

# Supreme Court of Florida

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No. SC07-1606

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## **IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES— REPORT NO. 2007-6.**

[April 17, 2008]

PER CURIAM.

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases (Committee) has submitted proposed new Standard Criminal Jury Instructions 11.16 and 11.16(a), Dangerous Sexual Felony Offender, and asks that the Court authorize the proposed standard instructions for publication and use. We have jurisdiction. See art. V, § 2(a), Fla. Const.

New instructions 11.16 and 11.16(a) pertain to the classification of “Dangerous Sexual Felony Offender.” The instructions derive from the rewording of section 794.0115, Florida Statutes, by chapter 2003-115, Laws of Florida, to include a mandatory minimum sentence of twenty-five years of imprisonment for those found to have violated the Dangerous Sexual Offender Act. Instruction 11.16 covers three of the five possible bases for a determination that the defendant

is a dangerous sexual felony offender under section 794.0115. Specifically, new instruction 11.16 is limited to findings that the defendant caused serious personal injury to the victim as a result of the commission of the offense, used or threatened to use a deadly weapon during the commission of the offense, or victimized more than one person during the course of the criminal episode applicable to the offense. See § 794.0115(2)(a)-(c), Fla. Stat. (2007). New instruction 11.16(a) covers the other two bases for enhancement under section 794.0115 and is intended only to be given if the State is seeking an enhanced penalty based on the defendant's status of being on probation or community control, § 794.0115(2)(d), or the offender was previously convicted of a qualifying offense. § 794.0115(2)(e).

Having considered the Committee's report and the one comment filed, we hereby authorize the publication and use of the instructions, as set forth in the appendix to this opinion. In doing so, we express no opinion on the correctness of those instructions and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions nor contesting the legal correctness of the instructions. We further caution all interested parties that any notes and comments associated with the instructions reflect only the opinion of the Committee and are not necessarily indicative of the views of this Court as to their correctness or applicability. New language is indicated by underlining, and deleted

language is struck through. The instructions as set forth in the appendix<sup>1</sup> shall be effective when this opinion becomes final.

It is so ordered.

LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Original Proceeding – Standard Jury Instructions in Criminal Cases

Judge Terry David Terrell, Chair, Supreme Court Committee on Standard Jury Instructions in Criminal Cases, First Judicial Circuit, Pensacola, Florida,

for Petitioner

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1. The amendments as reflected in the appendix to this opinion are to the Criminal Jury Instructions as they appear on the Court's website at [www.floridasupremecourt.org/jury\\_instructions/instructions.shtml](http://www.floridasupremecourt.org/jury_instructions/instructions.shtml). We recognize that there may be minor discrepancies between the instructions as they appear on the website and the published versions of the instructions. Any discrepancies as to instructions authorized for publication and use after October 25, 2007, should be resolved by reference to the published opinion of this Court authorizing the instruction.

## APPENDIX

### **11.16 DANGEROUS SEXUAL FELONY OFFENDER**

§ 794.0115, Fla. Stat.

*(For crimes committed on or after July 1, 2003.)*

**If you find (defendant) guilty of (felony, as identified by section 794.0115(2), Fla. Stat.) you must then determine whether the State has further proved beyond a reasonable doubt:**

**1. (Defendant) was 18 years of age or older at the time of the commission of the offense.**

**and**

*Give as applicable.*

**2. (Defendant)**

**a. caused serious personal injury to (victim) as a result of the commission of the offense.**

**b. used or threatened to use a deadly weapon during the commission of the offense.**

**c. victimized more than one person during the course of the criminal episode applicable to the offense.**

*Definition.*

**“Serious personal injury” means great bodily harm or pain, permanent disability, or permanent disfigurement.**

#### **Comment**

This instruction was adopted in 2008.

**11.16(a) DANGEROUS SEXUAL FELONY OFFENDER**

§ 794.0115, Fla. Stat.

*(For crimes committed on or after July 1, 2003.)*

*(For use when defendant has been found guilty of s. 794.0115(2)(d) or (e), Fla. Stat.).*

**Having found (defendant) guilty of (felony, as identified by section 794.0115(2), Fla. Stat., that defendant has been found guilty of committing) you must now determine whether the State has proven beyond a reasonable doubt whether (defendant):**

**1. (Defendant) was 18 years of age or older at the time of the commission of the offense**

**and**

*Give as applicable.*

**2. (Defendant)**

**a. committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in this state.**

**b. had been convicted of (felony, as identified by section 794.0115(2)(e), Fla. Stat.) before the commission of this offense.**

**Comment**

This instruction was adopted in 2008.