

Supreme Court of Florida

IN RE:
STANDARD JURY INSTRUCTIONS
IN CRIMINAL CASES-
REPORT 2007-6

CASE NO.: SC07-1606

COMMITTEE ON STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES

RESPONSE TO THE COMMENTS OF MR. R. BLAISE TRETTIS

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

Comes now the Supreme Court Committee on Standard Jury Instructions in Criminal Cases, by and through the Chair, the Honorable Terry D. Terrell, Circuit Court Judge, and files this response to the comments received by Mr. R. Blaise Trettis.

The committee filed a report with the Court on August 29, 2007, proposing a new standard jury instruction in criminal cases: Instruction 11.16 - Dangerous Sexual Felony Offender.

The Court published the proposed instruction in *The Florida Bar News* on October 15, 2007. Comments were required to be filed with the Court no later than November 14, 2007. No comments were filed with the Court; however, a comment was filed directly with the committee by Mr. R. Blaise Trettis.

The committee met on November 16, 2007, to address the comment received by the committee. The committee agreed to amend proposed instruction 11.16, by amending instruction 11.16, and adding a new instruction - 11.16(a). The substituted proposals are attached at Appendix A. The comments of Mr. Trettis are attached at Appendix B.

New Proposals:

11.16 Dangerous Sexual Felony Offender

11.16(a) Dangerous Sexual Felony Offender

At the meeting held on November 16, 2007, Mr. Trettis argued that the proposed instruction should not be submitted to the Court for two reasons. First, Mr. Trettis reasoned that elements 2d and 2e of the proposed instruction should be removed from the proposal and resubmitted to the Court as a separate and distinct jury instruction since the trial court would need to conduct a bifurcated proceeding if elements 2d or 2e were alleged in the Information or Indictment. Three committee members felt it was not necessary to separate the proposed instruction into two separate instructions since this might be confusing. However, a majority of the committee agreed with Mr. Trettis, and by a vote of 10 to 3, amended proposed instruction 11.16. Elements 2d and 2e were stricken from proposed instruction 11.16, and a new instruction, 11.16(a) was created. This new instruction is written in the past tense and would be given only if the State were seeking an enhanced penalty based on the defendant's status of being on probation, community control, or the offender previously been convicted of one of the enumerated felony offenses listed in section 794.0115(2)(e), Florida Statutes.

Although the committee adopted the recommendations of Mr. Trettis with regard to severing certain elements from proposed instruction 11.16, Mr. Trettis still felt that both proposed instruction 11.16, and newly created instruction 11.16(a), should not be submitted to the Court. He opined that the instructions were fatally defective as drafted by the committee. Mr. Trettis felt that the practice of using enhancement findings in a jury instruction is incorrect because the enhancement finding is actually an element of a greater crime and the enhancement finding should instead be defined as an element of this greater crime. A detailed explanation of this argument is attached at Appendix B. The committee did not agree with the logic of Mr. Trettis. The committee noted that there are several jury instructions that contain enhancement provisions. As long as the instruction given to the jury requires that the State prove beyond a reasonable doubt the facts that create an enhancement, the instruction is proper. In both proposed instruction 11.16, and instruction 11.16(a), the State is required to prove all of the elements listed in the two instructions beyond a reasonable doubt; therefore, the committee concluded the proposed instructions comply with the requirements of Insko v. State, 32 Fla. L. Weekly S 559 (2007).

Respectfully submitted this _____ day of December, 2007.

THE HONORABLE TERRY D. TERRELL
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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).

THE HONORABLE TERRY D. TERRELL
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CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing instrument has been
furnished to:

Mr. R. Blaise Trettis
Executive Assistant Public Defender
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by U.S. mail this _____ day of December, 2007.

THE HONORABLE TERRY D. TERRELL
Chair, Committee on Standard Jury Instructions
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