

Supreme Court of Florida

No. 67,396

THE FLORIDA BAR
RE: STANDARD JURY INSTRUCTIONS
CRIMINAL CASES

[October 10, 1985]

PER CURIAM.

The Supreme Court Committee on Florida Standard Instructions in Criminal Cases has submitted the following report and recommendations as to amendments to the standard instructions in criminal cases:

1. As presently written, the sentencing charge in capital cases states that the jury's recommendation must be made by a majority, whereas case law dictates that a tie vote results in a recommendation of life imprisonment. Therefore, pages 81 and 82 should be changed as indicated by the attached pages (exhibit 1). Likewise, the model charge on murder on pages lii and liii should be changed to reflect this amendment (exhibit 1A).

2. A new manslaughter instruction is submitted to take the place of the one which appears on page 68 (exhibit 2). The new instruction is intended to make clear the residual aspect of manslaughter and to substitute a new definition of culpable negligence more nearly in line with current law. Subsequent to publication, the first "note to judge" was eliminated to make certain that the instruction complied with the rationale of cases such as Delaford v. State, 449 So.2d 983 (Fla. 2d DCA 1984). The model charge on murder should be changed on pages xliii and xliv to reflect the new manslaughter instruction (exhibit 2A).

3. In chapter 82-164, Laws of Florida, the legislature amended the theft statute, section 812.014, and repealed the statute prohibiting unauthorized temporary use, section 812.041. The existence of this statute did not come to our attention until after The Florida Bar News publication. Therefore, the first line of element 2 of the theft instruction which appears on page 147 should be changed to read: "2. He did so with intent to, either temporarily or permanently," and the Note to Judges which appears between elements 1 and 2 should be eliminated. The instruction on unauthorized temporary use which appears on page 152 should be

eliminated. Finally, the crime of unauthorized temporary use which appears as category (2) offenses under first and second degree grand theft on page 265 of the schedule of lesser included offenses and the accompanying case citation should be eliminated.

4. On page 272 of the schedule of lesser included offenses, an asterisk should be placed after the category (1) offense under sale, manufacture, delivery or possession with intent to sell, manufacture or deliver a controlled substance. This asterisk should read: "Provided that charged offense is a second degree felony under section 893.13(1)(a)1." The reason for this is that a conviction under section 893.13(1)(e) is a third degree felony and can only be a lesser included offense if the requisite charge is a second degree felony. Some of the charges under section 893.13(1)(a) are not second degree felonies.

5. In State v. Lowery, 419 So.2d 621 (Fla. 1982), the Supreme Court held that the defendant need not be present at the scene of the crime in order to be guilty of second degree felony murder. Therefore, under the instruction for second degree felony murder which appears on page 66, the words "was present and" which appear under element number 3 should be eliminated.

6. A new definition of culpable negligence has been adopted so as to more nearly reflect current law. Therefore, a new instruction on culpable negligence is submitted to take the place of the one which appears on page 91 (exhibit 3).

7. The current instructions do not contain kidnapping and false imprisonment instructions. Appropriate instructions on these subjects are submitted (exhibit 4). The form of the instruction was slightly changed after publication so as to make it consistent with the format of the other instructions.

8. The current instructions include substantial duplication with respect to the various charges on self defense in that they appear separately on pages 40-45 and again under homicide on pages 71-75. To take the place of these instructions the committee has prepared new instructions on self defense which should appear as sections 3.04(d), 3.04(e), and 3.04(f), beginning at page 40 (exhibit 5). The instructions were rearranged and slightly rewritten after publication when it was decided to break them down under the headings of justifiable use of nondeadly force, justifiable use of deadly force, and justifiable use of force by law enforcement officer. There are, however, two changes of a substantive nature. First, under justifiable use of force by a law enforcement officer, a new instruction has been prepared with respect to making an arrest of a suspected felon pursuant to the recent decision of Tennessee v. Garner, 53 U.S.L.W. 4410 (U.S. March 27, 1985). The second substantive change is a new instruction under justifiable use of force in resisting arrest under section 776.051(1). This new instruction would take the place of the ones on that subject which now appear on page 43 and page 75. The reason for this new instruction is to reflect the rulings in Ivester v. State, 398 So.2d 926 (Fla. 1st DCA 1981), and Jackson v. State, 463 So.2d 372 (Fla.

5th DCA 1985), which hold that in light of section 776.012 our current instruction is incorrect. Neither of the two substantive changes was included in The Florida Bar News because the need for them was not brought to our attention until after publication.

9. On page 259 of the schedule of lesser included offenses, a double asterisk should appear after culpable negligence--784.05(2) and culpable negligence--784.05(1) which appear as category (1) lesser included offenses to manslaughter. The double asterisk should read: "But see Smith v. State, 330 So.2d 526 (Fla. 4th DCA 1976), and Murray v. State, 328 So.2d 501 (Fla. 4th DCA 1976)." The committee believes the schedule to be correct but wishes to call attention to cases which could be construed as holding to the contrary.

10. Element 3 in trafficking in cocaine on page 230 should be changed so as to coincide with element 2. Thus, element 3 should read: "3. The quantity of the substance involved was twenty-eight grams or more." The wording but not the meaning was changed after publication for purposes of consistency.

11. In view of rule 3.390, Florida Rules of Criminal Procedure, effective January 1, 1985, the present instruction 2.06 should be eliminated. It need not be replaced by a new instruction because item 5 under instruction 2.05 which appears on page 21 advises the jury that it is the judge's job to determine the proper sentence if the defendant is found guilty.

12. Elements 2 and 3 in trafficking in illegal drugs which appear on page 232 should be changed to allow for a charge on a mixture of an illegal substance as follows: "2. The substance was [(specific substance alleged)] [a mixture containing (specific substance alleged)]. 3. The quantity of the substance involved was four grams or more."

13. The statute on lewd, lascivious or indecent conduct was amended in 1984 to refer to children under the age of sixteen. § 800.04, Fla. Stat. (1984). Therefore, the word "fourteen" which appears under element 1 on page 122 should be changed to read "sixteen." The need for this change was not brought to our attention until after publication of the proposed amendments.

In our publication in The Florida Bar News we had proposed several additional changes in the schedule of lesser included offenses. However, since that date the Supreme Court issued its opinion in Rotenberry v. State, 468 So.2d 971 (Fla. 1985), which appears contrary to the underlying rationale of substantial portions of the schedule of lesser included offenses. Therefore, the committee deemed it advisable not to submit the proposed changes at this time and is considering the necessity of revamping the entire schedule.

Since the last revision of the Florida Standard Jury Instructions in Criminal Cases in 1981, the legislature has changed the numbering of several criminal statutes, thereby making obsolete some of the numbering which now appears in the instruction book. Rather than outlining the numbering changes in this report, the committee requests authorization to

make the necessary numbering changes in subsequent Florida Bar publications of the instruction book.

The report is accepted and the recommended changes in the instructions are approved.* The committee's requested authorization to make the necessary numbering changes in subsequent Florida Bar publications of the instruction book is granted. The exhibits are set out following this opinion.

It is so ordered.

BOYD, C.J., and ADKINS, OVERTON, McDONALD, EHRLICH and SHAW, JJ.,
Concur

* We note that the Court has recently rendered numerous decisions concerning the appropriateness of multiple convictions for one criminal episode. These decisions may affect the schedule of lesser included offenses. We request the committee to review this schedule in light of these opinions.

conduct to the requirements of law was substantially impaired;

7. The age of the defendant at the time of the crime;
8. Any other aspect of the defendant's character or record, and any other circumstance of the offense.

Each aggravating circumstance must be established beyond a reasonable doubt before it may be considered by you in arriving at your decision.

If one or more aggravating circumstances are established, you should consider all the evidence tending to establish one or more mitigating circumstances and give that evidence such weight as you feel it should receive in reaching your conclusion as to the sentence that should be imposed.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. If you are reasonably convinced that a mitigating circumstance exists, you may consider it as established.

The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. You should weigh the aggravating circumstances against the mitigating circumstances, and your advisory sentence must be based on these considerations.

In these proceedings it is not necessary that the advisory sentence of the jury be unanimous.

The fact that the determination of whether you recommend a sentence of death or sentence of life imprisonment in this case can be reached by a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you ballot you should carefully weigh, sift and consider the evidence, and all of it, realizing that human life is at stake, and bring to bear your best judgment in reaching your advisory sentence.

If a majority of the jury determine that (defendant) should be sentenced to death, your advisory sentence will be:

A majority of the jury, by a vote of _____, advise and recommend to the court that it impose the death penalty upon (defendant).

On the other hand, if by six or more votes the jury determines that (defendant) should not be sentenced to death, your advisory sentence will be:

The jury advises and recommends to the court that it impose a sentence of life imprisonment upon (defendant) without possibility of parole for 25 years.

You will now retire to consider your recommendation. When you have reached an advisory sentence in conformity with these instructions, that form of recommendation should be signed by your foreman and returned to the court.

2. The crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance.

3. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

4. The age of the defendant at the time of the crime.

5. Any other aspect of the defendant's character or record, and any other circumstance of the offense.

Each aggravating circumstance must be established beyond a reasonable doubt before it may be considered by you in arriving at your decision.

If one or more aggravating circumstances are established, you should consider all the evidence tending to establish one or more mitigating circumstances and give that evidence such weight as you feel it should receive in reaching your conclusion as to the sentence that should be imposed.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. If you are reasonably convinced that a mitigating circumstance exists, you may consider it as established.

The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. You should weigh the aggravating circumstances against the mitigating circumstances, and your advisory sentence must be based on these considerations.

In these proceedings it is not necessary that the advisory sentence of the jury be unanimous.

The fact that the determination of whether you recommend a sentence of death or sentence of life imprisonment in this case can be reached by a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you ballot you should carefully weigh, sift and consider the evidence, and all of it, realizing that human life is at stake, and bring to bear your best judgment in reaching your advisory sentence.

If a majority of the jury determine that Mr. Doe should be sentenced to death, your advisory sentence will be:

"A majority of the jury, by a vote of _____, advise and recommend to the court that it impose the death penalty upon John Doe for the First Degree Murder of Bradley Jones."

On the other hand, if by six or more votes the jury determines that Mr. Doe should not be sentenced to death, your advisory sentence will be:

"The jury advises and recommends to the court that it impose a sentence of life imprisonment upon John Doe without possibility of parole for 25 years."

You will now retire to consider your recommendation. When you have reached an advisory sentence in conformity with these instructions, that form of recommendation should be signed by your foreman and returned to the court.

MANSLAUGHTER
F.S. 782.07

Before you can find the defendant guilty of manslaughter, the state must prove the following elements beyond a reasonable doubt.

Elements

Give 2(a), (b) or (c) depending upon allegations and proof.

1. (Victim) is dead.
2. The death was caused by the
 - (a) act of (defendant).
 - (b) procurement of (defendant).
 - (c) culpable negligence of (defendant).

However, the defendant cannot be guilty of manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.

Note to Judge

In the event of any reinstruction on manslaughter, the instructions on justifiable and excusable homicide on page 61 should be given at the same time. Hedges v. State, 172 So.2d 824 (Fla. 1965).

Definitions

Give only if 2(b) alleged and proved.

To "procure" means to persuade, induce, prevail upon or cause a person to do something.

Give only if 2(c) alleged and proved.

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the

EXHIBIT 2

safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

2. Is done from ill will, hatred, spite or an evil intent, and

3. Is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Second Degree Murder, it is not necessary for the State to prove the defendant had a pre-meditated intent to cause death.

THIRD DEGREE MURDER

Before you can find Mr. Doe guilty of Third Degree Murder of Bradley Jones, the State must prove the following three elements beyond a reasonable doubt:

1. Bradley Jones is dead.
2. The death occurred as a consequence of and while Mr. Doe was engaged in the commission of grand theft.
3. Mr. Doe was the person who actually killed Bradley Jones.

The crime of grand theft is knowingly and unlawfully obtaining the property of another having a value of \$100 or more with intent to deprive the other person of a right to the property or a benefit therefrom.

It is not necessary for the State to prove the killing was perpetrated with a design to effect death.

MANSLAUGHTER

Before you can find Mr. Doe guilty of Manslaughter of Bradley Jones, the State must prove the following elements beyond a reasonable doubt:

1. Bradley Jones is dead.
2. The death was caused by the
 - (a) act of Mr. Doe,
 - (b) procurement of Mr. Doe,
 - (c) culpable negligence of Mr. Doe.

However, Mr. Doe cannot be guilty of manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.

To "procure" means to persuade, induce, prevail upon or cause a person to do something.

I will now define "culpable negligence" for you. Each

of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

[2.03] MEANING OF DEFENDANT'S PLEA OF NOT
GUILTY; REASONABLE DOUBT; AND
BURDEN OF PROOF

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the indictment through each stage of the trial until it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence the State has the burden of proving the following two elements:

1. The crime with which the defendant is charged was committed.
2. The defendant is the person who committed the crime.

The defendant is not required to prove anything.

Whenever the words "reasonable doubt" are used you must consider the following:

A reasonable doubt is not a possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

Definition

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

EXHIBIT 3

KIDNAPPING
F.S. 787.01

Before you can find the defendant guilty of kidnapping, the state must prove the following three elements beyond a reasonable doubt:

Elements

1. (Defendant) [forcibly] [secretly] [by threat]

[confined]
[abducted]
[imprisoned]

(victim) against [his] [her] will.

2. (Defendant) had no lawful authority.
3. (Defendant) acted with intent to:

Give (a), (b), (c) or (d) as applicable

If (b) given, define applicable felony

- (a) hold for ransom or reward or as a shield or hostage.
- (b) commit or facilitate commission of (applicable felony).
- (c) inflict bodily harm upon or to terrorize the victim or another person.
- (d) interfere with the performance of any governmental or political function.

Give when 3(b) is alleged.
See Carron v. State, 414 So.2d 288 (Fla. 2d DCA 1982), approved 427 So.2d 192 (Fla. 1982)

In order to be kidnapping the [confinement] [abduction] [imprisonment]

- (a) must not be slight, inconsequential or merely incidental to the felony;
- (b) must not be of the kind inherent in the nature of the felony; and
- (c) must have some significance independent of the felony in that it makes the felony substantially easier of commission or substantially lessens the risk of detection.

Read only if confinement is alleged and child is under thirteen years of age.

Confinement of a child under the age of thirteen (13) is against his will if such confinement is without the consent of his parent or legal guardian.

EXHIBIT 4

FALSE IMPRISONMENT
F.S. 787.02

Before you can find the defendant guilty of false imprisonment, the state must prove the following three elements beyond a reasonable doubt:

Elements

1. (Defendant) [forcibly] [secretly] [by threat]

[confined]
[abducted]
[imprisoned]
[restrained]

(victim) against [his] [her] will.

2. (Defendant) had no lawful authority.

Give (a), (b), (c) or (d) as applicable

3. (Defendant) acted for any purpose other than to:

- (a) hold for ransom or reward or as a shield or hostage.
- (b) commit or facilitate commission of any felony.
- (c) inflict bodily harm upon or to terrorize the victim or another person.
- (d) interfere with the performance of any governmental or political function.

Read only if confinement is alleged and child is under thirteen years of age.

Confinement of a child under the age of thirteen (13) is against his will if such confinement is without the consent of his parent or legal guardian.

3.04(d) JUSTIFIABLE USE OF DEADLY FORCE

Note to
Judge

Since there are many defenses applicable to self-defense, give only those parts of the instructions that are required by the evidence.

Read in
all cases

An issue in this case is whether the defendant acted in self defense. It is a defense to the offense with which (defendant) is charged if the [death of] [injury to] (victim) resulted from the justifiable use of force likely to cause death or great bodily harm.

Give if
applicable
F.S.
782.02

The use of force likely to cause death or great bodily harm is justifiable only if the defendant reasonably believes that the force is necessary to prevent imminent death or great bodily harm to himself while resisting:

Insert and
define appli-
cable felony
defendant
alleges victim
attempted to
commit

1. another's attempt to murder him, or
2. any attempt to commit (applicable felony) upon him, or
3. any attempt to commit (applicable felony) upon any dwelling house occupied by him, or
4. any attempt to commit (applicable felony) in any dwelling house occupied by him.

Give if
applicable
F.S.
776.012, .031

A person is justified in using force likely to cause death or great bodily harm if he reasonably believes that such force is necessary to prevent

Insert and
define ap-
plicable
forcible
felony de-
fendant
alleges
victim was
about to
commit

1. imminent death or great bodily harm to himself or another, or
2. the imminent commission of (applicable forcible felony) against himself or another.

EXHIBIT 5

Aggressor
F.S.
776.041

However, the use of force likely to cause death or great bodily harm is not justifiable if you find:

Give if applicable

1: (Defendant) was attempting to commit, committing or escaping after the commission of (applicable forcible felony); or

Define applicable forcible felony

2. (Defendant) initially provoked the use of force against himself, unless:

- (a) The force asserted toward the defendant was so great that he reasonably believed that he was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than using force likely to cause death or great bodily harm to (assailant).
- (b) In good faith, the defendant withdrew from physical contact with (assailant) and indicated clearly to (assailant) that he wanted to withdraw and stop the use of force likely to cause death or great bodily harm, but (assailant) continued or resumed the use of force.

Force in resisting arrest

A person is not justified in using force to resist an arrest by a law enforcement officer who is known, or reasonably appears to be a law enforcement officer.

F.S. 776.051(1) and
F.S. 776.012

Give if applicable

See Ivester v. State,
398 So.2d 926 (Fla.
1st DCA 1981); Jackson
v. State, 463 So.2d
372 (Fla. 5th DCA
1985).

However, if an officer uses excessive force to make an arrest, then a person is justified in the use of reasonable force to defend himself (or another), but only to the extent he reasonably believes such force is necessary.

In some instances, the instructions applicable to F.S. 776.012, 776.031 or 776.041 may need to be given in connection with this instruction.

Read in
all cases

In deciding whether defendant was justified in the use of force likely to cause death or great bodily harm, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing the defendant need not have been actual; however, to justify the use of force likely to cause death or great bodily harm, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.

Necessity to
avoid use of
deadly force
Read in all
cases

The defendant cannot justify the use of force likely to cause death or great bodily harm unless he used every reasonable means within his power and consistent with his own safety to avoid the danger before resorting to that force.

Retreat

Read in
all cases

The fact that the defendant was wrongfully attacked cannot justify his use of force likely to cause death or great bodily harm if by retreating he could have avoided the need to use that force. However, if the defendant was placed in a position of imminent danger of death or great bodily harm and it would have increased his own danger to retreat, then his use of force likely to cause death or great bodily harm was justifiable.

Defense
of home

Give if
applicable

If the defendant was attacked in his own home or on his own premises, he had no duty to retreat and had the lawful right to stand his ground and meet force with force, even to the extent of using force likely to cause death or great bodily harm, if it was necessary to prevent:

[death or great bodily harm to [himself]
[another].]

Define
felony

[the commission of a forcible felony.]

Prior
threats

Give if
applicable

If you find that the defendant who because of threats or prior difficulties with (victim) had reasonable grounds to believe that he was in danger of death or great bodily harm at the hands of (victim), then the defendant had the right to arm himself. However, the defendant cannot justify the use of force likely to cause death or great bodily harm, if after arming himself he renewed his difficulty with (victim) when he could have avoided the difficulty.

Reputation
of victim

Give if
applicable

If you find that (victim) had a reputation of being a violent and dangerous person and that his reputation was known to the defendant, you may consider this fact in determining whether the actions of the defendant were those of a reasonable person in dealing with an individual of that reputation.

Physical
abilities
Read in
all cases

In considering the issue of self-defense, you may take into account the relative physical abilities and capacities of the defendant and (victim).

Read in
all cases

If in your consideration of the issue of self-defense you have a reasonable doubt on the question of whether or not the defendant was justified in the use of force likely to cause death or great bodily harm, you should find the defendant not guilty.

However, if from the evidence you are convinced that the defendant was not justified in the use of force likely to cause death or great bodily harm, you should find him guilty if all the elements of the charge have been proved.

3.04(e) JUSTIFIABLE USE OF NON-DEADLY FORCE

Note to
Judge

Since there are many defenses applicable to self-defense, give only those parts of the instructions that are required by the evidence.

Read in
all cases

An issue in this case is whether the defendant acted in self defense. It is a defense to the offense with which (defendant) is charged if the [injury to] (victim) resulted from the justifiable use of force not likely to cause death or great bodily harm.

In defense
of person
F.S.
776.012

(Defendant) would be justified in using force not likely to cause death or great bodily harm against (victim) if the following two facts are proved:

Give if
applicable

1. (Defendant) must have reasonably believed that such conduct was necessary to defend (himself), (another), against (victim's) imminent use of unlawful force against (the defendant) (other person).
2. The use of unlawful force by (victim) must have appeared to (defendant) ready to take place.

In defense
of property
F.S.
776.031

(Defendant) would be justified in using force not likely to cause death or great bodily harm against (victim) if the following three facts are proved:

Give if
applicable

1. (Victim) must have been trespassing or otherwise wrongfully interfering with land or personal property.
2. The land or personal property must have lawfully been in (defendant's) possession, or in the possession of a member of his immediate family or household, or in the possession of some person whose property he was under a legal duty to protect.
3. (Defendant) must have reasonably believed that his use of force was necessary to prevent or terminate (victim's) wrongful behavior.

Aggressor
F.S. 776.041

The use of force not likely to cause death or great bodily harm is not justifiable if you find:

Give if applicable

1. (Defendant) was attempting to commit, committing or escaping after the commission of a (applicable forcible felony).

Define applicable forcible felony

2. (Defendant) initially provoked the use of force against himself, unless:

(a) The force asserted toward the defendant was so great that he reasonably believed that he was in imminent danger or death or great bodily harm and had exhausted every reasonable means to escape the danger, other than using force not likely to cause death or great bodily harm to (assailant).

(b) In good faith, the defendant withdrew from physical contact with (assailant) and indicated clearly to (assailant) that he wanted to withdraw and stop the use of force not likely to cause death or great bodily harm, but (assailant) continued or resumed the use of force.

Force in resisting arrest

A person is not justified in using force to resist an arrest by a law enforcement officer who is known, or reasonably appears to be a law enforcement officer.

F.S. 776.051(1) and
F.S. 776.012

Give if applicable

However, if an officer uses excessive force to make an arrest, then a person is justified in the use of reasonable force to defend himself (or another), but only to the extent he reasonably believes such force is necessary.

See Ivester v. State,
398 So.2d 926 (Fla.
1st DCA 1981); Jackson
v. State, 463 So.2d
372 (Fla. 5th DCA
1985).

In some instances, the instructions applicable to F.S. 776.012, 776.031 or 776.041 may need to be given in connection with this instruction.

Read in all cases

In deciding whether defendant was justified in the use of force not likely to cause death or great bodily harm, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing the defendant need not have been actual; however, to justify the use of force not likely to cause death or great bodily harm, the appearance of danger must have been so real that a

reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.

Necessity to avoid use of deadly force
Read in all cases

The defendant cannot justify his use of force not likely to cause death or great bodily harm unless he used every reasonable means within his power and consistent with his own safety to avoid the danger before resorting to that force.

Reputation of victim

If you find that (victim) had a reputation of being a violent and dangerous person and that his reputation was known to the defendant, you may consider this fact in determining whether the actions of the defendant were those of a reasonable person in dealing with an individual of that reputation.

Give if applicable

Physical abilities
Read in all cases

In considering the issue of self-defense, you may take into account the relative physical abilities and capacities of the defendant and (victim).

Read in all cases

If in your consideration of the issue of self-defense you have a reasonable doubt on the question of whether or not the defendant was justified in the use of force not likely to cause death or great bodily harm, you should find the defendant not guilty.

However, if from the evidence you are convinced that the defendant was not justified in the use of force not likely to cause death or great bodily harm then you should find him guilty if all the elements of the charge have been proved.

3.04(f) JUSTIFIABLE USE OF FORCE BY LAW ENFORCEMENT OFFICER

In making an arrest of a felon
F.S. 776.05

Give if applicable

A law enforcement officer, or any person he has summoned or directed to assist him, need not retreat from or stop efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force that he reasonably believes necessary to defend himself or another from bodily harm while making the arrest. That force is also justified when necessarily used:

1. in retaking a person who has been convicted of a felony and who has escaped.
2. in arresting a person who has been convicted of a felony and who is fleeing from justice.

Force in making unlawful arrest prohibited
F.S. 776.051(2)

Give if applicable

Use of any force by a law enforcement officer or any person summoned or directed to assist the law enforcement officer is not justified if:

1. The arrest is unlawful.
2. It is known by the officer or the person assisting him to be unlawful.

In making an arrest of a suspected felon
Tennessee v. Garner (U.S. Sup. Ct. 1985), 53 LW 4410

Give 1(a), (b) or (c) as applicable

Define felon

1. In arresting a suspected felon a law enforcement officer can use force likely to cause death or great bodily harm if
 - (a) the law enforcement officer has probable cause to believe that the suspected felon poses a threat of serious physical harm, either to the officer or to others.
 - (b) the suspected felon has threatened the law enforcement officer with a weapon.
 - (c) the law enforcement officer has probable cause to believe the suspected felon has committed a crime involving the infliction or threatened infliction of serious physical harm.

Read if
1(a)(b) or
(c) given

If the law enforcement officer has an opportunity to do so he must give the suspected felon warning that he is about to use force likely to cause death or great bodily harm.

To prevent
escape from
custody F.S.
776.07(1)
Give if
applicable

A law enforcement officer or other person who has an arrested person in his custody is justified in the use of any force that he reasonably believes to be necessary to prevent the escape of the arrested person from custody.

To prevent
escape from
penal
institution
F.S. 776.07(2)
Give if
applicable

A guard or other law enforcement officer is justified in the use of any force that he reasonably believes to be necessary to prevent an escape from a penal institution of a person the officer reasonably believes is lawfully detained.

Give if
applicable

"Deadly force" includes, but is not limited to:

F.S. 776.06(1)

1. Firing a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and

F.S. 776.06(2)

2. The firing of a firearm at a vehicle in which the person to be arrested is riding.

Definition
Give if
applicable

A "firearm" is legally defined as (adapt from F.S. 790.001(6) as required by allegations).

Original Proceeding - Florida Standard Jury Instructions (Criminal Cases)

Stephen H. Grimes, Chairman, Lakeland, Florida, for the Committee
On Florida Standard Jury Instructions In Criminal Cases,

Petitioner