

Supreme Court of Florida

No. SC10-636

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES—REPORT NO. 2010-03.

[October 7, 2010]

PER CURIAM.

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases (Committee) has submitted a report seeking amendments to a number of standard criminal jury instructions pertaining to prostitution and lewd or lascivious conduct. We have jurisdiction. See art. V, § 2(a), Fla. Const.

The Committee's report¹ is in response to the Court's request that the Committee review the instructions on sexual offenses and consider "whether a

1. The Committee proposes amendments to the following instructions: 11.8 – Committing Unnatural and Lascivious Act; 11.9 – Exposure of Sexual Organs (in a Vulgar or Indecent Manner); 11.10 – Lewd, Lascivious, Indecent Assault or Act upon or in the Presence of Child; Sexual Battery; 11.11 – Lewd or Lascivious Offenses Committed upon or in the Presence of an Elderly Person or Disabled Person; 23.1 – Maintaining a Place of Prostitution, Lewdness, or Assignment; 23.2 – Soliciting for the Purpose of Prostitution or a Lewd or Indecent Act; 23.3 – Receiving for the Purpose of Prostitution, Lewdness or Assignment; 23.4 – Transporting for the Purpose of Prostitution, Lewdness or Assignment;

uniform definition for ‘lewd and lascivious’ is needed and whether the term ‘sensual intent’ or ‘sensual intention’ should be included in that definition.” In re Standard Jury Instructions in Criminal Cases—Report No. 2008-04, 995 So. 2d 476, 477 n.1 (Fla. 2008) (amendments to instructions on sexual battery and prostitution); see also In re Standard Jury Instructions in Criminal Cases—Report No. 2008-02, 998 So. 2d 1138, 1139 n.2 (Fla. 2008) (amendments to instructions on lewd and lascivious molestation, conduct, and exhibition). The Committee’s proposals include the following: amending the definition of “lascivious” in instructions 11.8 and 11.9; adding the definition of “lewd and lascivious” to instruction 11.11; correcting instruction 23.2 to include the definition for “lewdness” previously authorized by the Court but inadvertently published as struck-through, see In re Standard Jury Instructions in Criminal Cases—Report No. 2008-04, 995 So. 2d at 476 n.1, 483; and adding the definition of “procure” to instruction 23.6.²

The Committee published its proposals in the February 1, 2010, edition of The Florida Bar News. No comments were received. Having considered the Committee’s report, we hereby authorize the publication and use of the instructions

23.5 – Offering to Commit, Committing, or Engaging in Prostitution, Lewdness, or Assignment; 23.6 – Soliciting for Prostitution, Lewdness, or Assignment; and 23.7 – Entering for the Purpose of Prostitution, Lewdness, or Assignment.

2. In addition, a number of the Committee’s proposals include updating the word choice in favor of more “plain” language use.

as they appear in the attached appendix.³ In authorizing the publication and use of these instructions, we express no opinion on their correctness and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions nor contesting the legal correctness of the instructions. We further caution all interested parties that any comments associated with the instructions reflect only the opinion of the Committee and are not necessarily indicative of the views of this Court as to their correctness or applicability. New language is indicated by underlining and deleted language is indicated by struck-through type. The instructions as set forth in the appendix shall be effective when this opinion becomes final.

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

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3. The amendments as reflected in the appendix are to the Criminal Jury Instructions as they appear on the Court's website at www.floridasupremecourt.org/jury_instructions/instructions.shtml. We recognize that there may be minor discrepancies between the instructions as they appear on the website and the published versions of the instructions. Any discrepancies as to instructions authorized for publication and use after October 25, 2007, should be resolved by reference to the published opinion of this Court authorizing the instruction.

Judge Lisa T. Munyon, Chair, Supreme Court Committee on Standard Jury
Instructions in Criminal Cases, Ninth Judicial Circuit, Orlando, Florida,

for Petitioner

APPENDIX

11.8 COMMITTING UNNATURAL AND LASCIVIOUS ACT

§ 800.02, Fla.Stat.

To prove the crime of Committing an Unnatural and Lascivious Act, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) (copy from charge) **with** (person named in charge).
2. **The act was unnatural and lascivious.**

Definitions

"Unnatural" means not in accordance with nature or with normal feelings or behavior.

"Lascivious" means a wicked, lustful or unchaste, licentious, or sensual intent on the part of the person doing an act.~~normally tending to excite a desire for sexual satisfaction.~~

Lesser Included Offenses

UNNATURAL AND LASCIVIOUS ACT — 800.02			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and revised in 2010.

**11.9 EXPOSURE OF SEXUAL ORGANS
(IN A VULGAR OR INDECENT MANNER)**

§ 800.03, Fla.Stat.

To prove the crime of [Indecent Exposure] [or] [Nakedness], the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant)

**[exposed or exhibited [his] [her] sexual organs].
[was naked].**

2. [He] [She] [did so] [was naked]

**[in a public place].
[on the private premises of another].
[so near the private premises of another as to be seen from
those private premises].**

3. (Defendant) intended the [exposure or exhibition of [his] [her] sexual organs] [or] [nakedness] to be in a vulgar, indecent, lewd, or lascivious manner.

4. The [exposure or exhibition of the sexual organs] [or] [nakedness] was in a vulgar, indecent, lewd, or lascivious manner.

Proof of mere nudity or exposure is not sufficient to sustain a conviction.

Definitions.

As used in regard to this offense the words "vulgar," "indecent," "lewd," and "lascivious" mean the same thing. They mean ~~an unlawful indulgence in lust or~~ a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing the act.

Acts are not vulgar, indecent, lewd, or lascivious unless such acts cause offense to one or more persons viewing those acts or unless the acts substantially intrude upon the rights of others.

A "public place" is any place intended or designed to be frequented or resorted to by the public.

Lesser Included Offenses

EXPOSURE OF SEXUAL ORGANS — 800.03			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Unnatural and lascivious act	800.02	11.8

Comment

This instruction was adopted in 1981 and ~~was~~ amended in 1997 [697 So. 2d 84] and 2010.

**11.10 LEWD, LASCIVIOUS, INDECENT ASSAULT OR ACT UPON OR
IN THE PRESENCE OF CHILD; SEXUAL BATTERY**

§ 800.04, Fla. Stat.

Give only for those offenses committed ~~on or~~ before October 1, 1999.

To prove the crime of (crime charged), the State must prove the following two elements beyond a reasonable doubt:

1. (Victim) was under the age of 16 years.

Give as applicable.

2. (Defendant)

a. [made an assault upon (victim) in a lewd, lascivious, or indecent manner].

[handled or fondled (victim) in a lewd, lascivious, or indecent manner].

b. (Defendant) committed upon (victim) or forced or enticed (victim) to commit

[actual or simulated sexual intercourse].

[deviate sexual intercourse].

[sexual bestiality].

[masturbation].

[sadomasochistic abuse].

[actual lewd exhibition of the genitals].

[any act or conduct which simulated that sexual battery was being or would be committed on (victim)].

c. (Defendant)

[committed an act [upon] [with] (victim) in which the sexual organ of the [(defendant)] [(victim)] penetrated or had union with the [anus] [vagina] [mouth] of [(victim)] [(defendant)]].

[committed an act upon (victim) in which the [anus] [vagina] of (victim) was penetrated by an object].

d. (Defendant) knowingly committed a lewd or lascivious act in the presence of (victim).

Definitions.

Give in all cases.

Neither the victim's lack of chastity nor the victim's consent is a defense to the crime charged.

Give when § 800.04(1), Fla. Stat., is charged.

As used in regard to this offense the words "lewd," "lascivious," and "indecent" mean the same thing. They mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

Give when assault is charged under § 800.04(1), Fla. Stat.

An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

Give when § 800.04(4), Fla. Stat., is charged.

As used in regard to this offense the words "lewd" and "lascivious" mean the same thing and mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

"In the presence of" means that (victim) saw, heard, or otherwise sensed that the act was taking place.

See State v. Werner, 609 So.2d 585 (Fla. 1992).

Give applicable definitions from § 847.001, Fla. Stat., when § 800.04(2), Fla. Stat., is charged.

There is no need to make reference to the words "without committing the crime of sexual battery" because this refers to forcible sexual relations. Lanier v. State, 443 So.2d 178 (Fla. 3d DCA 1983); Chapters 84–86, Laws of Florida.

Lesser Included Offenses

LEWD, LASCIVIOUS, OR INDECENT ASSAULT OR ACT UPON OR IN PRESENCE OF CHILD — 800.04			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1
	Battery	784.03	8.3
	Unnatural and lascivious act	800.02	11.8

Comment

This instruction was adopted in 1981 and was amended in 1985 [477 So. 2d 985], 1987 [508 So. 2d 1221], 1992 [603 So. 2d 1175], 1995 [657 So. 2d 1152], and 2008 [976 So 2d 1081], and 2010.

11.11 LEWD OR LASCIVIOUS OFFENSES COMMITTED UPON OR IN THE PRESENCE OF AN ELDERLY PERSON OR DISABLED PERSON
§ 825.1025, Fla. Stat.

To prove the crime of [Lewd or Lascivious Battery] [Lewd or Lascivious Molestation] [Lewd or Lascivious Exhibition] upon or in the Presence of an Elderly Person or Disabled Person, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) was [an elderly] [a disabled] person.

Give 2a, 2b, or 2c as applicable.

2. a. (Defendant) committed lewd and lascivious battery by encouraging, forcing, or enticing (victim) to engage in [sodomasochistic abuse] [sexual bestiality] [prostitution] [any act involving sexual activity].

b. (Defendant) committed lewd and lascivious molestation of (victim) by intentionally touching in a lewd and lascivious manner [his] [her] [breasts] [genitals] [genital area] [buttocks] [clothing covering [his] [her] [breasts] [genitals] [genital area] [buttocks]].

c. (Defendant) committed lewd and lascivious exhibition to (victim) by [intentionally masturbating] [intentionally exposing [his] [her] genitals in a lascivious manner] [committing any other lewd or lascivious act not involving physical or sexual contact with (victim) including but not limited to [sodomasochistic abuse] [sexual bestiality] [simulated any act involving sexual activity]].

3. (Defendant) knew or reasonably should have known that the (victim) lacked the capacity to consent or failed to give consent.

Definitions. Give as applicable

The words “lewd” and “lascivious” mean the same thing and mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

If 2a or 2c is alleged, define the act charged from § 847.001, Fla. Stat.

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

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

“Lacks capacity to consent” means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person’s or disabled adult’s person or property.

Lesser Included Offenses

11.14 LEWD OR LASCIVIOUS OFFENSES COMMITTED UPON OR IN THE PRESENCE OF AN ELDERLY PERSON OR DISABLED PERSON – 825.1025			
CATEGORY ONE	CATEGORY TWO	FLA.STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1
	Battery	784.03	8.3
	Unnatural and lascivious act	800.02	11.8
	Exposure of sexual organs	800.03	11.9

Comment

This instruction was adopted in 2007 [~~SC07-325, Corrected Opinion, August 30, 2007~~965 So. 2d 811] and amended in 2010. *See Jennings v. State*, 920 So. 2d 32 (Fla. 2d DCA 2005).

**23.1 MAINTAINING A PLACE OF
PROSTITUTION, LEWDNESS, OR ASSIGNATION**

§ 796.07(2)(a), Fla. Stat.

To prove the crime of Maintaining a Place of [Prostitution] [Lewdness] [Assignment], the State must prove the following element beyond a reasonable doubt:

(Defendant) [established] [owned] [maintained] [operated] any [place] [structure] [building] [conveyance] for the purpose of [lewdness] [assignment] [prostitution].

Definitions.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

“Lewdness” is any indecent or obscene act. “Indecent” ~~connotes~~means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

“Assignment” means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall.

A “conveyance” means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2008 and 2010.

**23.2 SOLICITING FOR THE PURPOSE OF PROSTITUTION
OR A LEWD OR INDECENT ACT**

§ 796.07(2)(b), Fla. Stat.

To prove the crime of Soliciting for the Purpose of [Prostitution] [Any Lewd or Indecent Act], the State must prove the following element beyond a reasonable doubt:

(Defendant) [offered] [offered to secure] [agreed to secure] another person for the purpose of [prostitution] [any lewd or indecent act].

Definitions.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

A “lewd act” is any indecent or obscene act. “Indecent” means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

~~“Indecent” connotes wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.~~

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2008 and 2010.

23.3 RECEIVING FOR THE PURPOSE OF PROSTITUTION, LEWDNESS OR ASSIGNATION

§ 796.07(2)(c), Fla. Stat.

To prove the crime of Receiving for the Purpose of [Prostitution] [Lewdness] [Assignment], the State must prove the following element beyond a reasonable doubt:

Give element 1 or element 2 as applicable.

1. (Defendant) [received] [offered to receive] [agreed to receive] a person into a [place] [structure] [building] [conveyance] for the purpose of [prostitution] [lewdness] [assignment].
2. (Defendant) permitted a person to remain in a [place] [structure] [building] [conveyance] for the purpose of [prostitution] [lewdness] [assignment].

Definitions.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

“Lewdness” is any indecent or obscene act. “Indecent” ~~connotes~~means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

“Assignment” includes the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall.

A “conveyance” means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2008 and 2010.

**23. 4 TRANSPORTING FOR THE PURPOSE OF PROSTITUTION,
LEWDNESS OR ASSIGNATION**

§ 796.07(2)(d), Fla. Stat.

To prove the crime of Transporting for the Purpose of [Prostitution] [Lewdness] [Assignment], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) [directed] [took] [transported] [offered or agreed to [direct] [take] [transport]] a person to [a place] [a structure] [a building] [another person].
2. At the time, (defendant) knew or had reasonable cause to believe that such [directing] [taking] [transporting] was for the purpose of [prostitution] [lewdness] [assignment].

Definitions.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

“Lewdness” is any indecent or obscene act. “Indecent” ~~connotes~~means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

“Assignment” includes the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2008 and 2010.

**23.5 OFFERING TO COMMIT, COMMITTING, OR ENGAGING IN
PROSTITUTION, LEWDNESS, OR ASSIGNATION**

§ 796.07(2)(e), Fla. Stat.

To prove the crime of Offering to Commit, Committing, or Engaging in [Prostitution] [Lewdness] [Assignment], the State must prove the following element beyond a reasonable doubt:

(Defendant) [offered to commit] [committed] [engaged in] [prostitution] [lewdness] [assignment].

Definitions.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

“Lewdness” is any indecent or obscene act. “Indecent” ~~connotes~~means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

“Assignment” includes the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2008 and 2010.

**23.6 SOLICITING FOR PROSTITUTION, LEWDNESS,
OR ASSIGNATION**

§ 796.07(2)(f), Fla. Stat.

To prove the crime of Soliciting for [Prostitution] [Lewdness] [Assignment], the State must prove the following element beyond a reasonable doubt:

(Defendant) [solicited] [induced] [enticed] [procured] another to commit [prostitution] [lewdness] [assignment].

Definitions.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

“Lewdness” is any indecent or obscene act. “Indecent” ~~connotes~~means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

“Assignment” includes the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

To “solicit” means to ask earnestly or to try to induce the person solicited to do the thing solicited.

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

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2008 and 2010.

**23.7 ENTERING FOR THE PURPOSE OF PROSTITUTION,
LEWDNESS, OR ASSIGNATION**

§ 796.07(2)(g), Fla. Stat.

To prove the crime of Entering for the Purpose of [Prostitution] [Lewdness] [Assignment], the State must prove the following element beyond a reasonable doubt:

(Defendant) [resided in] [entered] [remained in] a [place] [structure] [building] [conveyance] for the purpose of [prostitution] [lewdness] [assignment].

Definitions.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

“Lewdness” is any indecent or obscene act. “Indecent” ~~connotes~~means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

“Assignment” includes the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall.

A “conveyance” means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2008 and 2010.