ORIGINAL

IN THE SUPREME COURT OF FLORIDA

NO. SC09-906

IN RE: AMENDMENTS TO FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES -2.03

7-20-00 w/participate in o.a.

COMMENTS OF THE TWENTY STATE ATTORNEYS ACTING TOGETHER THROUGH THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION

COMES NOW, THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION [FPAA], representing the elected State Attorneys for the twenty judicial circuits of Florida, and files these comments to the Florida Supreme Court's Standard Jury Instructions in Criminal Cases' Committee's Amendment to Florida Standard Jury Instruction 2.03, on Reasonable Doubt, as published in the June 1, 2000 edition of the Florida Bar News, stating as follows:

1. The Committee has proposed that the standard jury instruction on reasonable doubt be amended. However, in its Comment, the Committee provides no reason for the change. Rather, the Comment expresses the Committee's desire to draft an instruction that eliminated any language which might be deemed unconstitutional for minimizing the concept of reasonable doubt. What the Committee does not state is the fact that the present standard jury instruction on reasonable doubt has been held constitutional. Esty v. State, 642 So.2d 1074 (Fla. 1994); Kearse v. State, 662 So.2d 677 (Fla. 1995); Davis v. State, 698 So.2d 1182 (Fla. 1 997). It is the State Attorneys' position that any changes in the standard instruction will open a pandora's box of unnecessary litigation. In Victor v. Nebraska, 511 U.S 1, 114 S. Ct. 1239, 127 L.Ed.2d 583 (1994), the court cites with approval the use of the term "abiding conviction", pointing out that although the use of the term "moral certainty" concerns the court, the requirement of proof to an "abiding conviction" puts jurors back on the right track. So why exactly are we changing this language and completely rewriting the instruction? Apparently it is because some think the language should be updated or cleaned up, not because there is any real concern about the constitutionality or legality of the existing instruction.

2. However, respecting the Committee's position of responsibility in this area, if this Court agrees that an amendment to the instruction is needed, the State Attorney's propose the following revisions to the Committee's proposal:

2.03: PLEA OF NOT GUILTY; BURDEN OF PROOF; AND REASONABLE DOUBT

The defendant has entered a plea of not guilty. This means you must presume the defendant is innocent. The presumption stays with the defendant as to each material allegation in the [information][indictment] through each stage of the trial unless 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 that the crime was committed and the defendant committed the crime.

It is to the evidence introduced in this trial, and to it alone that you are to look for the proof.

The defendant is not required to present evidence or to prove anything.

Proof beyond a reasonable doubt is proof that leaves you with a firm~~,~~ and stable~~, and unwavering~~ conclusion that the defendant is guilty. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Doubts based on speculation or imagination are not reasonable doubts.

~~A reasonable doubt is a doubt based on reason and common sense.~~ ~~A reasonable doubt is a doubt based on reason and common sense~~In determining whether there is a reasonable doubt you should use reason and common sense. A reasonable doubt may arise from a careful and impartial consideration of all the evidence, from conflicts in the evidence, or from the lack of evidence. If, after carefully considering, comparing and weighing all the evidence there is not a firm and stable conclusion that the defendant is guilty then there is a reasonable doubt.

If you have a reasonable doubt you should find the defendant not guilty. If you have no reasonable doubt you should find the defendant guilty.

3. It is the State Attorneys' position that the proposed use of the term "unwavering" is redundant to the use of the adjectives "firm " and "stable" and creates too high a standard. Reviewing other reasonable doubt instructions from other jurisdictions, most do not inject a requirement of such a firm or stable or unwavering opinion of guilt. The Federal Judicial Center's is the only one which uses a requirement that jurors have some firm opinion of guilty. There the terminology used is: "If, based

on your consideration of the evidence, you are *firmly convinced* that the defendant is guilty of the crime charged, you must find him guilty." Why must we have three (3) adjectives emphasizing a proof requirement most jurisdictions do not address at all.

4. Redefining reasonable doubt by telling the jurors it is a doubt which is based on reason and common sense confuses rather than illuminates the issue. Using "reason" to define "reasonable" fails to add anything. Reasonable doubt is defined in the previous paragraph as proof "that leaves you with a firm, stable and unwavering conclusion that the defendant is guilty." Why give another definition that appears to differ? Furthermore, this language seems to say that the use of common sense leads to reasonable doubt, which is unfair to the prosecution. The proposed change to the proposed revision would alleviate these concerns while reinvigorating the deliberation process with "common sense".

5. The State Attorneys propose the addition of language taken from the present jury instruction: "If, after carefully considering, comparing and weighing all the evidence there is not a firm and stable conclusion that the defendant is guilty than there is a reasonable doubt." This is necessary to explain the deliberative process and integrate it with the standard of reasonable doubt. Otherwise, jurors may feel that if they have any questions about the case when they retire to deliberate, there is automatically a reasonable doubt. Indeed, defense counsel make that argument many times in closing argument.

Wherefore, the State Attorneys of the Twenty Judicial Circuits of Florida, by and through the Florida Prosecuting Attorneys Association, respectfully request that this Court consider and adopt the Comments set forth herein.

Respectfully submitted,

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