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IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY INSTRUCTIONS CRIMINAL CASES REPORT 2019-10 **CASE NO.: SC19-**

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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.

	Instruction #	**Topic**
Proposal 1	**28.6**	**Fleeing to Elude a LEO**
Proposal 2	**28.7**	**Fleeing to Elude a LEO (Siren & Lights Activated)**
Proposal 3	**28.8**	**Fleeing to Elude a LEO (Siren & Lights Activated with High Speed or Reckless Driving)**
Proposal 4	**28.8(a)**	**Fleeing to Elude a LEO (Siren & Lights Activated with High Speed or Reckless Driving Causing Serious Bodily Injury or Death)**

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

The proposals were published in the August 1, 2019 issue of the *Bar News*. One comment was received from the Florida Public Defender Association ("FPDA"). The comment is in Appendix B (and contains comments on proposals that are not a part of this report).

Former chair Judge Joseph Bulone contacted the Committee because he knew of a case where a defendant was charged with fleeing from the police while on a moped. A moped is a "vehicle" pursuant to § 316.003(102), Fla. Stat., but a moped is not a "motor vehicle" pursuant to § 316.003(43), Fla. Stat. The problem is that the fleeing statute, § 316.1935, Fla. Stat., refers to a vehicle, but the

definition of "operator" in the existing standard fleeing instructions, which is copied from § 316.003(50), Fla. Stat., refers to a "motor vehicle."

The Committee considered two options: 1) delete the entire definition of "operator" from the instructions that cover §§ 316.1935(1), 316.135(2), and 316.1935(3), Fla. Stats.; or 2) retain the definition of "operator" but put brackets around the word "motor" within that definition.

The vote was unanimous to delete the entire definition of "operator." The Committee was persuaded by the idea that the Legislature must not have wanted the Chapter 316 definition of "operator" to apply to the fleeing statutes because they would not have used "vehicle" in the elements of the crime but then limited the crime, via a definition at the beginning of Chapter 316, to those operating a "motor vehicle." Because the definition of "operator" did not fit the elements of a fleeing crime, the Committee did not feel comfortable changing the Chapter 316 definition of "operator" by adding brackets around one word in the Legislature's definition.

The proposals were published and the FPDA commented. The FPDA contends that juries need instruction on what it means to "operate" a vehicle. No one on the Committee agreed. All members thought the meaning of "operating a vehicle" in the context of a fleeing trial would be obvious and self-explanatory. Upon post-publication review, the Committee updated statutory cites to the definitions of "street or highway" and "vehicle." The vote remained unanimous to delete the entire definition of "operator" in the four fleeing instructions in Appendix A.

Respectfully submitted this 15th day of October, 2019.

s/ Judge F. Rand Wallis_____
The Honorable F. Rand Wallis
Chair, Supreme Court Committee on
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CERTIFICATE OF SERVICE AND FONT COMPLIANCE

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) and that a copy of the report and appendices have been emailed through the portal to Attorney Logan Mohs, for the Florida Public Defender Association, at lmohs@pd15.state.fl.us, this 15th day of October, 2019.

s/ Judge F. Rand Wallis
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