

To: Justices of the Florida Supreme Court
Re: Comments on all proposed stalking instructions

Please consider the following comments about all the stalking jury instructions that were published in the July 1st Florida Bar News.

1) All of the stalking statutes contain the word “maliciously,” but that term is not defined in any of the proposed instructions. The problem is that “maliciously” is defined two ways in Florida. For instance, in the instructions for Shooting a Missile in a Dwelling (790.19 Fla. Stat.), “maliciously” is defined as “wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to another person or the property of another person.” But in the instructions for Aggravated Child Abuse (827.03 Fla. Stat.), “maliciously” is defined as “done from ill will, hatred, spite, or an evil intent.” To make matters worse, the giving of the first definition creates reversible error if the second definition should have been given. Young v. State, 753 So. 2d 725 (Fla. 1st DCA 2000).

(It is not clear which definition should be given. But the correct definition should obviously be given so as to avoid confusion for trial judges and a possible retrial.)

2) There are two problems with the proposal for Aggravated Stalking, 784.048(4). The first problem is that the term “credible threat” is defined in the proposed standard instruction, but the phrase “credible threat” is not an element. That is easily fixed by deleting the definition on “credible threat.” The second problem is that the proposed instruction does not tell the jurors that the defendant had to know about the injunction or court-ordered prohibition of conduct. Cases that highlight this problem include Gaspard v. State, 848 So. 2d 1161 (Fla. 1st DCA 2003) and Cazeau v. State, 873 So. 2d 528 (Fla. 4th DCA 2004). The statute does not say that knowledge of the injunction/court-ordered prohibitions of conduct is an element. But if this Court agrees with the First and Fourth Districts, then jurors should be instructed that there is a third element of “knowledge.”

Respectfully submitted,

Bart Schneider
Fla. Bar No. 0936065
203 Live Oak Court
Lake Mary, Florida 32746
(407) 321-1027

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished by U.S. mail to Judge Deede S. Costello, Chair of the Supreme Court Committee on Standard Jury Instructions in Criminal Cases, Bay County Courthouse, P.O. Box 1089, Panama City, Florida 32402-1089, this 25th day of July, 2005.

Bart Schneider

CERTIFICATE OF TYPE AND FONT SIZE

I CERTIFY that this letter has been typed using Times New Roman 14.

Bart Schneider