

Criminal Jury Instructions Committee
MINUTES
May 12, 2007

[1] Minutes of the September 16, 2006 committee meeting were reviewed and approved by the committee.

[2] “Proximate Cause” in Vehicular Death Cases, CJI2d 15.11. The committee reviewed both the court of appeals’ opinion and the supreme court order in *People v Kevin John Rideout*, 272 Mich App 602 (2006); 477 Mich. 1062 (2007).

Since the current standard instructions concerning causation in vehicular homicide and injury cases are correct and were not criticized by the appellate courts in *Rideout*, the committee took no action. However, the committee thought it likely that the causation issue, particularly as related to subsequent, intervening causes, is likely to recur frequently and require further attention in the standard instructions.

[3] CJI2d 11.6, Defense – Firearm Inoperable [CCW] and CJI2d 17.13 [felonious assault dangerous weapon]. The committee reviewed Anica Letica’s email dated March 23, 2007 concerning these instructions and the supreme court’s decisions in *People v Peals*, 476 Mich 636, 656 (2006). The committee voted to add use notes to 11.34(10), 11.38, and 11.38a indicating the the prosecutor need not prove in those cases that the firearm was operable [felony firearm and felon in possession]. In addition, use notes will be added to 11.6 [CCW] and 17.13 [felonious assault] that the inoperability instructions found there apply only to those offenses.

[4] CJI2d 17.7(4), Assault with Intent to Do Great Bodily Harm Less Than Murder. Under Tab#4 of the mailed materials you’ll find the legal memorandum of Charles Justian with the Muskegon County Prosecutor’s Office explaining – convincingly I think – why our current instruction is wrong. This memorandum was furnished to us by Ms. Letica. I suggest we modify the last sentence of CJI2d 17.7(4) to read: “Great bodily harm means a serious injury of an aggravated nature.” We could then delete the last clause of the concluding sentence of the commentary at p 17-15. The only reason I hesitate to adopt the suggestion that we define GBH as “any injury that [could] seriously harm the health or function of the body” is that the *Hardy* case supporting that language is an unpublished per curiam

opinion. See Mr. Justian's memorandum, pp 6-7.

[5] Self-Defense Instructions. The committee reviewed CJI2d 7.15 through 7.24; the new self-defense statutes; MCL 780.951, MCL 780.961, MCL 780.971, MCL 780.972, MCL 780.973, and MCL 780.974; proposed revised instructions published on the ICLE website, and Judge Hammond's emailed comments concerning the instructions.

The committee voted to revise the proposed instructions and publish them more broadly for comment. Dan Kopka from ICLE indicated that ICLE will publish them on a public-accessible portion of its website. In addition, the reporter will send a copy of the new proposed instructions to the Bar Journal. Members of the committee will also forward copies for comment to organizations associated with both the prosecution and defense bars. The instructions and any comments will then be revisited at the committee's September, 2007 meeting.

[6] CJI2d 26.1, 26.3, 26.6, Receiving and Concealing. Mr. Vaillencourt's April 17, 2007 note, proposed revised instructions, and copy of the amended statute were reviewed by the committee. The committee voted to adopt the instructions as proposed.

[7] Old Business. None.

[8] New Business.

[a] Judge Kenny suggested a growing need for terrorist threat instructions and will forward to the reporter drafts for inclusion in our next agenda.

[b] Dan Kopka of ICLE suggested that the committee might wish to solicit recommendations for new instructions, comments concerning existing instructions, and criminal jury practice changes through ICLE's website. The committee agreed that doing so would be fine.

[c] Judge Hammond suggested that any reference to "imperfect self-defense" as a doctrine mitigating murder to manslaughter be eliminated from the jury instruction commentary, use notes, and indices. Judge Hammond pointed out that Michigan law does not recognize such a doctrine and that any suggestion to the contrary in caselaw is misguided *dicta* attributable to ill-informed appellate staff. A motion to adopt Judge

Hammond's proposal – if not his precise mode of expression – was tabled until the issue can be considered as an independent agenda item in tandem with the self-defense instruction revisions.

Ms. Letica pointed out that the supreme court, in *People v Posey*, recognized that it had never determined imperfect self-defense to be a viable mitigating factor in Michigan.

[9] Next Meeting. The next meeting will be held the Saturday following the State Bar Annual Meeting. The meeting will either be in Lansing or Hamtramack if Jerry Surowiec has anything to say about it. The meeting can't be on a home football Saturday but could be on a Tiger home game day.

[10] Adjournment. The meeting was adjourned.