

In the Supreme Court of Florida

In the matter of use by the trial courts
of the Supreme Court Standard Jury Instructions
Committee in Criminal Cases

Case No. SC06

Report No. 2006-03
Committee on Standard Jury Instructions in Criminal Cases

To the Chief Justice and Justices of the Supreme Court of Florida:

This report regarding proposed amendments to the Florida Standard Jury Instructions in Criminal Cases on the Supreme Court's website at http://www.floridasupremecourt.org/jury_instructions.shtml, is filed pursuant to Article V, section 2(a), Florida Constitution. The committee proposes the following amended criminal jury instruction:

3.6(g) – Justifiable use of Non-Deadly Force

The proposed instruction is found at Appendix A. Words to be removed are shown by strike-through marks, and words to be added are shown by underlining. The amended 3.6(g) proposed by the committee in SC05-1621 is found at Appendix B. The published 3.6(g) in *The Standard Jury Instructions in Criminal Cases, Fifth Edition*, published by LexisNexis, can be found at Appendix C. The proposed instruction was published in *The Florida Bar News* on November 15, 2006. One comment was received from The Honorable Angel Cortinas, Judge, Third District Court of Appeal. Comments can be found at Appendix D.

Explanation of the Proposal

3.6(g) Justifiable Use of Non-Deadly Force

On September 6, 2005, the committee filed a report proposing an amended jury instruction 3.6(g) – Justifiable Use of Non-deadly Force. The case number assigned was SC05-1621.

SC05-1621 was approved by the Court on May 25, 2006. The approved instruction was posted on the Supreme Court website exactly as it appeared in the opinion.

On October 27, 2006, the committee Chair received an email from Orange County Judge Mike Murphy questioning the use of “beyond a reasonable doubt,” as the burden of proof for a defendant raising the justifiable use of non-deadly force as a defense. He noted that “beyond a reasonable doubt” was not underlined in the Court’s opinion and queried whether the committee had voted to require the defendant to establish certain proof “beyond a reasonable doubt.”

After some investigation, staff for the committee verified that “beyond a reasonable doubt” was not in the instruction in the *Standard Jury Instructions in Criminal Cases, Fourth Edition*, nor was it in the instruction posted on the website prior to the Court’s opinion. However, “beyond a reasonable doubt” was in 3.6(g) in the *Standard Jury Instructions in Criminal Cases, Fifth Edition*. The language in question is on page forty-seven of the *Fifth Edition* and reads as follows:

In defense of person § 776.012, Fla. Stat.

(Defendant) **would be justified in using force not likely to cause death or great bodily harm against (victim) if the following two facts are proved beyond a reasonable doubt:**

In defense of property § 776.031, Fla. Stat.

(Defendant) **would be justified in using force not likely to cause death or great bodily harm against (victim) if the following three facts are proved beyond a reasonable doubt:**

The committee’s proposal for 3.6(g) in SC05-1621 did not include the language “beyond a reasonable doubt.” The amended instruction submitted to the Court read as follows:

In defense of person. § 776.012, Fla. Stat. Give if applicable

(Defendant) **would be justified in using non-deadly force ~~not likely to cause death or great bodily harm~~ against (victim) if the following two facts are proved:**

In defense of property. § 776.031, Fla. Stat. Give if applicable.
(Defendant) **would be justified in using non-deadly force ~~not likely to cause death or great bodily harm~~ against (victim) if the following three facts are proved:**

The *Fifth Edition* was published by the Florida Bar and LexisNexis in December 2005. In preparation of this publication, the editorial staff at the Bar found that there were omissions in many of the instructions regarding the State's burden to prove the elements of an offense beyond a reasonable doubt. A search was performed on the instructions to locate these omissions, prior to being submitted to LexisNexis for publication. When an omission was found, "beyond a reasonable doubt" was inserted. Unfortunately, "beyond a reasonable doubt" was inadvertently added to instruction 3.6(g) and went unnoticed.

The jury instructions were published prior to the Court rendering its opinion in SC05-1621. It appears that the Court used the *Fifth Edition* as the read against in rendering the opinion in SC05-1621. The Court approved all of the committee's recommendations; however, it added the "beyond a reasonable doubt" language found in the *Fifth Edition*.

As soon as this error came to light, staff alerted the Chair and he directed that an email be sent to all the members summarizing the issue and requested an e-vote to correct the error. The email attached the instruction as proposed in SC05-1621 and the instruction issued in the Court's opinion.

The committee unanimously agreed to amend the instruction to delete "beyond a reasonable doubt" using the website instruction as its read against. Staff was directed to publish the instruction in the *Bar News* as soon as possible. It was published on November 15, 2006 and received one comment from The Honorable Angel Cortinas, Judge, Third District Court of Appeal. He suggested that the committee consider amending the *Aggressor* portion of the instruction to advise the trial judge to give that portion of the instruction only when an independent forcible felony exists. His Honor cited Martinez v. State, 933 So.2d 1155 (Fla. 3d DCA 2006.)

The committee met on December 3, 2006, and unanimously agreed with Judge Cortina's suggestion. The following language was added:

Give if applicable. only if the defendant is charged with more than one forcible felony. See Giles v. State, 831 So. 2d 1263 (Fla. 4th DCA 2002).

The directive to the judge is also found in the *Aggressor* section of 3.6(f) – Justifiable Use of Force. It is inserted in the same place as in 3.6(f), following the word *Aggressor*.

The committee voted unanimously for 3.6(a) as amended.

Respectfully submitted this ____ day of December, 2006.

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CERTIFICATE OF FONT SIZE

I hereby certify that this brief has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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