

ORIGINAL

IN THE SUPREME COURT OF
FLORIDA

IN RE: STANDARD JURY INSTRUCTIONS -
CRIMINAL CASES (200-1)

CASE NO: SC00-906

FILED
THOMAS D. HALL

JUN 22 2000

CLERK, SUPREME COURT
BY *[Signature]*

**COMMENTS OF FLORIDA ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS (FACDL) IN SUPPORT OF
PROPOSED AMENDMENTS TO REASONABLE DOUBT INSTRUCTION**

*7-20-00
w/ participate
in o.o.* The Florida Association of Criminal Defense Lawyers, (FACDL) offers the following comments, pursuant to the notice published in the June 1, 2000 Florida Bar News, to the proposed amendments to the reasonable doubt instruction:

A. Position of FACDL

1. The proposed amendments are clearer and better written than the current instruction. FACDL supports the proposed amendments to the reasonable doubt instruction. FACDL is a statewide organization of over 1,100 criminal defense lawyers, including both private attorneys and public defenders. The Board of Directors of FACDL has considered the proposed amendments to the reasonable doubt instruction.

While there are some divergent opinions in FACDL about some of the language used in the proposed amendments, FACDL believes the proposed amendments are an improvement over the current instruction; the current instruction is confusing and ungrammatical. Although the current instruction does contain some language which FACDL supports, FACDL believes the

amendments are an improvement because they define reasonable doubt in positive terms, rather than by negations (the current instruction mostly defines reasonable doubt by what is not, rather than by what it is). The proposed amendments are also simpler and use plain, ordinary English. The proposed amendments avoid the use of terms like "abiding conviction" "wavers and vacillates". Jurors may not fully understand those terms and the use of "abiding conviction" in the current instruction is inherently misleading.

2. The proposed amendments are balanced and fair. FACDL submits that the proposed amendments are balanced and fair for both the State and Defense. The proposed amendments inform the jury that a reasonable doubt does not include 1) proof beyond all possible doubt; 2) doubts based upon speculation or imagination. The amendments further define reasonable doubt as a doubt based upon the evidence, conflicts in the evidence or lack of evidence. These definitions should satisfy the interest of the State to prevent verdicts based upon doubts which do not derive from the evidence. The language in the proposed amendments should help prevent verdicts based upon the whim or imagination of jurors who base their decisions on matters outside the evidence or decisions not based upon reasonable doubt - doubts based upon the evidence, conflicts in the evidence, lack of evidence and the instructions on the

law.

The proposed amendments are also fair to defense lawyers because the instruction does not denigrate the reasonable doubt standard. The amendments state that a reasonable doubt is proof of a firm, stable, and unwavering conclusion that the Defendant is guilty. The "firm, stable and unwavering conclusion" language adequately defines the term doubt - this language is ordinary and plain English which jurors will understand. The amendments are also fair to the defense because they inform the jury that a reasonable doubt is a doubt based upon reason and common sense and a doubt which arises from all of the evidence, from conflicts in the evidence or from the lack of evidence. The "careful and impartial consideration of all of the evidence" language advises the jury of its solemn duty and the high burden of proof for proof beyond a reasonable doubt.

B. The proposed amendments are neutral and do not minimize the reasonable doubt standard.

The reasonable doubt instruction should be neutral in the sense that it does not unfairly favor either the defense or prosecution. Neither the defense nor prosecutors should seek a tactical advantage with a particular reasonable doubt instruction; any such instruction must be fair and constitutional - it must adequately inform the jury of the

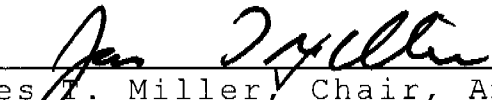
quantum of proof necessary to constitute proof beyond a reasonable doubt. FACDL sincerely believes that the proposed amendments do not unfairly favor either side - the amendments clearly define reasonable doubt in plain English and inform the jury that a reasonable doubt is not a doubt based upon imagination or speculation (not based upon reasonable inferences from the evidence, lack of evidence or conflicts in the evidence). The instruction fairly and accurately informs the jury of the basis of doubt - a careful and impartial consideration of all the evidence, conflicts in the evidence and from the lack of evidence.

The proposed amendments do not contain the subjective and value-laden terms which may be unconstitutional because they denigrate the reasonable doubt standard. See Comment to Proposed Amendments to Reasonable Doubt Instruction. See also Victor v. Nebraska, 511 U.S. 1, 114 S. Ct. 1239, 127 L. Ed. 2d 583 (1994); Cage v. Louisiana, 498 U.S. 9, 111 S. Ct. 328, 112 L. Ed. 2d 339 (1990); Variance v. State, 687 So.2d 1 (Fla. 4th DCA 1996); Pierce v. State, 671 So.2d 186 (Fla. 4th DCA 1996). To the extent that a court may fairly define reasonable doubt, the proposed amendments do not diminish the reasonable doubt standard. This court has held that the present standard instruction does not dilute the reasonable doubt standard. Brown v. State, 565 So.2d 304 (Fla. 1990) If this standard

instruction does not dilute the quantum of proof, then the proposed amendments (with clearer and more positive language) also do not denigrate the reasonable doubt standard.

FACDL understands that there is no constitutional requirement to define reasonable doubt. See Victor v. Nebraska, 511 U.S. 1, 114 S. Ct. 1239, 1243, 127 L. Ed. 2d 583 (1994); Archer v. State, 673 So.2d 17, 20 (Fla. 1996) However, a fair and impartial definition of reasonable doubt helps the jury understand and apply the appropriate standard of proof. A standard jury instruction on reasonable doubt also helps prevent improper arguments by counsel - arguments which denigrate or misstate the reasonable doubt standard. A standard jury instruction on reasonable doubt helps both prosecutors and defense counsel avoid inaccurate and self-serving arguments about the legal definition of reasonable doubt. A standard instruction will also prevent judicial ad hoc definitions of reasonable doubt - a standard instruction will ensure juries in Florida receive a uniform definition of the benchmark standard for proof in a criminal case. Consequently, FACDL supports some type of standard instruction. FACDL supports the proposed amendments because they are clearer and better written than the current standard instructions.

Respectfully submitted,


James T. Miller, Chair, Amicus
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On Behalf of Florida Association of
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Submitted this 20th day of June, 2000.