

**IN THE SUPREME COURT OF FLORIDA**

IN THE MATTER OF USE BY THE TRIAL COURTS  
OF THE STANDARD JURY INSTRUCTIONS  
(CRIMINAL CASES)

SC05-1434

**COMMENTS OF FLORIDA ASSOCIATION OF  
CRIMINAL DEFENSE LAWYERS (FACDL)**

The Florida Association of Criminal Defense Lawyers (FACDL), by and through the undersigned counsel, offers the following comments to proposed Jury Instructions 25.14 Drug Abuse - Use of Possession of Drug Paraphernalia (Proposal 1-M), 25.15 Drug Abuse **B** Delivery, Possession with Intent to Deliver, or Manufacture with Intent to Deliver Drug Paraphernalia (Proposal 1-N), and 25.16 Drug Abuse **B** Delivery of Drug Paraphernalia to a Minor (Proposal 1-O).

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases has submitted revised jury instructions for a whole array of drug offenses. Instructions 25.2 - 25.15 have been amended by replacing all references to a **A**thing@ in the existing instructions to **A**controlled substance@ in the revised instructions. This language is more precise and is appropriate in Instructions 25.2 - 25.13 pertaining to drug offenses. While consistency is usually a good *thing*, Instructions 25.14 and 25.15 pertain to the unlawful use, possession, delivery, possession with intent to deliver or manufacture of drug

paraphernalia, not controlled substances. The **Athing@** referred to in those two instructions includes equipment, products, materials, devices, or other objects used in conjunction with controlled substances, not the controlled substances themselves. Changing **Athing@** to **Acontrolled substance@** in Instructions 25.14 and 25.15 is imprecise and confusing. The word **Athing@** in the instructions need not be amended at all. Alternatively, FACDL suggests that all references to the **Athing@** in Instructions 25.14 and 25.1 be changed to read either **Aobject@** or **Aparaphernalia.@**

In addition, Instructions 25.14, 25.15 and 25.16 contain the following instruction on knowledge (to be given if applicable):

An issue in this case is whether (defendant) knew that the *controlled substance* was illegal. You are permitted to presume that (defendant) was aware of the illegal nature of the *controlled substance* if you find that (defendant) was in actual or constructive possession of the *controlled substance*. . . . However, if from the evidence you are convinced that the defendant knew of the illegal nature of the *controlled substance*, you should find him/her guilty if all the elements of the charge have been proved.

Presumably, this language was used to maintain consistency with the other proposed drug offense instructions. While the law on knowledge may be the same with regard to the possession, use, delivery, or manufacture of drugs and drug paraphernalia, the language should be different and should relate to the specific offense charged. Since controlled substances are not at issue in Instructions 25.14, 25.15 and 25.16, all four references to **Acontrolled substances@** should be deleted and changed to either **Aobject@** or **Aparaphernalia.@**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has  
been furnished to:

The Honorable Dedee S. Costello  
Bay County Courthouse

P.O. Box 1089  
Panama City, FL 32402-1089

by mail delivery this 15th day of November, 2005.

Respectfully submitted,

/s/ Paula S. Sanders

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