

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY
INSTRUCTIONS IN CRIMINAL
CASES – REPORT NO. 2007-03

CASE NO. SC07-705

Undersigned counsel respectfully submits the following comment regarding proposed jury instructions 5 and 6.

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

This new definition should include the same definition of the word “cruelty” that is included in the proposed instruction for felony animal cruelty in Proposal 5. The inclusion of the definition of the word “cruelty” is needed so that it is clear to prosecutors, judges and juries that the killing of an animal or the infliction of pain and suffering of an animal is not a crime when it is done in the interest of medical science. Section 828.02 Fla. Stat. (2006) provides that the “in the interest of medical science” exception to animal cruelty applies to every section in Chapter 828 and to every law of the state affecting animals. The misdemeanor animal cruelty jury instruction should therefore include the same definition of “cruelty” as is included in the proposed instruction on felony animal cruelty.

PROPOSAL 6
29.15 DISTURBING A SCHOOL,
RELIGIOUS OR LAWFUL ASSEMBLY
871.01(1), Fla. Stat.

The Court should not adopt this proposal because the Comment in the proposal is actually the elements of the crime that must be proven. *See S.H.B., v. State*, 355 So.2d 1176, 1178 (Fla. 1978). Without the inclusion of the Comment as elements that must be proven, the proposal does not correctly list the elements of the crime. The proposal’s Comment is not part of the jury instructions, will not be read to the jury, and the jury therefore will not be properly instructed on the elements of the crime. The proposal as written essentially instructs the jury that any interruption or

disruption of a meeting, no matter how brief or insignificant, is sufficient for the return of a guilty verdict. To paraphrase Justice England's dissent in *S.H.B. v. State, supra*, without any definition by which the terms "disturbed" and "interrupted" may be measured, it will be left to the idiosyncrasies of juries to determine whether a meeting was "disturbed" or "interrupted". The definition of "disturb" according to *Webster's Ninth New Collegiate Dictionary* includes: "to put to inconvenience" and "to destroy the tranquility or composure of." If the proposal were to be adopted by the Court, section 871.01(1) would allow the government to punish and imprison unpopular people who speak unpopular words, who take unpopular positions, and who cause even mild discomfort, delay or annoyance at a meeting. The proposal as written allows § 871.01(1) to operate as a deterrent to the exercise of citizens' rights of free expression and free speech. Amending the proposal to include definitions of the words "interrupted" and "disturbed" consistent with the Comment in the proposal would be enough to properly instruct the jury on the elements of the crime in accordance with the Court's decision in *S.H.B. v. State, supra*.

Respectfully submitted this ____ day of July 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 July 2007.

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