

Supreme Court of Florida

IN RE:
STANDARD JURY INSTRUCTIONS
IN CRIMINAL CASES-
REPORT 2008-2

CASE NO.: SC08-484

COMMITTEE ON STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES

RESPONSE TO THE COMMENTS OF MR. LAWRENCE D. SHEARER, ESQUIRE, AND MR. STEPHEN L. ROMINE, ESQUIRE

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 Mr. Lawrence D. Shearer, Esquire, and Mr. Stephen L. Romine, Esquire.

The committee filed a report with the Court on March 12, 2008, proposing four new standard jury instructions in criminal cases: Instruction 11.10(c) – Lewd or Lascivious Molestation; instruction 11.10(d) – Lewd or Lascivious Conduct ; instruction 11.10(e) – Lewd or Lascivious Exhibition/Presence of a Child; and instruction 11.10(f) – Lewd or Lascivious Exhibition over Computer Service.

The Court published the proposed instructions in *The Florida Bar News* on April 15, 2008. Comments were required to be filed with the Court no later than May 15, 2008. The committee was directed to respond to any comments filed with the Court no later than June 5, 2008. A comment was filed by Mr. Lawrence D. Shearer, Esquire, and Mr. Stephen L. Romine, Esquire, regarding proposed instruction 11.10(c). No comments were filed with the Court regarding proposed instructions 11.10(d), 11.10(e), or 11.10(f).

Mr. Shearer wrote to the Court on May 8, 2008, and opined that proposed instruction 11.10(c) was fatally flawed in that the proposal failed to require the State of Florida to prove in element 2b that the conduct of the defendant was both intentional and committed in a lewd or lascivious manner.

Mr. Romine wrote to the Court on May 15, 2008, and suggested that the committee provide definitions for the terms “genital area” and “clothing covering.” Mr. Romine stated that having uniform definitions will ensure that the law is equally and clearly understood in every case.

The committee met via telephone conference on May 13, 2008. The committee agreed with the conclusions drawn by Mr. Shearer, and by a unanimous vote, agreed to amend the proposed instruction. Element 2b of the proposed instruction originally read as follows.

b. [forced] [enticed] (victim) to touch the [breasts] [genitals] [genital area] [buttocks] [clothing covering the breasts] [clothing covering the genitals] [clothing covering the genital area] [clothing covering the buttocks] of (defendant).

The committee amended element 2b of the instruction to read:

b. [forced] [enticed] (victim) to intentionally touch the [breasts] [genitals] [genital area] [buttocks] [clothing covering the breasts] [clothing covering the genitals] [clothing covering the genital area] [clothing covering the buttocks] of (defendant) in a lewd or lascivious manner.

The committee met again via telephone conference on May 21, 2008, to consider the comments of Mr. Romine. Judge Munyon noted that s. 800.04(5), Florida Statutes (2007), does not contain a definition of the terms “genital area” and “clothing covering.” She commented that the committee would be creating law that does not exist by attempting to provide definitions. Judge Munyon stated that the proper remedy for the defendant to challenge the sufficiency of the evidence, regarding the area of the victim that was touched, would be by a motion for judgment of acquittal. She also stated that Mr. Romine has raised an issue with regard to the constitutionality of the statute, but this is outside of the purview of the committee to consider. Judge Weatherby commented that the attorneys and trial judge will need to adopt appropriate definitions based on the facts of each individual case, and no standard definition could possibly be provided that would fit every fact pattern for a violation of s. 800.04(5).

The committee voted unanimously not to include definitions for the terms “genital area” or “clothing covering” as requested by Mr. Romine.

Attached to this Response is Amended Appendix A. This appendix contains proposed instructions 11.10(d), 11.10(e), 11.10(f) and amended proposed instruction 11.10(c).

Respectfully submitted this _____ day of May, 2008.

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CERTIFICATE OF FONT SIZE

I hereby certify that this brief 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).

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CERTIFICATE OF SERVICE

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

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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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