IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES – INSTRUCTION 7.7 **CASE NO.: SC2010-113**

Undersigned counsel asks this Court to consider five issues before issuing instruction 7.7 in its final form:

(**1**) Does manslaughter by act include "simple negligence causing death?"

(**2**) Should jurors should be instructed on justifiable homicide (Fla. Stat. 782.02) when the manslaughter statute instead references chapter 776?

(3) The interim instruction does not inform jurors that murder must be excluded.

(**4**) The interim instruction does not specify a burden of persuasion on the exclusion of murder, a justified killing, and excusable homicide.

(5) The definition of "culpable negligence" is confusing and wrong.

Issue 1: A doctor performs an operation during which a patient dies because of the surgeon's simple negligence. There was no intent to kill, no intent to injure, no recklessness, no culpable negligence - the doctor was ordinarily negligent and as a result, the patient died. Pursuant to interim instruction 7.7, the surgeon is guilty of manslaughter by act because the doctor committed an act, that act caused death, and the act was neither murder nor justified nor excusable homicide (the doctor was doing a lawful act without any unlawful intent, but did not use usual ordinary caution). Thus, interim instruction 7.7 establishes a new theory of criminal behavior: "Simple negligence causing death" is now manslaughter by act.

It does not make sense to interpret manslaughter by act to include "simple negligence causing death" because the same manslaughter statute criminalizes "culpable negligence causing death."[1] Additionally, "simple negligence causing death" has never constituted manslaughter in

[1] Why would the State charge manslaughter by culpable negligence now? No rational prosecutor would assume the burden of proving "culpable negligence" when he/she could instead prove manslaughter by act.

Florida. I respectfully suggest the *Montgomery* court misconstrued manslaughter by following the plain language of the statute. Although it is generally a good idea to follow the plain language of a statute, adherence to that formula leads to an erroneous conclusion in this instance. Instead, it would make more sense to conclude that the legislature that first wrote the manslaughter statute intended to codify the common law of manslaughter.

Prof. Wayne LaFave's hornbook on *Criminal Law* and the federal en banc opinion in *Comber v. United States*, 584 A. 2d 26 (D.C. 1990) contain excellent information regarding the law of homicide. An abbreviated explanation is as follows: To understand manslaughter at common law, it is best to begin with murder. A murder at common law was the unlawful killing of a human being with "malice aforethought." The term "malice aforethought" evolved into four concepts:

1) Defendant had an intent to kill;
2) Defendant had an intent to do serious bodily harm and caused an unintentional death;
3) Defendant engaged in extreme recklessness that caused an unintentional death;
4) Defendant engaged in a felony and an unintentional death occurred during the felony.

The practical problem with common law murder was that a guilty person was put to death. Such a harsh result was difficult to accept, especially in cases where a husband killed his wife upon finding the wife in bed with another man. As a result, judges invented the crime of manslaughter to deal with killings that deserved punishment, but not the death penalty. Manslaughter became the practical way to punish unacceptable – but mitigated – homicides.

At common law, manslaughter broadly developed into three concepts:

1) Defendant had an intent to kill, but had been provoked by a legally adequate reason and was in a "heat-of-passion" when he intentionally killed a victim;
2) Defendant engaged in risky behavior that caused an unintentional death. The level of riskiness was more than ordinary negligence but it did not rise to the level of riskiness that qualified as "malice aforethought;"
3) Defendant engaged in an unlawful act that did not rise to the level of a felony and an unintentional death occurred during the unlawful act.

#1 above is commonly referred to as voluntary manslaughter. #2 is commonly referred to as involuntary manslaughter. #3 is another form of involuntary manslaughter and is commonly referred to as misdemeanor manslaughter. When the legislature criminalized manslaughter by culpable negligence, the legislature intended to refer to #2 above. When the legislature criminalized manslaughter by act, the legislature intended both #1 and #3 above.

The inclusion of #1 and #3 in manslaughter by act is what has led to the confusion. A heat-of-passion killing (#1) is an intentional killing. An "unlawful act killing" (#3) is an unintentional killing. So, does manslaughter by act include an intent to kill? The answer is: no and yes. If the killing is misdemeanor manslaughter (#3), there is no intent to kill, only an intent to commit the underlying misdemeanor. Under voluntary manslaughter (#1), there is an intent to kill, but a legally adequate provoking event caused a heat-of-passion which precluded premeditation. A heat-of-passion, non-premeditated, intentional killing is a bit of a legal fiction, but it has been in existence for hundreds of years and has even been deemed by the legislature to be a less severe crime than an unintentional killing done with a depraved mind regardless of human life. The Court may disagree with the legislature's view of culpability. But a disagreement on culpability should not lead to a distortion of the law.

Florida appellate courts have long recognized these concepts. Voluntary manslaughter case law – which includes an intent to kill for manslaughter by act - goes at least back to *Olds v. State*, 33 So. 296 (1902). A discussion of voluntary and involuntary manslaughter is contained in Justice Brown's concurring opinion in *Fortner v. State*, 161 So. 94 (Fla. 1935). This Court also explained the origin of our manslaughter statute in Footnote 6 in *Bautista v. State*, 863 So.2d 1180 (Fla. 2003). A lengthier explanation is contained in *Rodriguez v. State*, 443 So. 2d 286 (Fla. 3d DCA 1983). *Douglas v. State*, 652 So. 2d 887 (Fla. 4th DCA 1987) has a good discussion of

legally adequate heat-of-passion. A more recent example of voluntary manslaughter (by act) - a non-premeditated, intentional killing done in a heat-of-passion - is *Paz v. State*, 777 So. 2d 983 (Fla. 3d DCA 2000). A recent example of an unintentional killing via misdemeanor manslaughter (by act) is *Hall v. State*, 951 So. 2d 91 (Fla. 2d DCA 2007). The case of *Todd v. State*, 594 So. 2d 802 (Fla. 5th DCA 1992) explains that in misdemeanor manslaughter, the commission of the misdemeanor must create a direct, foreseeable risk of physical harm to the victim and there has to be both "but for" and "proximate causation." *Taylor v. State*, 444 So. 2d 931 (Fla. 1983) and *State v. Sherhouse*, 536 So. 2d 1194 (Fla. 5th DCA 1989) both take Florida's traditional view of manslaughter and explain that attempted voluntary manslaughter includes an intent to kill.

Of course, this Court can ignore these cases and interpret manslaughter by act as it pleases. The Court may have intended "simple negligence causing death" to constitute manslaughter by act, which is constitutionally permissible, but represents a revolutionary change in Florida law.

Issue 2: The crime of manslaughter is partly defined by what it is not. Many years ago, the manslaughter statute excluded "justifiable homicide." But now, the statutory exclusion does not refer to "justifiable homicide." The current manslaughter statute instead says: ". . . without lawful justification according to the provisions of chapter 776." Undersigned counsel asks this Court to re-consider whether jurors should be read justifiable homicide (Fla. Stat. 782.02) when the statute specifically refers to chapter 776, especially since chapter 776 has recently been expanded and contains far more exclusions and qualifications than Fla. Stat. 782.02.[2]

[2] A case such as *Carranza v. State*, 511 So. 2d 410 (Fla. 4th DCA 1987) highlights the problem of not instructing on a Chapter 776 defense in a manslaughter case. In *Carranza*, a conviction was reversed because the justifiable homicide instruction did not cover the defendant's claim of defense of others, which was contained in Chapter 776.

Issue 3: The manslaughter statute also excludes murder. Accordingly, the standard manslaughter instruction should inform jurors they cannot find a defendant guilty of manslaughter if they find the defendant's conduct constituted murder.

Issue 4: Florida's manslaughter statute is ambiguous as to whether the exclusion of a Chapter 776 justification, excusable homicide, and murder are elements of the crime or defenses. Florida courts have repeatedly stated that the provisions of excusable homicide and justifiable homicide have to be read to jurors, which might lead one to assume the exclusions are elements.[3] If that is correct, instruction 7.7 should inform jurors the State must prove beyond a reasonable doubt the defendant's act was not justified, excusable homicide, or murder. If the burden of persuasion is not specified, there will undoubtedly be claims that the interim instruction still constitutes fundamental error.

Issue 5: Since this Court will be changing the standard manslaughter instruction, undersigned counsel urges the Court to take the opportunity to alter the existing confusing and erroneous definition of culpable negligence. The current instruction has eight explanations of culpable negligence: 1) More than a failure to use ordinary care toward others; 2) Gross and flagrant; 3) Reckless disregard of human life or of the safety of persons exposed to its dangerous effects; 4) An entire want of care as to raise a presumption of a conscious indifference to consequences;

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[3] Undersigned counsel respectfully suggests the manslaughter statute should not be interpreted in a way that treats the three exclusions as elements of manslaughter. Excuse and justification are normally considered to be defenses. In fact, Chapter 776 pertains to self-defense, which is an affirmative defense. Under Florida law, jurors are not even instructed on self-defense when there is no evidence of self-defense. As for excusable homicide, the Second and Third Districts have clearly stated the excusable homicide statute (Fla. Stat. 782.03) establishes a defense. *Colon v. State*, 430 So. 2d 965, 966 (Fla. 2d DCA 1983); *Parker v. State*, 495 So. 2d 1204, 1206 (Fla. 3d DCA 1986). This Court may want to follow the South Dakota model which has a manslaughter statute similar to Florida's. According to the Supreme Court of South Dakota, the exclusion of excusable and justifiable homicide from the crime of manslaughter are matters for the defense. *State v. Johnson*, 139 N.W. 2d 232 (S.D. 1965).

5) Wantonness or recklessness; 6) A grossly careless disregard for the safety and welfare of the public; 7) An indifference to the rights of others as is equivalent to an intentional violation of such rights; and 8) An utter disregard for the safety of others. This language comes from old manslaughter case law. But the modern trend is to make jury instructions understandable by using everyday language. A more concise explanation should be sufficient.

More important, the language in the last sentence of the culpable negligence section in the standard instruction is inconsistent with case law and wrong. The standard instruction requires that the defendant must have known or reasonably should have known that his/her course of conduct was ***likely*** to cause death or great bodily injury. One would expect jurors to construe the word “likely” as "probable." If the word "likely" is construed in its most common meaning, this simply is not true. Consider a hypothetical where a defendant puts one bullet in a revolver, leaves the other five chambers empty, spins the cylinder, points the gun at someone’s head, and pulls the trigger. If a victim is killed, that would certainly be manslaughter by culpable negligence (and manslaughter by act under *Montgomery).* But if a defendant were charged with only manslaughter by culpable negligence, the standard jury instruction should lead jurors to acquit because there was only a 1 in 6 chance of death or great bodily harm.

The early manslaughter cases did not require a *likelihood* of death/great bodily harm. *Miller v. State*, 75 So. 2d 312 (Fla. 1954); *Cannon v. State*, 107 So. 360 (Fla. 1926). Additionally, Florida courts have not required a “greater than 50% chance” of death or great bodily harm. For example, in *Tuff v. State*, 509 So. 2d 953 (4th DCA 1987), the defendant was shaking a loaded gun and it went off, apparently accidentally, and the shot went through the closed door of her son's bedroom and killed her son. Even though there was no evidence that the defendant intentionally pointed the gun at the door, and even though she didn't know where in the bedroom

her son was located, her conviction for manslaughter by culpable negligence was affirmed. Simply shaking a loaded gun in an unsafe manner was enough, even though it seems clear under these facts that by doing so it was not "likely" that her son would get shot. The Second District - in *Manuel v. State*, 344 So. 2d 1317 (Fla. 2d DCA 1977) – found evidence that the defendant pointed and shot a gun in a direction where "one would think a shot could not result in harm to any person," to be sufficient for manslaughter**.** In the civil case of *Glaab v. Caudhill*, 236 So. 2d 180 (Fla. 2nd DCA 1970), the court discussed the definition of "likelihood" by saying: "the chance of injury resulting from the complained of conduct must be more than a real possibility, though not necessarily better than a 50-50 probability."

In sum, the word "likely" as used in the manslaughter jury instructions cannot mean "probable." But "probable" is the most common definition of "likely" and therefore would be so understood by a jury (and sometimes by an appellate court). The opinion in *Azima v. State*, 480 So. 2d 184 (Fla. 2d DCA 1985) is a classic example of a problem caused by the ambiguity of the word "likely." In *Azima*, the 2nd DCA held that a conviction for culpable negligence had to be set aside on evidence that an expert said the defendant's conduct created a risk of death or great bodily harm, but not a high risk. There was no discussion of the definition of the word "likely" in the opinion and it is difficult to reconcile the Second District's logic when comparing *Azima* with *Manuel v. State*, 344 So. 2d 1317 (Fla. 2d DCA 1977). Interim Instruction 7.7 should be amended because there is too great a chance that the word "likely" will be misinterpreted.

My proposal for a standard manslaughter jury instruction is set forth below, using the pre-interim instruction as a base. The three most common types of manslaughter are contained in elements 2a, 2b, and 2c. Because Florida recognizes a few other types of manslaughter by act and manslaughter by procurement (no one knows what that means), the Comment section

informs the reader that special instructions are needed in those special cases. There is an explanation for element 2a that differentiates voluntary manslaughter (by act) from premeditated murder and explains the necessary concepts of heat-of-passion and provocation. Element 2b covers misdemeanor manslaughter (by act) and includes the requirement that the commission of the misdemeanor must create a direct, foreseeable risk of physical harm to the victim. The jurors are told they must exclude justified killings, but the jurors are instructed about Chapter 776, not the justifiable homicide statute. The jurors are also told they must exclude murder and murder is defined. The instruction below ***assumes*** the three exclusions are elements of manslaughter and thus the burden of persuasion is on the State under the beyond a reasonable doubt standard. If the three exclusions are elements, there is no need for a note in the Comment section about the need to reinstruct on the three exclusions. (The Court might want to consider briefing in another manslaughter case or supplemental briefing in *Montgomery* to determine whether one or more of the three exclusions should be elements of manslaughter or defenses.) Finally, the definition of culpable negligence has been simplified and clarified.

7.7 Manslaughter
§782.07 Fla. Stat.

To prove the crime of Manslaughter, the State must prove the following ~~two~~ three elements beyond a reasonable doubt:

1. (Victim) **is dead.**

~~*Give 2a, 2b, or 2c depending upon allegations and proof.*~~

~~**2. a.** (Defendant) **intentionally caused the death of** (victim).~~

~~**b.** (Defendant) **intentionally procured the death of** (victim).~~

~~**c. The death of** (victim) **was caused by the culpable negligence of** (defendant).~~

Give as applicable.

2. a. (Defendant) **intentionally caused the death of** (victim)**, but did so without premeditating because [he][she] was in a heat-of-passion caused by sudden and adequate provocation.**

b. (Victim's) **death occurred as a consequence of and while** (defendant) **[attempted to commit][committed]** (misdemeanor) **[or the death occurred as a consequence of and while there was an escape from the immediate scene of the** (misdemeanor)**] and the commission of the** (misdemeanor) **created a direct, foreseeable risk of physical harm to** (victim).

c. The death of (victim) **was caused by the culpable negligence of** (defendant).

3. The killing of (victim) **was neither excusable homicide, nor a justified killing, nor murder.**

~~*Give only if 2(a) alleged and proved, and manslaughter is being defined as a lesser included offense of first degree premeditated murder.*~~

~~**In order to convict of manslaughter by intentional act, it is not necessary for the State to prove that the defendant had a premeditated intent to cause death, only an intent to commit an act which caused death**. *See Hall v. State*, 951 So. 2d 91 (Fla. 2d DCA 2007).~~

If 2a given:

A premeditated killing requires a conscious decision to kill. The law does not fix the exact period of time that must pass between the formation of the premeditated intent and the killing. But the period of time must be long enough to allow reflection by a defendant. In order to find that a defendant did not premeditate because [he][she] was in a heat-of-passion, there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person such that [he][she] would have lost normal self-control, [he][she]would have been impelled by a blind and unreasoning fury, and [he][she] would not have cooled off before committing the act that caused death. Finally, you must find that (defendant) **was, in fact, so provoked and did not cool off before [he][she] committed the act that caused the death of** (victim)**.**

~~Give only if 2b alleged and proved.~~

~~To "procure" means to persuade, induce, prevail upon or cause a person to do something.~~

If 2b given, define elements of the misdemeanor.

Give only if 2c alleged and proved.

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, ~~or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness,~~ or a grossly careless disregard for the safety and welfare of the public~~, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights~~. ~~The negligent act or omission must have been committed with an utter disregard for the safety of others.~~ Culpable negligence is consciously doing an act or following a course of conduct that the defendant ~~must have known~~, knew or reasonably should have known, ~~was likely to cause~~ created a substantial and unjustifiable risk of death or great bodily injury.

Read in all cases.

~~However, the defendant cannot be guilty of manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.~~

The killing of a human being is excusable homicide under any one of the following three circumstances:

1. **When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or**

2. **When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or**

3. **When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.**

"Dangerous weapon" is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

The killing of a human being is a justified killing when: (*Read appropriate instruction(s) from chapter 776).*

There are three types of murder in Florida: first degree premeditated murder, second degree murder, and felony murder. *If the parties do not stipulate that the defendant's conduct was not murder, read instructions 7.2, 7.3, 7.4, 7.5, and 7.6, or refer the jurors to previously read murder instructions if manslaughter is being given as a lesser included offense.*

§ 782.07(2)-(4), Fla. Stat. Enhanced penalty if 2c alleged and proved. Give a, b, or c, as applicable.

If you find the defendant guilty of manslaughter, you must then determine whether the State has further proved beyond a reasonable doubt that:

a. (Victim) **was at the time [an elderly person] [a disabled adult] whose death was caused by the neglect of** (defendant), **a caregiver.**

b. (Victim) **was a child whose death was caused by the neglect of** (defendant)**, a caregiver.**

c. (Victim) **was at the time [an officer] [a firefighter] [an emergency medical technician] [a paramedic] who was at the time performing duties that were within the course of [his] [her] employment. The court now instructs you that** (official title of victim) **is [an officer] [a firefighter] [an emergency medical technician] [a paramedic].**

Definitions. Give if applicable.

Child means any person under the age of 18 years.

An elderly person means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age, organic brain damage, or physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

A disabled adult means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the persons ability to perform the normal activities of daily living.

"Facility" means any location providing day or residential care or treatment for elderly persons or disabled adults. The term "facility" may include, but is not limited to, any hospital, training center, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, group home, mental health treatment center, or continuing care community.

As applied to an Elderly Person or a Disabled Adult.

"Caregiver" means a person who has been entrusted with or has assumed responsibility for the care or the property of an elderly person or a disabled adult. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities.

As applied to a child.

A caregiver means a parent, adult household member, or other person responsible for a child's welfare.

§ 825.102(3)(a) or § 827.03(3)(a), Fla. Stat. Give 1 or 2 as applicable.

"Neglect of [a child"] [an elderly person"] [a disabled adult"] means:

1. **A caregiver's failure or omission to provide [a child] [an elderly person] [a disabled adult] with the care, supervision, and services necessary to maintain [a child's] [an elderly person's] [a disabled adult's] physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the [child] [elderly person] [disabled adult];**

or

2. **A caregiver's failure to make reasonable effort to protect [a child] [an elderly person] [a disabled adult] from abuse, neglect or exploitation by another person.**

Repeated conduct or a single incident or omission by a caregiver that results in, or could reasonably be expected to result in, a substantial risk of death of [a child] [an elderly person] [a disabled adult] may be considered in determining neglect.

Definitions. As applied to Designated Personnel.
§ 112.191 and § 633.35, Fla. Stat.

"Firefighter" means any full-time duly employed uniformed firefighter employed by an employer, whose primary duty is the prevention and extinguishing of fires, the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, who is certified by the Division of State Fire Marshal of the Department of Financial Services, who is a member of a duly constituted fire department of such employer or who is a volunteer firefighter.

§ 943.10(14), Fla. Stat.

"Officer" means any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer.

§ 401.23, Fla. Stat.

"Emergency Medical Technician" means a person who is certified by the Department of Health to perform basic life support.

§ 401.23, Fla. Stat.

"Paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support.

Lesser Included Offenses

MANSLAUGHTER - 782.07			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Vehicular homicide	782.071	7.9
	Vessel homicide	782.072	7.9
	(Nonhomicide lessers) Attempt	777.04(1)	5.1
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1
	Culpable negligence	784.05	8.9

Comment

~~In the event of any reinstruction on manslaughter, the instructions on justifiable and excusable homicide as previously given should be given at the same time. *Hedges v. State*, 172 So.2d 824 (Fla. 1965).~~

Florida recognizes other types of §782.07 manslaughters that require special jury instructions. For depraved mind murders done in a heat-of-passion, see *Palmore v. State*, 838 So. 2d 1222 (Fla. 1DCA 2003). For unnecessary killings involving the use of excessive force in self-defense but without a depraved mind, see *Pierce v. State*, 376 So. 2d 417 (Fla. 3d DCA1979). For mutual combat where both parties were at fault and where neither was more the aggressor than the other, see *Rodriguez v. State*, 443 So. 2d 286 (Fla. 3d DCA 1983). The killing of a human being by procurement is also manslaughter according to §782.07(1) Fla. Stat.

In appropriate cases, an instruction on transferred intent should be given.

~~Trial judges should carefully study~~ See *Eversley v. State*, 748 So.2d 963 (Fla. 1999), ~~in any manslaughter case in which causation is an issue to determine if~~ in cases where a special jury instruction on causation is needed.

To be found guilty of Aggravated Manslaughter, there is no statutory requirement that the defendant have knowledge of the classification of the victim; therefore, the schedule of lesser included offenses does not include Aggravated Battery on a Law Enforcement Officer, Aggravated Assault on a Law Enforcement Officer, Battery on a Law Enforcement Officer, or Assault on a Law Enforcement Officer. Those offenses have a different definition of officer. Additionally, the excluded lesser included offenses require proof of knowing that the commission of the offense was on an officer who was engaged in the lawful performance of a legal duty.

This instruction was adopted in 1981 and amended in 1985 [477 So.2d 985], 1992 [603 So.2d 1175], 1994 [636 So.2d 502], 2005 [911 So.2d 1220], 2006 [946 So.2d 1061] ~~and~~ 2008, and 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND FONT

Undersigned counsel certifies this comment has been typed using Times New Roman 12 and that an accurate copy has been sent by U.S. Mail to Judge Lisa T. Munyon, Committee Chair, c/o Les Garringer, Office of the General Counsel, 500 S. Duval Street, Tallahassee, Florida, 32399-1925 this 15th day of May, 2010.

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Bart Schneider

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES – INSTRUCTION 7.7 **CASE NO.: SC2010-113**

Undersigned counsel requests to participate in the oral argument if the Court schedules one.

Respectfully submitted,

_____

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