

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY INSTRUCTIONS IN
CRIMINAL CASES - REPORT NO. 2007-05

CASE NO.
SC07-1420

COMMENT OPPOSING PROPOSED INSTRUCTION
15.4 ROBBERY BY SUDDEN SNATCHING

On the authority of *Insko v. State*, 32 Fla. L. Weekly S559 (Fla. Sup. Ct., Sept. 20, 2007), undersigned counsel submits that carrying a firearm or a deadly weapon during the commission of a robbery by sudden snatching is a separate crime and that the carrying of a firearm or a deadly weapon are elements of this separate crime - not a reclassification of an underlying crime as it is treated in the proposed jury instruction on robbery by sudden snatching. The structure of the robbery by sudden snatching statute, § 812.131, is identical to the structure of the lewd or lascivious conduct statute, § 800.04(6), analyzed by the Court in the *Insko* case.

Like the lewd, lascivious conduct statute, the robbery by sudden snatching statute has subsections which define the conduct, which in § 812.131(1) and (3) defines robbery by sudden snatching. Section 812.131(1) and (3), however, do not make the conduct unlawful. This is identical to the structure of the statute analyzed in *Insko*. Subsections 2(a) and 2(b) of the robbery by sudden snatching statute are the subsections which make the conduct criminal and which assign different maximum penalties to the two separate crimes based on whether or not a

firearm or deadly weapon was carried during the robbery by sudden snatching. Again, this structure is identical to the structure of the lewd, lascivious conduct statute analyzed in the *Insko* case.

Undersigned counsel submits that, on the authority of *Insko v. State*, the proposed instruction on robbery by sudden snatching should be changed to list the carrying of a deadly weapon or firearm as the fifth element of the separate crime of robbery by sudden snatching while carrying deadly weapon or firearm.

Respectfully submitted this ____ day of October 2007.

R. Blaise Trettis

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing comment has been sent by U.S. mail delivery to Judge Terry D. Terrell, committee chair, c/o Les Garringer, Office of the General Counsel, Office of State Courts Administrator, 500 S. Duval St., Tallahassee, FL 32399-1925 this ____ day of October 2007.

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