

IN THE SUPREME COURT OF FLORIDA

**IN RE:
STANDARD JURY INSTRUCTIONS
IN CRIMINAL CASES-
REPORT 2009-03**

CASE NO.

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

This report regarding a proposed amendment to the Florida Standard Jury Instructions in Criminal Cases on the Supreme Court's website at http://www.floridasupremecourt.org/jury_instructions.shtml is filed pursuant to Article V, section 2(a), Florida Constitution. The committee proposes the following amended criminal jury instruction.

**Proposal 1 28.1(a) Driving under the Influence Causing
Property Damage or Injury**

The proposed amended instruction can be found in legislative format at Appendix A. The amended instruction shows underlining. The proposal has not been published in *The Florida Bar News* for comment.

Explanation of Proposals

**Proposal 1 28.1(a) Driving under the Influence Causing
Property Damage or Injury**

Instruction 28.1(a) was approved by the Court in Case No. SC08-2431, on February 26, 2009. The instruction was part of a series of instructions that addressed driving and boating under the influence offenses. The instruction had been approved by the committee at the July 18, 2008 meeting. At that meeting, the following language was approved by the committee:

3. If you find from the evidence that while driving or in actual physical control of a motor vehicle, the defendant had a blood or breath-alcohol level of .08 or more, that evidence would be sufficient by itself to establish that the

defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. But this evidence may be contradicted or rebutted by other evidence demonstrating that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

This language is derived from s. 316.1934, Florida Statutes (2009), and has appeared in the standard jury instructions for over twenty-five years. Although there have been minor modifications with regard to the wording of the presumption, the substance of the instruction has never changed.

When the proposed instruction was published in *The Florida Bar News* in September 15, 2008, the paragraph was inadvertently omitted. However, the paragraph did appear in the following proposed published instructions on that date: 7.8 Driving under the Influence Manslaughter, 28.1 Driving under the Influence, 28.2 Felony Driving under the Influence, 28.3 Driving under the Influence Causing Serious Bodily Injury, 7.8(a) Boating under the Influence Manslaughter, 28.14 Boating under the Influence, 28.15 Boating under the Influence Causing Property Damage or Injury, 28.16 Felony Boating under the Influence, and 28.17 Boating under the Influence Causing Serious Bodily Injury. No comments were received regarding these instructions.

The committee gave final approval for instruction 28.1(a), and all the other driving and boating under the influence instructions at the October 31, 2008 meeting. The omission of the paragraph was not noticed. When Report 2008-08 was submitted to the Court, the published version of the instruction, rather than the approved version of the instruction, was included in Appendix A. The failure to include the language in instruction 28.1(a) was an oversight and is regretted by the committee.

The committee requests that the Court approve the proposed instruction without the necessity of publishing the instruction in *The Florida Bar News*. This instruction is commonly used in criminal cases and it is important to have a corrected instruction available for use as soon as is practicable.

Respectfully submitted this _____day of May, 2009.

The Honorable Lisa T. Munyon
Ninth Judicial Circuit
Chair, Supreme Court Committee on
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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 Lisa T. Munyon
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