

Supreme Court of Florida

ORIGINAL

No. 85,199

IN RE: INSTRUCTIONS IN CRIMINAL CASES

[March 30, 1995]

PER CURIAM.

This Court has jurisdiction to approve jury instructions for use in the courts of this state and we have done so by adopting standard jury instructions for civil and criminal cases and have expressly approved other instructions in case law. See, e.g., Standard Jury Instructions -- Criminal Cases, 603 So. 2d 1175 (Fla. 1992); In re Use by Trial Courts of Standard Jury Instructions in Criminal Cases, 431 So. 2d 594 (Fla. 1981). On its own motion, the Court has concluded that the jury instruction concerning inconsistent exculpatory statements set forth in our decision in Johnson v. State, 465 So. 2d 499 (Fla.), cert. denied, 474 U.S. 865, 106 S. Ct. 186, 88 L. Ed. 2d 155 (1985),

should no longer be given because it is a comment on the evidence. The instruction approved in Johnson reads as follows: "Inconsistent exculpatory statements can be used to affirmatively show consciousness of guilt and unlawful intent." Johnson, 465 So. 2d at 504. We specifically overrule Johnson to the extent it approves the use of this instruction in the trial courts. This decision will apply only to those trials that have not commenced as of the date this decision becomes final. We note that the Committee on Standard Jury Instructions (Criminal) has not prepared a standard instruction on inconsistent exculpatory statements and, consequently, no amendment to the standard instructions is required. Because we have considered this matter on our own motion, we grant any interested party until the 28th day of April, 1995, to file appropriate comments.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur.

Original Proceeding - Florida Standard Jury Instructions
(Criminal)