

CHAPTER 16

JURY INSTRUCTIONS

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16.2.1 GENERAL JURY INSTRUCTIONS

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16.1 GENERALLY

Following are several sample jury instructions which may serve as a basis for the instructions a prosecutor will present to the court prior to trial. An effort has not been made to supply an entire set of instructions for a trial. Each court will undoubtedly have their own set of stock instructions; however, the following should be helpful in arguing for certain instructions beneficial to the prosecution's case.

The Utah Supreme Court has stated that, "we need only ask whether the instructions, taken as a whole, correctly communicate the principle of reasonable doubt, namely, that a defendant cannot be convicted of a crime "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *State v. Cruz*, 122 P.3d 543, 530 (Utah 2005), quoting *In re Winship*, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970) .

16.2 SAMPLE INSTRUCTIONS

16.2.1 GENERAL JURY INSTRUCTIONS

In *State v. Reyes*, 116 P.3d 305, 307 (Utah 2005), the Utah Supreme Court explicitly approved the following jury instruction relating to reasonable doubt. As such, it is recommended that prosecutors request the court to utilize the following instruction:

INSTRUCTION NO. _____
REASONABLE DOUBT

All presumptions of law, independent of evidence, are in favor of innocence. A defendant is presumed innocent until proven guilty beyond a reasonable doubt. Where you are satisfied that a reasonable doubt exists as to a defendant's guilt, he/she is entitled to acquittal.

The burden is upon the prosecution to prove the defendant guilty beyond a reasonable doubt. Proof beyond a reasonable doubt does not require proof to an absolute certainty. Reasonable doubt is required, not doubt which is merely possible, since everything in human affairs is open to some possible or imaginary doubt. Proof beyond a reasonable doubt is a degree of proof that satisfies your mind and convinces your conscientious understanding. Reasonable doubt is doubt entertained by reasonable men and women and arises from the evidence, or lack of evidence, in the case.

16.2.2 DUI-SPECIFIC JURY INSTRUCTIONS

The following instructions are specific to DUI cases and have been accepted by several courts throughout the state:

INSTRUCTION NO. _____
DRINKING AND DRIVING

The mere consumption of an alcoholic beverage combined with the driving of an automobile is not unlawful under the laws of the State of Utah. To act in an unlawful manner, one must either (1) drive an automobile with the blood/breath alcohol content of 0.08% or greater, or (2) drive an automobile while in a state of being then “under the influence” of alcohol and/or drugs.

Under the law it may also be said that a person drives a vehicle while “under the influence” of alcohol and/or drugs, when, as a result of drinking alcohol or taking drugs, a person is incapable of safely operating a motor vehicle. The prosecution need not show that actual driving was impaired, merely that the person’s mental or physical faculties or abilities of perception, coordination, or judgment, are so affected as to impair, to an appreciable degree, one’s ability to operate the vehicle with the degree of care which an ordinary prudent individual in full possession of his faculties would exercise under similar circumstances.

INSTRUCTION NO. _____
DEFINITION OF ACTUAL PHYSICAL CONTROL

You are instructed that the Defendant must be either driving the vehicle or in “actual physical control” of it to be convicted of Driving Under the Influence. “Actual physical control” is defined as having an apparent ability to start and move the vehicle. A person need not actually move, or attempt to move, a vehicle in order to be in “actual physical control” of the vehicle.

State v. Barnhart, 850 P.2d 473, 478 (Utah Ct. App. 1993).

INSTRUCTION NO. _____
PURPOSE OF “ACTUAL PHYSICAL CONTROL” LANGUAGE

“The clear purpose of the [actual physical] control aspect of the instant ordinance is to deter persons from being found under circumstances in which they can directly commence operating a vehicle while they are under the influence of alcohol ...”² “[The actual physical control] requirement was intended by our legislature to protect public safety and apprehend the drunken driver before he or she strikes, and may not be construed to exclude those whose vehicles are presently immobile because of mechanical trouble.”³

“In general, laws prohibiting driving while intoxicated are deemed remedial statutes, to be liberally interpreted in favor of the public interest and against the private interests of the drivers involved. Specifically, actual physical control statutes have been characterized as preventive measures, which deter individuals who have been drinking intoxicating liquor from getting into their vehicles, except as passengers, and which enable the drunken driver to be apprehended before he strikes.”⁴

² Garcia v. Schwendiman, 645 P.2d 651, 654 (Utah 1982) (quoting City of Cincinnati v. Kelley, 351 N.E.2d 85, 87 (Ohio 1976)).

³ Lopez v. Schwendiman, 720 P.2d 778, 781 (Utah 1986) (per curiam) (citations omitted).

⁴ Richfield City v. Walker, 790 P.2d 87, 91 (Utah Ct. App. 1990) (quoting State v. Smelter, 674 P.2d 690, 693 (Wash. 1984) (quotations and citations omitted)).

INSTRUCTION NO. _____
LEGAL GUIDELINES FOR ACTUAL PHYSICAL CONTROL

“To summarize, [the law] recognize[s] the following established legal guidelines that affect a [jury’s] factfinding discretion in these cases: the [jury] must look to the totality of the circumstances, no single factor being dispositive as a matter of law, the statute is intended to prevent intoxicated persons from causing harm by apprehending them before they operate a vehicle, a person need not actually move, or attempt to move, a vehicle, but only needs to have an apparent ability to start and move the vehicle in order to be in actual physical control.”

1 State v. Barnhart, 850 P.2d 473, 478 (Utah Ct. App. 1993).

INSTRUCTION NO. _____
NO REQUIREMENT TO ACTUALLY MOVE THE VEHICLE

“A person need not actually move, or attempt to move, a vehicle in order to have actual physical control; the person only needs to have ‘the apparent ability to start and move the vehicle.’”

1 State v. Barnhart, 850 P.2d 473, 477 (Utah Ct. App. 1993) (quoting Garcia v. Schwendiman, 645 P.2d 651, 654 (Utah 1982)).

INSTRUCTION NO. _____
ADEQUATE SHOWING OF ACTUAL PHYSICAL CONTROL

“[W]here a motorist occupied the driver's position behind the steering wheel, with possession of the ignition key and with the apparent ability to start and move the vehicle, ... there has been an adequate showing of ‘actual physical control’ under our ... [Driving Under the Influence] statute.”

“The fact that defendant was unconscious [or asleep] at the time the police officer arrived does not prevent a finding that defendant had the ability to start the car and drive away either before or after his unconsciousness.”

1 Garcia v. Schwendiman, 645 P.2d 651, 655 (Utah 1982)

2 State v. Barnhart, 850 P.2d 473, 479 (Utah Ct. App. 1993).

INSTRUCTION NO. _____
SUBJECTIVE INTENT OF DEFENDANT NOT RELEVANT

“The subjective intent of a defendant not to operate the vehicle does not prevent a finding that the defendant was in actual physical control. ... Whether or not a person has the subjective intent to subsequently operate a vehicle is irrelevant to the question of whether the person has the present ability to start and move the vehicle. It is therefore permissible for [the jury] to find that [the defendant] had actual physical control over a vehicle even though [he/she] did not subjectively intend to exercise it.”

1 State v. Barnhart, 850 P.2d 473, 479 (Utah Ct. App. 1993).

INSTRUCTION NO. _____
REFUSAL TO SUBMIT TO CHEMICAL ANALYSIS

You are instructed that the Defendant's failure to consent to a chemical analysis of his/her breath to determine its alcohol content may be considered along with all other facts received into evidence in determining the guilt or innocence of Defendant. You should weigh the Defendant's actions the same as you weigh all other evidence presented.

INSTRUCTION NO. _____
BLOOD ALCOHOL CONTENT FROM BREATH ANALYSIS

It is the intent of the Utah Legislature to relieve the State of Utah and other governmental entities of the financial burden of calling as a witness in every DUI case the public officer responsible for testing the accuracy of the Intoxilizer equipment. Thus, in place of the public officer's testimony, the law permits the admission of affidavits regarding the maintenance of a specific Intoxilizer as evidence of the proper functioning of that Intoxilizer machine and the accuracy of the ampoules.

This court has found: (1) the calibration and testing for accuracy of Intoxilyzer was performed in accordance with the standards established by the Commissioner of Public Safety, (2) the affidavits were prepared in the regular course of the public officer's duties, (3) that they were prepared contemporaneously with the act, condition or event, and (4) the source of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness. This court has admitted into evidence these affidavits.

Further, this court has admitted into evidence the results from the Intoxilizer. Based upon these findings, the prosecution is entitled to the

presumption that the test results are valid and further foundation for introduction of evidence is unnecessary. However, in admitting evidence of a chemical analysis of the Defendant's breath, the Court does not determine the accuracy of the test or analysis. Such is a question of fact for the jury alone to determine.

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