Judge Green called the meeting to order at 1:30 p.m.
2. Approval of March 24, 2023 minutes unanimously approved.
3. Introduction of new members. Judge Green welcomes new members.
4. Revisiting Proposed New Standard Instruction 8.1 for Another Vote
 - a. Discussion held about where the Committee left off in March, discussed proxy issue.
 - b. Euchner summarized issues for new Committee members.

- i. Discussion regarding *Abdi* case, specifically, that a court not reversing a conviction solely on an instruction is not the same as saying it should be a pattern instruction.
- c. Group reviewed suggested modifications from March 24th minutes. Heade raised issue that additional sentence would be a comment on the evidence or shift the burden to defendants.
- d. Minicozzi expressed concern about whether jury would start thinking about evidence that was suppressed, inadmissible, etc.
- e. Proposal about bifurcated language discussed.
- f. Bingert and Euchner discussed whether this is within Committee’s purview.
- g. **Bingert moved to adopt proposed 8.1 as written. Jones seconded.**
 - i. **Yes: 2**
 - 1. **Charls**
 - 2. **Baumann**
 - ii. **No: Everyone else**
 - iii. **Abstained: None**
 - iv. **Motion fails.**

5. Proposed Revision to 12.04 – Aggravated Assault

- a. Karen Komrada’s proposal.
- b. Euchner offered a friendly amendment to nasal inhaler language to say that a “nasal inhaler can be a simulated deadly weapon.”
- c. Euchner and Komrada discussed *Garza-Rodriguez* and *Bousley* cases. Francis said we should not have to cite to *Felix*.
- d. Heade would rather see the definition of simulated deadly weapon
 - i. Committee members like language from *Garza-Rodriguez*: “We held that the simulation required by law is not that a robber feigns or pretends to have a weapon on their person, but rather that the person commits the robbery with a pretend deadly weapon.” 164 Ariz. at 112.
- e. **Euchner motioned to approve language above the line to add, “the defendant used a simulated deadly weapon.” Carrion seconded.**
 - i. **Motion passed unanimously.**
- f. Committee discussed language below the line to include “pretend deadly weapon.”
 - i. **Euchner moved to table until the next meeting. Carrion seconded.**
 - ii. **Motion passed unanimously.**

6. Proposed Revision to 12.11 – Discharge of a Firearm at a Structure

- a. Komrada presented information about *Aguirre* case and its holding that the state is required to prove that the defendant aimed at the structure.
- b. Committee agreed to update the citation to 225 Ariz. 89.

- c. Francis said *Aguirre* addresses non-residential structure only, questioned whether the Committee should include both residential and non-residential. Euchner said it seems it would apply to both and matters what is in the “to wit” in the charging document.
 - d. Jones updated Committee that SCOAZ denied the petition for review, so the appellate proceedings have concluded in this case.
 - e. **Komrada moved to add proposed 12.11 with updated citation. Euchner seconded. Motion passed unanimously.**
7. Proposed Revision to 32.12B – Child Sex Trafficking
- a. Minicozzi discussed July 24, 2014 change to statute
 - b. Lawson said there should be a note to practitioners that this is the statute at the time and practitioners should take caution in case there’s an update. Carrion agrees.
 - c. Euchner had issues with language because it creates a negligence standard.
 - d. Steinberg said the instruction should mirror the statute’s language. Gard agrees that the Committee shouldn’t change the language because it’s what the legislature passed.
 - e. Heade asked whether Minicozzi reviewed the more recent versions of the statute. Minicozzi said we should leave the original date as-is if that’s the Committee’s common practice.
 - f. **Komrada moved to adopt instruction as written above the line. Make no changes below the line but Committee may revisit. Steinberg seconded.**
 - i. **Abstain: Kluger**
 - ii. **No: David Euchner**
 - iii. **Yes: Everyone else**
 - iv. **Motion passed.**
8. Proposed Revision to 29.21.01 – Aggravated Harassment
- a. Discussion held. Several members mentioned tabling the issue to look at the statute. Heade raised concerns about First Amendment issues if we don’t include “intent to harass” language.
 - b. Jones said there is a case coming out that she may need to include as part of a future proposal.
 - c. **Benson moved to table. Carrion seconded. Motion passed unanimously.**
9. Proposed Revision to 14.04 – Sexual Abuse (Victim Under 15)
- a. Minicozzi said the Committee already addressed this and it is in the 6th Ed. of the RAJIs.
 - b. Minicozzi will find editing issues and send to Kukan and Bingert.
 - c. **Benson moved to withdraw the proposal. No objection.**

10. Amendment to 5.03-1a and 5.031b – Effect of Non-Prescribed Alcohol or Drug Use or Abuse of Prescribed Medication

- a. Minicozzi explained that because marijuana is now legal the Committee should add “voluntary intoxication” language to both instructions.
 - i. **Euchner moved to adopt and to strike the use note in both instructions. Kluger seconded. Heade concerned with issues with marijuana prescriptions.**
 - ii. **No: Heade**
 - iii. **Yes: Everyone else.**
 - iv. **Motion passed.**

11. Amendment to 4.06 – Justification for Defense of a Third Person

- a. **Baumann moved to strike number 3 and add sentence about permitted use of deadly force. Euchner seconded.**
 - i. **No: Linn**
 - ii. **Yes: Everyone else.**
 - iii. **Motion passed.**

12. Proposed Revision to DUI 28-1381(A)(1)

- a. **Benson moved to adopt proposed changes that were submitted to the Committee. Euchner seconded.**
- b. Discussion: Komrada expressed concern because there is no locally binding authority in what was submitted. Carrion proposed separate standard instruction. Lawson and Komrada want to see Arizona authority. Carrion argued that it’s common sense.
- c. **Benson moved to table. Euchner seconded.**
- d. **Motion to table passed unanimously.**

13. New DUI – Field Sobriety Tests

- a. Benson moved to table. Allen seconded. Motion passed unanimously.

14. Maintenance of breath testing machines with field sobriety tests tabled to next meeting

15. Supreme Court’s Fentanyl and Toxic Evidence Task Force

- a. Komrada discussed task force to address no more toxic substances will be allowed in the courtroom, specifically fentanyl.
- b. Green clarified that substances won’t go back to the jury but the Committee should address what other states are doing to address this issue in their jury instructions.
- c. Euchner suggested ad hoc committee to look into this. Green says she will set up a Teams meeting in December and will report back to the Committee. Open to anyone who wants to join. Green says she will reach out to Komrada.

16. Other Business

- a. Lawson addressed issues with formatting of RAJI document. Bingert, Carrion, Euchner, Gard, and Lawson will form subcommittee to address formatting. Kukan to send Word document of all instructions to Lawson.
- b. New member introductions for anyone who joined later.

17. Next meeting: Friday, December 8, 2023 at 9 a.m.

18. Adjourned at 3:32 p.m.