

**IN THE SUPREME COURT OF FLORIDA**

IN RE:

STANDARD JURY INSTRUCTIONS  
IN CRIMINAL CASES –  
REPORT NO.: 2008-03

Supreme Court Case  
No.: SC 08-490

**COMMENT REGARDING PROPOSED  
AMENDMENT TO JURY INSTRUCTION  
21.1 – RESISTING OFFICER WITH VIOLENCE**

The undersigned has reviewed the proposed amendments to instruction 21.1 – Resisting Officer with Violence, and respectfully submits the following comments and suggested changes:

1. **In connection with the first element:** replace the word

“offering” with the word “threatening,” so that it reads as follows:

(Defendant) **knowingly and willfully**  
**[resisted] [obstructed] [opposed]** (victim)  
**by [threatening to do [him] [her] violence]**  
**[doing violence to [him] [her]].**

**Reason for this suggested change:** The word “offering”

implies that something will be done politely, whereas the word

“threatening” is more in line with potential violence.

2. **In connection with the fourth element:** Add the phrase “or reasonably should have known” to this element so that it reads as follows:

(Defendant) **knew, or reasonably should have known**, (victim) **was an officer.**

**Reason for this suggested change:** By adding this additional language the jurors will be better able to make a decision regarding a defendant’s knowledge, based on the evidence presented and the specific facts of the case, regardless of whether the defendant testifies.

3. **As to the overall instruction:** Add a definition for the word “violence.” I suggest the following definition which is consistent with terminology already contained in the instruction:

**Violence** is defined as “the exertion of force towards the officer in an attempt to prevent the officer from performing the lawful execution of a legal process or legal duty.”

**Reason for this suggested change:** During a recent trial that included a count for resisting an officer with violence, the jurors,

during their deliberations, submitted a question to the Court<sup>1</sup> asking for the definition of “violence.”

During the trial there was testimony that the defendant, while being placed under arrest, turned around and hit the officer to avoid being handcuffed and then took off running.

At the conclusion of the trial, the jurors requested to speak to the Court and the attorneys and explained that since the defendant was trying to get away, they were not sure the hit was considered “violence” towards the officer.

The defendant was also charged with battery on a law enforcement officer [referring to the same officer] and was found guilty of this offense. So, there is no question that they believed the officer’s testimony that the defendant hit him. However, the jury felt the jury instruction regarding resisting an officer with violence was unclear as to what constituted violence towards the officer.

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<sup>1</sup> The question was, of course, reviewed with the attorneys on the record and marked for identification.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to The Honorable Terry D. Terrell, c/o Les Garringer, Office of the General Counsel, 500 South Duval Street, Tallahassee, Florida 32399-1925, on this \_\_\_\_\_ day of March, 2008.

Respectfully submitted,

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