

# Supreme Court of Florida

IN RE:  
STANDARD JURY INSTRUCTIONS  
IN CRIMINAL CASES-  
REPORT 2007-7

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CASE NO.: SC07-1664

## 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 September 7, 2007, proposing two new standard jury instructions in criminal cases: Instruction 20.13 - Fraudulent Use or Possession of Personal Identification Information and Instruction 20.17 - Fraudulent Use or Possession of Personal Identification Information Concerning a Deceased Individual.

The Court published the proposed instructions 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, comments were filed directly with the committee by Mr. R. Blaise Trettis.

The committee met on November 16, 2007, to address the comments received by the committee. The committee agreed to amend proposed instruction 20.13. Proposed instruction 20.17 remains unchanged. The substituted proposal is attached at Appendix A. The comments of Mr. Trettis are attached at Appendix B.

**I. Proposal                    20.13. Fraudulent Use of Personal Identification Information**

Mr. Trettis argued before the committee that instruction 20.13 should not be approved by the committee and sent to the Court for approval. In a nutshell, Mr. Trettis suggested that the instruction as written should be separated into individual instructions to match the varying degrees of offenses contained in the statute. The committee disagreed by a unanimous vote. It was noted that the Court had already approved several identity theft instructions in Case No. SC06-2303 (Fla. July 12, 2007). Proposed instruction 20.13 requires the State to prove additional elements of the offense beyond a reasonable doubt in order for the penalty to be enhanced. The committee felt the proposed language in the proposed instruction did not run afoul of the holding of this Court in Insko v. State, 32 Fla. L. Weekly S 559 (2007), and therefore it was not necessary to separate the proposed instruction into several individual instructions in order to properly charge the jury.

The committee did agree with Mr. Trettis to the addition of a lesser included offense to the table of lesser included offenses located at the end of the proposed instruction. The approved lesser included offense involves §817.568(4), Florida Statutes (2007), which may most precisely be described as “Harassment by Use of Personal Identification Information.”

A minority of the committee did not agree that the table of lesser included offenses needed to be amended. The minority noted that proposed instruction 20.13 is specifically directed to Fraudulent Use or Possession of Personal Identification Information, sentencing for which is based upon either the amount of damage perpetrated upon an individual or upon the number of individuals defrauded by use of their information. The recommended lesser included offense which is a first degree misdemeanor is specifically directed toward harassment of a specified individual. Section 817.568(1)(c), Florida Statutes (2007), provides a statutory definition of “harass.” “Harass” means to engage in conduct directed at a specific person that is intended to cause substantial emotion distress to such person. “Harass” does not mean to use personal identification information for accepted commercial purposes. The term does not include constitutionally protected conduct such as organized protests or the use of personal identification information for accepted commercial purposes.

In other words, the recommended lesser included offense deals with an entirely different purpose from the primary offense and thus, cannot be either a

category one or category two lesser included offense. The secondary exclusionary definition of “harass” adds to the argument; because fraudulent use linked to damages caused to a person or people would otherwise be for “accepted commercial purposes” but for the fraud.

Therefore, a minority of the committee recommended against inclusion of “Harassment by Use of Personal Identification Information” in the table of lesser included offenses for proposed instruction 20.13.

**II. Proposal                    20.17. Fraudulent Use or Possession of Personal Identification Information Concerning a Deceased Individual**

Mr. Trettis stated that his recommendation regarding instruction 20.17 was identical to the argument he presented for instruction 20.13. However, Mr. Trettis did not suggest that any lesser included offense needed to be added to instruction 20.17. The committee unanimously rejected his argument and voted not to amend the proposed instruction that has been submitted to the Court.

Respectfully submitted this \_\_\_\_\_ day of December, 2007.

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THE HONORABLE TERRY D. TERRELL  
First Judicial Circuit  
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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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**THE HONORABLE TERRY D. TERRELL**  
Chair, Committee on Standard Jury  
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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  
18th Judicial Circuit  
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Building E, Second Floor  
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by U.S. mail delivery this \_\_\_\_\_ day of December, 2007.

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