

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. SC07-705

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES

(REPORT NO. 2007-03)

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The follow are comments and suggestions regarding the above-captioned draft instructions as published in *The Florida Bar News*, July 1, 2007.

**Proposal 3: 21.2 RESISTING OFFICER WITHOUT VIOLENCE § 843.02, Fla. Stat.**

- To ensure that the necessary adjective "lawful" is used consistently, amend the last italicized instruction as follows:

*In giving this instruction, refer only to the type of duty or legal process that was being performed, e.g., making a lawful arrest, a lawful investigatory detention, or a lawful traffic stop; -serving a subpoena; -serving a domestic violence order. See *Hierro v. State*, 608 So.2d 912 (Fla. 3d DCA 1992).*

**Proposal 4: 28.6 FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER § 316.1935(1), Fla. Stat.**

- Element 3 is actually two elements, with the knowledge element buried in the gerund clause "knowing . . ." in the current draft. It would make for a clearer analysis if the elements were separated out.
- (Additional changes are shown to conform the instruction to the language of the statute.)
- **Draft instruction reflecting my suggestions:**

To prove the crime of Fleeing to Elude a Law Enforcement Officer, the State must prove the following ~~three~~ four elements beyond a reasonable doubt:

1. (Defendant) was operating a vehicle upon a street or highway in Florida.

2. A duly authorized law enforcement officer ordered ~~the defendant~~ (defendant) to stop or remain stopped.

~~Give 3a or 3b as applicable.~~

~~3. (Defendant), knowing [he] [she] had been directed to stop by a duly authorized law enforcement officer,~~

3. (Defendant) knew [he] [she] had been ordered to stop by the officer.

Give 4a or 4b as applicable.

4.

a. (Defendant) willfully refused or failed to stop the [his] [her] vehicle in compliance with the order.

b. ~~having~~ Having stopped the [his] [her] vehicle in knowing compliance with the order, (defendant) willfully fled in a vehicle in an attempt to elude the officer.

- Definition of "operator": Use the ordinary bracket method to show a choice (same in other instructions under Proposal 4; this suggestion is not repeated there):

"Operator" means any person who is [in actual physical control of a motor vehicle upon the highway] ~~for who is~~ [exercising control over or steering a vehicle being towed by a motor vehicle].

**Proposal 4: 28.7 FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER** § 316.1935(2), Fla. Stat.

- Does the title of this instruction need a parenthetical subtitle, like "(Sirens and lights activated)", to distinguish it from 28.6?
- Element 2: Much of the information in this element is not explicitly in the statute, although I guess the statute logically implies it. I will leave this element as is, except as noted next.

- Deleted Element 2: It is not clear why this element has been deleted.  
Presumably it's because the corresponding language is not in the statute.  
Nevertheless, the element is surely implied, as reflected in draft Element 2. I would restore deleted Element 2.
- Element 2: Draft Element 2 has at least three elements crammed into it: the fact of being stopped by a law enforcement officer, the knowledge element, and the substance of a. and b. This makes the jury's job that much more difficult. Each discrete element should appear in its own numbered item.
- Element 2b: In § 316.1935(1), the source of draft instruction 28.6, the wording is "fle[d] in an attempt to elude the officer". In § 316.1935(2), the source of the instant draft instruction, it is "flees or attempts to elude a law enforcement officer". My suggestion below uses the bracket method to reflect the latter phrasing. Note that in draft instruction 28.8, both the "in an" and the "or" language are used (in Elements 2b. and 4. respectively), thus resulting in an inconsistency.
- Element 3: The separate items in this element are separable elements:
  - "Authorized law enforcement patrol vehicle": As opposed to an off-duty officer in his own car(?). (Query: Does "authorized law enforcement vehicle" may need a definition?)

- "with agency insignia and other jurisdictional markings": This distinguishes the vehicle from an unmarked car.
- "with siren and lights activated": As opposed to not being activated.
- **Draft instruction reflecting my suggestions:**

To prove the crime of Fleeing to Elude a Law Enforcement Officer, the State must prove the following ~~three~~ seven elements beyond a reasonable doubt:

1. (Defendant) was operating a vehicle upon a street or highway in Florida.

2. A ~~duly authorized~~ law enforcement officer ordered the defendant to stop or remain stopped.

~~Give 2a or 2b as applicable.~~

3. The law enforcement officer was in an authorized law enforcement patrol vehicle.

4. ~~with agency~~ Agency insignia and other jurisdictional markings were prominently displayed on the patrol vehicle. ~~and~~

5. The patrol vehicle's ~~with~~ siren and lights were activated.

~~2-6.~~ (Defendant) ~~knowing~~ knew [he] [she] had been ~~directed~~ ordered to stop by ~~a duly authorized~~ the law enforcement officer~~7.~~

Give 7a or 7b as applicable.

7.

a. (Defendant) willfully refused or failed to stop ~~the~~ [his] [her] vehicle in compliance with the order.

b. ~~having~~ Having stopped ~~the~~ [his] [her] vehicle in knowing compliance with the order, (defendant) willfully fled in a vehicle in an attempt to elude the officer.

**Proposal 4: 28.8 FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER (Siren and lights activated with high speed or reckless driving) § 316.1935(3)(a), Fla. Stat.**

- Suggestions are the same as those for instruction 28.7.
- Element 4: Should the prongs on either side of the second *or* be separated using the bracket method? The suggestion below reflects this.
- **Draft instruction reflecting my suggestions:**

To prove the crime of Fleeing to Elude a Law Enforcement Officer, the State must prove the following ~~four~~ eight elements beyond a reasonable doubt:

1. (Defendant) was operating a vehicle upon a street or highway in Florida.

2. A ~~duly authorized~~ law enforcement officer ordered the defendant to stop or remain stopped.

~~Give 2a or 2b as applicable.~~

3. The law enforcement officer was in an authorized law enforcement patrol vehicle.

4. ~~with agency~~ Agency insignia and other jurisdictional markings were prominently displayed on the patrol vehicle. ~~and~~

5. The patrol vehicle's ~~with~~ siren and lights were activated.

~~2-6.~~ (Defendant), ~~knowing~~ knew [he] [she] had been ~~directed~~ ordered to stop by a ~~duly authorized~~ the law enforcement officer~~.~~

~~Give 7a or 7b as applicable.~~

7.

a. (Defendant) willfully refused or failed to stop ~~the~~ [his] [her] vehicle in compliance with the order.

~~b. having~~ Having stopped ~~the~~ [his] [her] vehicle in knowing compliance with the order, (defendant) willfully fled in a vehicle in an attempt to elude the officer.

~~7.8.~~ 8. During the course of the [fleeing] ~~the~~ [attempt to elude], (defendant) [drove at high speed] ~~or~~ [in any a manner demonstrating a wanton disregard for the safety of persons or property].

**Proposal 4: 28.81 FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER (Siren and lights activated with high speed or reckless driving causing serious bodily injury or death) § 316.1935(3)(b), Fla. Stat.**

- Suggestions are the same as those for instructions 28.7 and 28.8.
- Element 5: I tentatively changed the *or*'s to the bracket method.
- **Draft instruction reflecting my suggestions:**

To prove the crime of Fleeing to Elude a Law Enforcement Officer, the State must prove the following ~~five~~ nine elements beyond a reasonable doubt:

1. (Defendant) was operating a vehicle upon a street or highway in Florida.

2. A ~~duly authorized~~ law enforcement officer ordered the defendant to stop or remain stopped.

~~Give 2a or 2b as applicable.~~



3. The law enforcement officer was in an authorized law enforcement patrol vehicle.

4. ~~with agency~~ Agency insignia and other jurisdictional markings were prominently displayed on the patrol vehicle. ~~and~~

5. The patrol vehicle's ~~with~~ siren and lights were activated.

~~2-6.~~ (Defendant) ~~, knowing~~ knew [he] [she] had been ~~directed~~ ordered to stop by a ~~duly authorized~~ the law enforcement officer~~7.~~

Give 7a or 7b as applicable.

7.

a. (Defendant) willfully refused or failed to stop ~~the~~ [his] [her] vehicle in compliance with the order.

b. ~~having~~ Having stopped ~~the~~ [his] [her] vehicle in knowing compliance with the order, (defendant) willfully fled in a vehicle in an attempt to elude the officer.

~~7-8.~~ During the course of the [fleeing] ~~the~~ [attempt to elude], (defendant) [drove at high speed] ~~or~~ [in any a manner demonstrating a wanton disregard for the safety of persons or property].

~~5.9.~~ 9. As a result of (defendant's) [fleeing or eluding at high speed] ~~or~~ [wanton disregard for safety], ~~he~~ ~~she~~ (defendant) caused [the death of] [serious bodily injury to] [another person] [a law enforcement officer involved in pursuing or otherwise attempting to stop ~~his~~ ~~her~~ the vehicle that (defendant) was driving].

**Proposal 4: 28.83 FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER (Siren and lights activated with high speed or reckless driving causing serious bodily injury or death) § 316.1935(4)(b) and § 316.061, Fla. Stat.**

- Element 1: § 316.061(1) isn't particularly clear about how the verbs "driven" and "attended" are supposed to match up with the preceding nouns. As a result, the bracket method in the draft instruction could result in this wordy and somewhat awkward phrasing: "Defendant was the driver of a vehicle involved in a crash resulting only in damage to property other than a vehicle that was driven or attended by another person." I tried to resolve this in my suggested version.
- Element 3: Is this element necessary? Is it implied in the statute? When there has been a "crash," there has to have been some consequence; as long as the driver knew or should have known about the crash, he knew or should have known about the possibility of property damage, death, etc.

- Element 3: Assuming this element is to be retained, I would change "of the damage" to "that there was damage". The former sounds as if the defendant should have known what the specific nature and extent of the damage was, which is unlikely to be the case.
- Element 3: Assuming this element is to be retained, the word "attended" isn't necessary. It is awkward, and the word "property" alone sufficiently refers back to "or other property".
- Element 4: If the crash involves a vehicle (as opposed to "other property"), the person affected could be the driver or occupant of the vehicle, § 316.062. (Presumably, this covers situations like crashing into a parked vehicle having only a passenger in it at the time.)
- Element 5: "issued an order" sounds like the officer produced something in writing. The simpler "ordered" is preferable.
- Element 6: Separate into constituent elements, as suggested for similar instructions, above.
- "I further instruct you that . . ." and definition of "identifying information." Although it may generally be neater to place all the definitions of terms at the end of the instruction, in this case the jurors will be wondering what "any part of the 'identifying information' " means. Positioning the definition before this explanation will make for an easier-to-understand instruction overall.

- Draft instruction reflecting my suggestions:

To prove the crime of Aggravated Fleeing or Eluding, the State must prove the following ~~seven~~ eight elements beyond a reasonable doubt:

1. (Defendant) was the driver of a vehicle involved in a crash resulting only in damage to [a vehicle that was driven or attended by another person] ~~[the property attended by another person, other than a vehicle] which was driven or attended by a person.~~

2. (Defendant) knew or should have known that [he] [she] was involved in a crash.

3. (Defendant) knew or should have known ~~of the~~ that there was damage to the [vehicle] [the attended property]. <<Or delete entire element and renumber subsequent elements?>>

4. (Defendant) willfully failed to stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given "identifying information" to the [driver of the other vehicle] [occupant of the other vehicle] [person attending the damaged property] and to any police officer investigating the crash.

5. A duly authorized law enforcement officer ~~issued an order to stop to~~ (defendant) ordered (defendant) to stop.

6. (Defendant), ~~knowing~~ knew [he] [she] had been ordered to stop by a law enforcement officer, ~~[willfully refused or failed to stop [his] [her] vehicle in compliance with the order to stop] [and after having stopped in knowing compliance with the order to stop, willfully fled in a vehicle in an attempt to elude the law enforcement officer].~~

Give 7a or 7b as applicable.

7.

a. (Defendant) willfully refused or failed to stop the [his] [her] vehicle in compliance with the order.

b. ~~having~~ Having stopped ~~the~~ [his] [her] vehicle in knowing compliance with the order, (defendant) willfully fled in a vehicle in an attempt to elude the officer.

~~7-8.~~ 8. As a result of (defendant)'s fleeing or eluding, [he] [she] caused [serious bodily injury to] [the death of] (name of victim).

I further instruct you ~~that~~ as follows:

§ 316.061 and § 316.062, Fla. Stat.

With respect to the fourth element, a A driver has the legal duty to immediately stop [his] [her] vehicle at the scene of the crash or as close to the scene of the crash as possible and remain there until [he] [she] has provided "identifying information=" to the [driver or occupant of the vehicle] [person attending the damaged property] and to any police officer investigating the crash. "Identifying information" means the name, address, vehicle registration number, and, if available and requested, the ~~exhibition of the defendant's license or permit to drive.~~

If the State proves beyond a reasonable doubt that ~~the defendant~~ (defendant) willfully failed to ~~give~~ provide any part of the "identifying information," the State satisfies this element of the offense.

*Definitions.*

"Willfully" means intentionally, knowingly, and purposely.

~~"Identifying information" means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant's license or permit to drive.~~

**Proposal 4: 28.85 FLEEING TO ELUDE A LAW ENFORCEMENT**

**OFFICER (Leaving a Crash Involving Damage to a Vehicle or Property then**

**Causing Injury or Property Damage to Another) § 316.1935(4)(a) and**

§ 316.061, Fla. Stat.

- Comments the same as for Proposal 4 — 28.83.

- **Draft instruction reflecting my suggestions:**

To prove the crime of Aggravated Fleeing or Eluding, the State must prove the following ~~seven~~ eight elements beyond a reasonable doubt:

1. (Defendant) was the driver of a vehicle involved in a crash resulting only in damage ~~to~~ [a vehicle that was driven or attended by another person] ~~[to property attended by another person, other than a vehicle] which was driven or attended by a person.~~

2. (Defendant) knew or should have known that [he] [she] was involved in a crash.

3. (Defendant) knew or should have known ~~of the~~ that there was damage to ~~the~~ [vehicle] ~~[the attended property]~~. <<Or delete entire element and renumber subsequent elements?>>

4. (Defendant) willfully failed to stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given "identifying information" to the [driver of the other vehicle] [occupant of the other vehicle] [person attending the damaged property] and to any police officer investigating the crash.

5. A duly authorized law enforcement officer ~~issued an order to stop to (defendant)~~ ordered (defendant) to stop.

6. (Defendant), ~~knowing~~ knew [he] [she] had been ordered to stop by a law enforcement officer, ~~[willfully refused or failed to stop [his] [her] vehicle in compliance with the order to stop]~~ ~~[and after having stopped in knowing compliance with the order to stop, willfully fled in a vehicle in an attempt to elude the law enforcement officer].~~

Give 7a or 7b as applicable.

7.

a. (Defendant) willfully refused or failed to stop [her] [her] vehicle in compliance with the order.

b. having Having stopped ~~the~~ [his] [her] vehicle in knowing compliance with the order, (defendant) willfully fled in a vehicle in an attempt to elude the officer.



~~7~~8. As a result of (defendant)'s fleeing or eluding, [he] [she] caused [injury to] [damage to the property of] (name of victim).

I further instruct you ~~that~~ as follows:

§ 316.061 and § 316.062, Fla. Stat.

With respect to the fourth element, a driver has the legal duty to immediately stop [his] [her] vehicle at the scene of the crash or as close to the scene of the crash as possible and remain there until [he] [she] has provided "identifying information" to the [driver or occupant of the vehicle] [person attending the damaged property] and to any police officer investigating the crash. "Identifying information" means the name, address, vehicle registration number, and, if available and requested, the ~~exhibition of~~ the defendant's license or permit to drive.

If the State proves beyond a reasonable doubt that ~~the defendant~~ (defendant) willfully failed to ~~give~~ provide any part of the "identifying information," the State satisfies this element of the offense.

*Definitions.*

"Willfully" means intentionally, knowingly, and purposely.

~~"Identifying information" means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant's license or permit to drive.~~

**Proposal 5: 29.13 ANIMAL CRUELTY [FELONY] § 828.12(2), Fla. Stat.**

- I think the wording of the single element needs to reflect the statutory language more closely; specifically, the phrase "to an animal" needs to be retained. As worded, the instruction can be taken to mean that a person who intentionally commits an act in which an animal is inadvertently injured or killed is guilty. For example, intentionally plowing a field with a tractor and inadvertently running over a kitten.

- **Draft instruction reflecting my suggestions:**

To prove the crime of Animal Cruelty, the State must prove the following element beyond a reasonable doubt:

(Defendant) intentionally committed an act to an animal ~~which~~ that resulted in [the excessive or repeated infliction of unnecessary pain or suffering to ~~an~~ the animal] [~~an~~ the animal's cruel death].

*Definition, if cruel death charged. § 828.02, Fla. Stat.*

"Cruelty" ["Torture"] ["Torment"] includes any act, omission, or negligence whereby unnecessary or

unjustifiable pain or suffering is caused, permitted, or allowed to continue when there is reasonable remedy or relief, except when done in the interest of medical science.

~~Only read~~ Read the definition for the terms "Torture" or "Torment" only when the State seeks sentencing enhancements pursuant to § 828.12(2)(a), Fla. Stat.

**Proposal 5: 29.13(a) ANIMAL CRUELTY [MISDEMEANOR] § 828.12(1), Fla. Stat.**

- This statute is so awkwardly written that it is difficult to determine what modifies what. I think the draft accurately reflects the verbs that "unnecessarily" is supposed to modify. However, I don't think that "in a cruel or inhumane manner" is intended to modify all the preceding verbs. It makes no sense to say "torments . . . in a cruel or inhumane manner." (Actually, it makes little or no sense to say "unnecessarily overloads" or "unnecessarily torments", either.) Upon reading the statute but before reading the draft instruction, I took "in a cruel or inhumane manner" to modify only "carries in or upon any vehicle, or otherwise". Also, if "in a cruel or inhumane manner" is intended to modify "kills", per the draft instruction, it must also grammatically

modify "mutilates", which, again, makes no sense. Grammatically, I believe the only modifier of "kills" is the second "unnecessarily".

Refer also to *Reynolds v. State*, 842 So. 2d 46, 50 n.3 (Fla. 2002), which shows how the statute was revised in 1994 (Ch. 94-339, § 5, at 2436, Laws of Fla.):

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily ~~or cruelly~~ beats, mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$5,000, or both.

Before the deletion, I would have taken the primary categorization to be:

(1) unnecessarily overloading, overdriving, tormenting, or depriving of necessary sustenance or shelter; (2) unnecessarily or cruelly beating, mutilating or killing; (3) carrying in on or upon any vehicle, or otherwise, in a cruel or inhumane manner. (I'm not sure exactly "or causes the same to be done" covers or what "or otherwise" is supposed to mean.) In deleting "or cruelly", the legislature left the sentence with two "unnecessarily"s, which only creates confusion. Additionally, "kills" was left with only the modifier "unnecessarily", which somehow doesn't seem sufficient, so the reader might tend to force "in a cruel or inhumane manner" to modify "kills", even though grammatically I don't think it does. In deleting "beats" and the comma without

fixing the punctuation thereafter, the legislature ruined the complex (but otherwise reasonably comprehensible) list of items.

In any case, my suggestion below reflects this interpretation.

- **Draft instruction reflecting my suggestions:**

To prove the crime of Animal Cruelty, the State must prove the following element beyond a reasonable doubt ~~that~~:

*Give 1a, ~~or~~ 1b, or 1c as applicable.*

1. (Defendant)

a. unnecessarily [overloaded] [overdrove] [tormented] [mutilated] [killed] ~~any an animal in a cruel or inhumane manner.~~

b. ~~deprived~~ an animal of necessary [sustenance] ~~or~~ [shelter] [~~killed~~] [~~carried in or upon any vehicle or otherwise~~] ~~any animal in a cruel or inhumane manner.~~

c. carried an animal in or upon any vehicle or otherwise in a cruel or inhumane manner.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the forgoing has been served on Hon. Terry D. Terrell, c/o Les Garringer, Office of General Counsel, 500 S. Duval Street, Suite 490, Jacksonville, FL 32399-1925 on this the \_\_\_\_\_ day of July 2007 by U.S. Mail.

By:

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