

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD INSTRUCTIONS  
IN CRIMINAL CASES –  
REPORT NO. 2008-01,

CASE NO. SC08-335

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COMMENTS ON PROPOSED AMENDMENTS  
TO FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES  
3.12(a), (c), AND (d)

The Public Defender, Second Judicial Circuit, through the undersigned, makes the following comments to the proposed amendments to the Florida Standard Jury Instructions in Criminal Cases 3.12 (d):

1. We respectfully suggest that the term “[l]egally interlocking counts” is a term of legal art that will not be useful to most jurors. Instead, the standard instruction should explain the concept in terms similar to those in the comment to the committee’s proposal.

2. Rather than repeatedly use the parenthetical terms “predicate charge/count” and “compound charge/count” in identifying the interlocking counts for the judge, we respectfully suggest that the instruction simply identify those counts once with the algebraic labels A and B, then use this shorthand notation in the remainder of the instruction.

3. Finally, the use of what is in effect a double negative in the last sentence of Proposed Instruction 3.12(d) is problematic. The proposed instruction tells the jury that a guilty verdict on the first count does not require a guilty verdict on the second count word “unless” the jury finds the second crime proven beyond a reasonable doubt. Consistent with the presumption of innocence, a court should not convey to jurors that a guilty verdict on one count can compel a guilty verdict on another. This problem can be avoided by deleting “unless” and using two sentences instead of one.

5. An instruction incorporating the suggestions in Paragraphs 2-4 of this comment follows:

### 3.12(d) LEGALLY INTERLOCKING COUNTS

Counts [A and B] (substitute appropriate count numbers) are linked in that the crime charged in count [A] (identify predicate charged crime) is an essential element of the crime charged in count [B] (identify compound charged crime). You should first consider the evidence on count [A]. If you find the crime in count [A] not proven beyond a reasonable doubt, you must find the defendant not guilty on both counts [A] and [B].

If, on the other hand, you find that the crime charged in count [A] has been proven beyond a reasonable doubt, you must then consider the evidence on count [B]. A guilty verdict on count [A] does not require a guilty verdict on count [B]. You should find the Defendant guilty on count [B] only if you find all the elements of that crime, including the essential element contained in count [A], were proven beyond a reasonable doubt.

**SIGNATURES OF ATTORNEYS AND**  
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to The Honorable Terry D. Terrell, Committee Chair C/O Les Garringer, Office of the General Counsel, 500 S. Duval Street, Tallahassee, Florida 32399-1925, this \_\_\_\_ day of May, 2008.

Respectfully submitted,

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