

Supreme Court of Florida

IN RE:
STANDARD JURY INSTRUCTIONS
IN CRIMINAL CASES-
REPORT 2008-1

CASE NO.: SC08-335

COMMITTEE ON STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES

RESPONSE TO THE COMMENTS OF MS. NANCY A. DANIELS AND MR. GLENN P. GIFFORD

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 Honorable Terry David Terrell, Circuit Court Judge, Chair of the committee, and files this Response to the comments received by Nancy A. Daniels, Public Defender of the Second Judicial Circuit and Assistant Public Defender Mr. Glenn P. Gifford.

The committee filed a report with the Court on February 25, 2008, proposing three amended or new standard jury instructions in criminal cases: Instruction 3.12(a) - Single Defendant, Multiple Counts or Informations; Instruction 3.12(c) – Multiple Counts or Informations, Multiple Defendants; Instruction 3.12(d) – Legally Interlocking Crimes.

The Court published the proposed instructions in *The Florida Bar News* on April 1, 2008. Comments were required to be filed with the Court no later than May 1, 2008. The committee was directed to respond to any comments filed with the Court no later than May 22, 2008. Comments were filed by Nancy Daniels, Public Defender of the Second Judicial Circuit, and Assistant Public Defender Glenn P. Gifford, addressing proposed instruction 3.12(d). No comments were filed with the Court regarding proposed instructions 3.12(a) and 3.12(c).

Ms. Daniels and Mr. Gifford felt that the wording of the proposed instruction could be simplified by identifying the interlocking counts using algebraic labels A and B. In addition, Ms. Daniels and Mr. Gifford believed that the last sentence of proposed instruction 3.12(d) contained a double negative. They felt the proposal should be amended by deleting one word and using two sentences rather than one in the proposal to the Court. The following proposal was submitted to the committee for consideration.

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.

The committee met via telephone conference on May 13, 2008, to discuss the comment received by the committee. By a unanimous vote, the committee agreed to adopt the recommended changes to the proposal with only slight modifications. Paragraph one of the recommendation was amended to add the words “applicable to” in the second sentence. Paragraph one was also amended to expand the words “not proven beyond a reasonable doubt” to read: “has not been proven beyond a reasonable doubt.” Paragraph two was amended to include the words “applicable to” in the first sentence. Paragraph two was also amended to add the letter “s” to the word “element” in the last sentence. The amended proposal reflecting the recommendations of Ms. Daniels and Mr. Gifford, and the changes to the recommendation by the committee, read as follows.

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 applicable to count [A]. If you find the crime in count [A] has not been 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 applicable to 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 elements contained in count [A], were proven beyond a reasonable doubt.

Attached to this Response is Amended Appendix A. This appendix contains proposed instructions 3.12(a), 3.12(c), and amended proposed instruction 3.12(d).

Respectfully submitted this _____ day of May, 2008.

THE HONORABLE TERRY DAVID TERRELL
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CERTIFICATE OF FONT SIZE

I hereby certify that this Response 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).

THE HONORABLE TERRY DAVID TERRELL
Chair, Committee on Standard Jury Instructions in
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CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing Response has been furnished to:

Ms. Nancy A. Daniels
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by U.S. mail this _____ day of May, 2008.

THE HONORABLE TERRY DAVID TERRELL
Chair, Committee on Standard Jury Instructions
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