

May 8, 2008

Hon. Thomas D. Hall, Clerk of Court
Florida Supreme Court
500 S. Duval St.
Tallahassee, FL 32399-1927

Re: Comments for the Supreme Court's Committee on Standard Jury
Instructions in Criminal Cases re: proposed standard jury instruction:
11.10(c) Lewd or Lascivious Molestation, printed in Florida Bar News
April 15, 2008

Dear Mr. Hall:

Enclosed are the original and nine copies of my comments for the Court's
Committee on Standard Jury Instructions in Criminal Cases re: proposed standard
jury instruction 11.10(c) Lewd or Lascivious Molestation, as printed in the Florida
Bar News edition of April 15, 2008.

COMMENTS:

Paragraph 2.(b) of the proposed new instruction does not include the
qualifying language that the "forcing" or "enticing" of the victim to perform the
touch was "intentional."

The same paragraph also includes no language that the "forcing" or
"enticing" was done "in a lewd or lascivious manner."

Each of these qualifiers was placed in paragraph 2.(a) of the proposed
instruction. However, paragraph 2.(a) and paragraph 2.(b) are independent
paragraphs which would not necessarily be read in conjunction, depending on the
case facts. One paragraph may be read to the jury without the other.

The same statutory and constitutional considerations which require the qualifying language that the acts described in paragraph 2.(a) have been intentionally done and in a lewd or lascivious manner should apply equally to the prohibited conduct defined in paragraph 2.(b).

Without adding both qualifiers to paragraph 2.(b), the jury instruction's definition for the crime would not match the statute or Florida law.

Without adding both qualifiers to paragraph 2.(b), the jury instruction's definition for the crime would be both vague and overbroad, in violation of the Fifth and Fourteenth Amendments to the United States Constitution. Without the qualifying language, a jury might convict for accidental conduct, such as an adult stumbling and falling into the lap of a 15 year old youth. Hugging, play wrestling, swimming pool play and the like could also be considered crimes, without a requirement of a lewd or lascivious intent.

With great respect to you and your committee, I imagine that this problem was simply an oversight. Fortunately, it should be easy to rectify.

Thank you for your time and consideration of my comments.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished by U.S. Mail this ____ day of May, 2008, to Hon. Terry D. Terrell, Committee Chair, c/o Les Garringer, Office of the General Counsel, 500 S. Duval St., Tallahassee, FL 32399-1925.

Sincerely,

Lawrence D. Shearer