

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY
INSTRUCTIONS CRIMINAL CASES
REPORT 2017-10

CASE NUMBER: SC17-2263

/

RESPONSE TO COMMENTS

The Standard Jury Instruction Committee in Criminal Cases, (“Committee”), by and through the undersigned Chair of the Committee, hereby files this response to comments filed by the Florida Public Defender’s Association (“FPDA”).

Instruction 10.1- Carrying a Concealed Firearm or Weapon

The FPDA comment contained the argument that the Legislature intended to exclude antique firearms from the definition of a firearm unless the antique firearm was used in another crime, not the weapons offense itself. The FPDA therefore suggested the Committee change “a crime” to “another crime” for the explanation of antique firearm (within the definition of “firearm”), so that the relevant sentence would read: **[The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of another crime.]**

The Committee unanimously agreed with the FPDA for purposes of Instruction 10.1 and therefore the Committee is filing an Amended Appendix A along with this response.

Separately, the Committee realized there was a mistake in the “*State of emergency*” section of the Instruction 10.1 that was originally filed. That proposal stated, “**while in the act of evacuating a mandatory evacuation order during a state of emergency...**”

This sentence is obviously missing a few words. Accordingly, the Committee voted unanimously to revise the “*State of emergency*” section for Instruction 10.1 as follows:

It is a defense to the charge of Unlicensed Carrying a Concealed [Weapon] [Firearm] if a person [carries a concealed weapon] [who may lawfully possess a firearm, carries a concealed firearm] on or about [his] [her] person, while in the act of evacuating during a mandatory evacuation order issued during a state of emergency that had been declared by [the governor

RECEIVED, 03/22/2018 03:03:25 PM, Clerk, Supreme Court

under Chapter 252 of Florida Statutes] [a local authority under Chapter 870 of Florida Statutes].

....

If burden of persuasion is on the defendant:

If you find that defendant proved (insert appropriate burden of persuasion) that, at the time of the carrying, [he] [she] was in the act of evacuating during a mandatory evacuation order issued during a state of emergency that had been declared by [the governor under Chapter 252 of Florida Statutes] [a local authority under Chapter 870 of Florida Statutes], you should find [him] [her] not guilty.

If the defendant did not prove (insert appropriate burden of persuasion) that, at the time of the carrying, [he] [she] was in the act of evacuating during a mandatory evacuation order issued during a state of emergency that had been declared by [the governor under Chapter 252 of Florida Statutes] [a local authority under Chapter 870 of Florida Statutes], you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.

If burden of persuasion is on the State:

If you find that the State proved (insert appropriate burden of persuasion) that, at the time of the carrying, the defendant was not in the act of evacuating during a mandatory evacuation order issued during a state of emergency that had been declared by [the governor under Chapter 252 of Florida Statutes] [a local authority under Chapter 870 of Florida Statutes], you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.

If you find that the State failed to prove (insert appropriate burden of persuasion) that, at the time of the carrying, the defendant was not in the act of evacuating during a mandatory evacuation order issued during a state of emergency that had been declared by [the governor under Chapter 252 of Florida Statutes] [a local authority under Chapter 870 of Florida Statutes], you should find [him] [her] not guilty.

There were no other changes made to the proposal that was filed for Instruction 10.1

Instruction 10.5 – Improper Exhibition of a Firearm or Weapon

The FPDA comment regarding antique firearms is relevant to this proposal also. For Instruction 10.5, there were a minority of members (3) who thought the courts would (or should) not treat a threatening exhibition of a firearm in the same manner as a firearm offense that consisted solely of merely carrying or merely possessing a firearm. Nevertheless, the majority of the Committee disagreed and, therefore, amended the explanation of an antique firearm in the same manner as was done in Instruction 10.1.

Other than changing “**a crime**” to “**another crime**,” there were no other changes made to the proposal that was originally filed. The Committee’s final proposal for Instruction 10.5 is in Amended Appendix A.

Instruction 10.6(b) – Driver/Owner Knowingly Directing Another to Discharge a Firearm from the Vehicle

The FPDA comment regarding antique firearms is relevant to this proposal also. For Instruction 10.6(b), the same minority of members thought the courts would (or should) not treat a discharge of a firearm in the same manner as a firearm offense that consisted solely of merely carrying or merely possessing a firearm. Nevertheless, the majority of the Committee disagreed and, therefore, amended the explanation of an antique firearm in the same manner as was done in Instructions 10.1 and 10.5.

In addition to changing “**a crime**” to “**another crime**,” the Committee took the opportunity to update the Comment section. The vote was unanimous that instead of “As of November 2017...,” the Court use: “As of February 2018 ...” because there still is no case law that decides whether the definitions of “driver” and “vehicle” in § 316.003, Fla. Stat., should be applied to the crime in § 790.15(3), Fla. Stat.

Other than those two changes, the Committee made no other amendments to the originally filed proposal. The Committee’s final proposal for Instruction 10.6(b) is in Amended Appendix A.

Instruction 10.6(c) – Recreational Discharge of a Firearm Outdoors in a Residential Area

The FPDA commented that there is ambiguity about how far the *mens rea* in § 790.15(4), Fla. Stat., travels. That is, does “knows or reasonably should know” apply only to “primarily residential in area?” Or does the *mens rea* of “knows or reasonably should know” also apply to “residential density of one or more dwelling units per acre?”

The Committee was unsure of the proper interpretation of the statute and did not think it appropriate to create law in a standard jury instruction. The Committee, therefore, voted unanimously to wait for the case law to develop. The Committee asks the Court to withdraw the proposal for Instruction 10.6(c) from SC17-2263. (Amended Appendix A does not contain a proposal for an instruction numbered 10.6(c)).

Instruction 13.5 – Trespass on School Property with a Firearm or Weapon

The FPDA’s comment about antique firearms also applies to Instruction 13.5. For this instruction, however, only one member of the Committee agreed with the FPDA. That member argued that one cannot violate the firearm part of § 810.095(1), Fla. Stat., without having a firearm and, therefore, the Committee should treat the antique firearm portion of this instruction in the same manner as the instructions for Carrying a Concealed Firearm or Improper Exhibition of a Firearm.

The majority of the Committee voted to retain “[...**unless the antique firearm is used in the commission of a crime.**]” The majority thought that because one could commit the underlying crime of trespass, one could be convicted of trespassing on school property with an antique firearm. In other words, the majority thought this crime would be treated by the courts like robbery with an antique firearm. Accordingly, there are no changes in Amended Appendix A for Instruction 13.5 from what was originally proposed.

WHEREFORE, the Committee requests the Court consider the proposals in Amended Appendix A, which is being filed along with this response.

Respectfully submitted this 22nd day of
March, 2018.

s/ Judge F. Rand Wallis

The Honorable F. Rand Wallis
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal
Cases
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
Florida Bar Number: 980821
WallisR@flcourts.org

CERTIFICATE OF SERVICE AND FONT COMPLIANCE

I hereby certify that this Response to Comments and Amended Appendix A 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) and that a copy of both the response and Amended Appendix A has been sent through the portal to Attorney Luke Newman at lukewallmanlaw.com; to Attorney William Ponall at ponallb@criminaldefenselaw.com; and to Attorney John Eddy Morrison at Jjmorrisson@pdmiami.com; this 22nd day of March, 2018.

s/ Judge F. Rand Wallis
The Honorable F. Rand Wallis
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal
Cases
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
Florida Bar Number: 980821
WallisR@flcourts.org