

IN THE SUPREME COURT OF FLORIDA

IN RE:

**STANDARD JURY INSTRUCTIONS
CRIMINAL CASES-
REPORT 2011- 01**

CASE NUMBER: SC11-

To the Chief Justice and Justices of the Supreme Court of Florida:

This report, proposing amended instructions to the Florida Standard Jury Instructions in Criminal Cases, is filed pursuant to Article V, section 2(a), Florida Constitution.

	<u>Instruction #</u>	<u>Topic</u>
Proposal 1	28.6-28.85	Fleeings
Proposal 2	3.3(a)-(c), (e) and (f)	Aggravators

The proposals are provided in Appendix A. Words to be deleted are shown with strike-through marks; words to be added are underlined.

Proposal 1 was published in the *Florida Bar News* on January 15, 2011. No comments were received.

Proposal 2 was published in the *Florida Bar News* on January 1, 2011. No comments were received.

Explanation of Proposals

Proposal 1- All Fleeings

As a result of *Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010), the committee added “Disobeying a Police Officer” to the Category 2 box of lesser-included offenses for all of the Fleeing instructions.

For 28.6 and as a result of *Prescott v. State*, 23 So.3d 1251 (Fla. 4th DCA 2009), the committee replaced “directed” with “ordered” – which is the word used in Fla. Stat. 316.1935(1).

For 28.7, 28.8, and 28.81, the committee changed the wording of element #2 to remedy the problem identified in *Anderson v. State*, 780 So. 2d 1012 (Fla. 4th

DCA 2001) and *Erskine v. State*, 23 So. 3d 1207(Fla. 3d 2009). In those cases, the courts found that it was error to instruct that a defendant could be guilty if he or she willfully fled in a vehicle after having stopped the vehicle. That language is not in Fla. Stat. 316.1935(2); 316.1935(3)(a); or 316. 1935(3)(b). Although the proposed element #2 does not precisely track the language of these statutes, the committee thought the proposal was the cleanest way to fix the *Anderson/Erskine* issue.

One committee member did not think these instructions should state that the fleeing had to be “in a vehicle” because none of the Fla. Stat. 316.1935 statutes require the fleeing to be in a vehicle. The rest of the committee felt otherwise.

All of the Fleeing instructions were published in *The Florida Bar News* on January 15, 2011. There were no comments; they passed by a vote of 12-0.

Proposal 2 – Aggravators 3.3(a)-(c), (e) and (f)

For 3.3(a), the committee put in the appropriate burden of persuasion, a definition of “firearm” and the word “personally” so that the instruction is clear that a person cannot be guilty of the firearm aggravator as a principal. For 3.3(b), the committee added the appropriate burden of persuasion and the word “personally.” For 3.3(c) and (e), the burden of persuasion was added to the instruction. For 3.3(f), the instruction was updated to include the protected class of the homeless, which was added to Fla. Stat. 775.085 in 2010. All of the Aggravator proposals were published in the *Florida Bar News* on January 1, 2011. No comments were received and they passed by a vote of 12-0.

Respectfully submitted this ____ day of
March, 2011.

The Honorable Samantha L. Ward
Thirteenth Judicial Circuit
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
800 East Twiggs Street
Tampa, Florida 33602
Florida Bar Number 862207

CERTIFICATE OF FONT SIZE

I hereby certify that this report 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).

THE HONORABLE SAMANTHA WARD
Chair, Committee on Standard Jury
Instructions in Criminal Cases
Florida Bar Number 862207