

Supreme Court of Florida

No. SC11-463

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES – REPORT 2011-02.

[October 13, 2011]

PER CURIAM.

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases (Committee) has filed a report in which it proposes amending standard criminal jury instruction 16.3, Child Abuse, and asks the Court to authorize the amended instruction for publication and use. We have jurisdiction. See art. V, § 2(a), Fla. Const.

The Committee proposes amending instruction 16.3 to add the following: (1) that the defendant “knowingly or willfully” committed the abuse; (2) the parental affirmative defense;¹ (3) language putting the trial court on notice that it is

1. See *Raford v. State*, 828 So. 2d 1012, 1020 (Fla. 2002) (recognizing that where a parent is charged with the crime of child abuse, the parent “may assert as an affirmative defense his or her parental right to administer ‘reasonable’ or ‘nonexcessive’ corporal punishment”).

unclear who bears the burden of persuasion regarding the affirmative defense; (4) the statutory definition of “mental injury”; and (5) the crimes of “contributing to the dependency of a minor” and “battery” to the list of lesser-included offenses to child abuse. A Minority Report was also filed, which provided the Court with alternative options for the instruction.

The Committee published its final proposal in the January 15, 2011, edition of The Florida Bar News.² Upon consideration of the proposals and the comments received by the Committee, we hereby authorize for publication and use instruction 16.3 as amended in proposals 1, 2, 3, and 5.

The Committee’s fourth proposal is to amend the instruction to include only the statutory definition of “mental injury,” which is found in section 39.01(42), Florida Statutes (2010). The Minority Report, by contrast, urges that the statutory definitions from chapter 39, Florida Statutes, for “abuse,” “harm,” “physical injury,” “mental injury,” and “legal custody”³ should be added to the instruction,

2. The Committee initially published a proposal in the June 15, 2010, edition of The Florida Bar News. Three comments were received. The Committee published a revised proposal on November 1, 2010, and one comment was received. In response to that comment, the Committee again revised the proposal, and on January 15, 2011, the Committee published the proposal now before the Court.

3. The Minority Report’s suggestion also includes a note directing the trial judge to section 39.01(49), Florida Statutes, when the definition of “parent” is relevant.

based on this Court's decision in Dufresne v. State, 826 So. 2d 272 (Fla. 2002).⁴

After consideration of the Committee's proposal and the Minority Report's alternative suggestion as to this issue, we revise instruction 16.3 to include the chapter 39 statutory definitions for "abuse," "harm," "physical injury," "mental injury," and "legal custody" as suggested in the Minority Report.

Revised instruction 16.3, which appears in the attached appendix, is authorized for publication and use.⁵ We express no opinion on the correctness of the instruction and remind all interested parties that this authorization forecloses neither requesting an additional or alternative instruction nor contesting the legal correctness of the instruction. We further caution all interested parties that any notes and comments associated with the instruction reflect only the opinion of the Committee and are not necessarily indicative of the views of this Court as to its correctness or applicability. New language is indicated by underlining and deleted

4. According to the Minority Report, Dufresne recognized that the provisions of chapter 39 and section 827.03, Florida Statutes, should be read in proper relation to one another. Therefore, the minority believes that several chapter 39 definitions should be used in the jury instruction for section 827.03.

5. 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.

language is indicated by struck-through type. The instruction as set forth in the appendix shall be effective when this opinion becomes final.

It is so ordered.

PARIENTE, LEWIS, QUINCE, LABARGA, and PERRY, JJ., concur.
POLSTON, J., concurs in part and dissents in part with an opinion, in which
CANADY, C.J., concurs.

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

POLSTON, J., concurring in part and dissenting in part.

I concur with the majority's authorization for publication and use of instruction 16.3 as amended in proposals 1 and 5. Because of disagreements between a majority of the Committee and a minority of its members and various other commentators, as described by the Minority Report and comments filed with the Court, I respectfully dissent from the majority's rulings on proposals 2, 3, and 4.

CANADY, C.J., concurs.

Original Proceeding – Supreme Court Committee on Standard Jury Instructions in Criminal Cases

Judge Samantha L. Ward, Chair, Supreme Court Committee on Standard Jury Instructions in Criminal Cases, Thirteenth Judicial Circuit, Tampa, Florida,

for Petitioner

APPENDIX

16.3 CHILD ABUSE

§ 827.03(1), Fla. Stat.

To prove the crime of Child Abuse, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly or willfully:**

Give as applicable.

- a. **intentionally inflicted [physical][or] [mental] injury upon (victim).**
- b. **committed an intentional act that could reasonably be expected to result in [physical] [or] [mental] injury to (victim).**
- c. **actively encouraged another person to commit an act that resulted in or could reasonably have been expected to result in [physical] [or] [mental] injury to (victim).**

2. (Victim) **was under the age of 18 years.**

Parental affirmative defense. Give if applicable. See Raford v. State, 828 So. 2d 1012 (Fla. 2002).

§ 827.03 Fla. Stat. and case law are silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on affirmative defenses by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinions in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is not a crime for [a parent] [a person who is acting as the lawful guardian] of a child to impose reasonable physical discipline on a child for misbehavior under the circumstances even though physical injury resulted

from the discipline. (Insert appropriate burden of persuasion to appropriate party.)

Definitions, give as applicable.

§ 39.01(2), Florida Statutes.

“Abuse” means any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. [Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.]

§ 39.01(32), Florida Statutes.

“Harm” means (insert specific allegation included from this subsection of the statute charged in the indictment or information).

§ 39.01(56), Florida Statutes.

“Physical injury” means death, permanent or temporary disfigurement, or impairment of any bodily part.

§ 39.01(42), Florida Statutes.

“Mental injury” means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior.

Note to Judge. See § 39.01(49), Florida Statutes, if the defendant’s status as a parent is at issue.

§ 39.01(35), Florida Statutes. (Give only when the guardian is not a parent).

“Legal custody” means a legal status created by a court which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide [him] [her] with food, shelter, education and ordinary medical, dental, psychiatric, and psychological care.

Lesser Included Offenses

CHILD ABUSE — 827.03(1)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	<u>Contributing to the dependency of a minor</u>	<u>827.04(1)</u>	<u>16.4</u>
	<u>Battery; only under certain circumstances. See <i>Kama v. State</i>, 507 So. 2d 154 (Fla. 1st DCA 1987)</u>	<u>784.03</u>	<u>8.3</u>
	Attempt	777.04(1)	5.1

Comment

See *Raford v. State*, 828 So. 2d 1012 (Fla. 2002), and *Dufresne v. State*, 826 So. 2d 272 (Fla. 2002), for authority to incorporate definitions from Chapter 39, Florida Statutes.

This instruction was adopted in 1981 and amended in 1985, 1989, and 2002, and 2011.