



MODEL CRIMINAL JURY INSTRUCTIONS COMMITTEE
Meeting Minutes of:
Thursday, August 16, 2012
3:00 – 5:00 p.m.
Held at the Supreme Court – 8th floor conference room

Attendees:

Justice Coats (Chair), Judge Dailey (Vice Chair), Judge Lichtenstein (Vice Chair), Judge Egelhoff, Judge Samour, Judge Tuttle, and Judge Warner.

Telephone participants:

Judge Burback, Judge Gilbert, Judge Lammons, Judge Lemon, Judge Robison, and Judge K. Romeo.

Staff:

Andrew Field (Reporter), and Penny Wagner (Court Services Analyst).

I. Approval of Minutes

The Committee approved the minutes for the July 19, 2012, meeting.

II. Committee Web Site

The Reporter reviewed the proposed draft materials that he had completed and posted on the Committee's secure web site since the last meeting: Chapter 4-4 (Theft and Related Offenses) and Chapter 4-5 (Criminal Mischief, Trespass, and Related Offenses).

III. Discussion concerning how to describe the prosecution's burden of proof with respect to affirmative defenses.

A majority of the Committee tentatively agreed to language that describes each affirmative defense as having requirements or conditions, and which states that it is the prosecution's burden to prove beyond a reasonable doubt that the defendant's conduct was not legally authorized by the affirmative defense. Accordingly, the Committee asked the Reporter to: (1) revise the affirmative defense instructions to enumerate the multiple requirements or conditions in the same way that elements are listed in the instructions that define offenses; and (2) modify this language, where appropriate, so that it refers only to a single requirement or condition.

IV. Chair's Update

The Chair informed the members of the Committee that he and the Reporter will speak about the Committee's work at the Judicial Conference in September.

V. Affirmative Defense Instructions

The Committee asked the Reporter to expand the introductory chapter comment that discusses the low evidentiary threshold for giving affirmative defense instructions.

The Committee asked the Reporter to draft an introductory chapter comment that alerts users to the fact that a few instructions defining statutorily-labeled "affirmative defenses" are accompanied by Committee comments, or summaries of precedent, that question the correctness of the characterization.

The Committee discussed whether it is necessary to inform juries that a defense is "affirmative." The Committee agreed that, although the word "affirmative" may not convey additional information, the use of this term is a well-established convention that should be maintained because it is a helpful label for judges and attorneys.

The Committee asked the Reporter to draft separate instructions for: (1) the affirmative defense of use of non-deadly physical force in defense of person; and (2) the affirmative defense of use of deadly physical force in defense person. The Committee also asked the Reporter to draft a pair of separate instructions explaining these concepts pursuant to section 18-1-704(4)(admission of evidence of self-defense not as an affirmative defense, but as an element-negating traverse).

The Committee endorsed the idea of integrating the three exceptions to self-defense (provocation, initial aggressor, and combat by agreement) into the affirmative defense instructions as bracketed alternatives that are to be used when supported by the evidence. Accordingly, the Committee asked the Reporter to draft language phrasing the non-existence of each exception as a requirement or condition.

The Committee discussed whether language describing the no-retreat doctrine should be integrated into various instructions. The Committee asked the Reporter to conduct additional research to determine when it is appropriate to instruct the jury concerning this concept, and whether it applies in contexts other than self-defense (e.g., use of force against an intruder to a dwelling, defense of premises, and defense of property).

VI. Next Meeting

The next meeting will be held in the same location, at the same time, on Thursday, September 20, 2012.

The Chair will set an agenda and have the Reporter distribute relevant written materials in advance of the meeting.

The Chair adjourned the meeting at 4:56 p.m.

Respectfully submitted,

Andrew Field, Reporter.