

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 29 2000

CLERK SUPREME COURT
BY 

**ADDENDUM TO COMMENTS BY THE FLORIDA ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS (FACDL) TO
PROPOSED AMENDMENTS TO INSTRUCTION ON REASONABLE DOUBT**

The Florida Association of Criminal Defense Lawyers, (FACDL) by and through the undersigned attorney, respectfully files this addendum to the previously filed comments on the proposed amendments to the standard jury instruction on reasonable doubt in criminal cases.

Proof beyond all possible doubt.

FACDL maintains its general support of the proposed amendments because these amendments are an improvement over the current instruction. However, the use of the phrase "possible doubt" creates confusion in a circumstantial evidence case, especially because this Court has decided that special jury instructions on circumstantial evidence are no longer necessary. See Williams v. State, 437 So.2d 133 (Fla. 1983)

FACDL agrees that the state need not prove a case beyond all doubt. A doubt must be reasonable. In a circumstantial evidence case, the state must exclude all reasonable hypotheses of innocence. Norton v. State, 709 So.2d 87 (Fla. 1997) The common meaning of hypothesis is a possibility of a certain event based

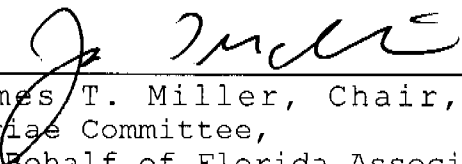
upon the circumstances of a case. Random House Websters Dictionary 3rd Edition, defines possible as that which may or can exist, happen or be done ... capable of being true (Ballantine, New York, 1998, page 558). The word reasonable modifies the phrase hypothesis or possibility to exclude merely speculative possibilities or hypotheses which are not rationally based upon the facts and reasonable inferences of a case.

This Court in State v. Law, 559 So.2d 187 (Fla. 1989) held that the State's proof, in a circumstantial evidence case, did not have to exclude every possible variant of the events inferred from the evidence - the state's proof must exclude reasonable possible variants of the events. This Court itself substituted the phrase "possible variant" for hypothesis. Expert witnesses often testify in term of possibilities based upon the evidence - such possibilities could constitute reasonable doubt. See Butts v. State, 733 So.2d 1097 (Fla. 1st DCA 1999); Corpuz v. State, 733 So.2d 1048 (Fla. 4th DCA 1999) If Courts have used the phrase possibility to mean hypothesis or inferences of guilt or innocence, then juries may also use the phrase possible doubt to include a doubt based upon reasonable possibilities, inferences, or hypothesis. If a jury so defines possible doubt, then the jury may reject or misapply the evidence in a circumstantial evidence case.

FACDL supports the rest of the proposed amendments and realizes the phrase possible doubt is in the current standard

instruction. However, for the reasons stated above, this Court shall consider deleting the phrase "beyond all possible doubt".

Respectfully submitted,


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Curiae Committee,
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