

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY
INSTRUCTIONS IN CRIMINAL CASES —
REPORT NO. 2014-08

CASE NO.: SC14-2507

STANDARD JURY INSTRUCTION COMMITTEE’S RESPONSE TO
REQUEST FOR EXPLANATIONS

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases (“Committee”) files the following response to the Court’s June 3, 2015 request (see Appendix A) for the Committee to explain: 1) the proposed change for the definition of “lottery” in the lottery instructions and 2) the rearranging of “coercion” in the human trafficking proposal.

1. Changing the Definition of Lottery

The existing definition of “lottery” in Instructions 22.5—22.11 is as follows:

A "lottery" is a game of chance in which smaller sums of money or things of smaller value are risked for the chance of getting money or property of greater value upon the happening of an uncertain event. The three elements of a lottery are: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

The Committee’s proposal to explain the concept of a lottery in Instructions 22.5—22.11 is as follows:

Little River Theatre Corporation v. State, 185 So. 855 (Fla. 1939).

A "lottery" has three elements: is a game of chance in which smaller sums of money or things of smaller value are risked for the chance of getting money or property of greater value upon the happening of an uncertain event. The three elements of a lottery are: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

A “bet” is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.

RECEIVED, 06/30/2015 02:08:35 PM, Clerk, Supreme Court

A “thing ventured” is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.

A “prize by lot or chance” is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant’s skill, such as by drawing numbers, entries, cards, or by rolling dice.

The Committee believes there would be four benefits from its proposed changes.

First, the Committee’s proposal eliminates redundancies. Jurors are now told multiple times that a lottery involves “chance” because the existing definition mentions: 1) “game of chance” and 2) “chance of getting money or property” and 3) “happening of an uncertain event” and 4) “award of the prize is by lot or chance.” The Committee did not think the instruction needed to explain one concept, four ways.

The second benefit is that by eliminating redundancies, the definition of “lottery” is simplified and thus clarified. The Committee’s proposal does not change the core elements of a “lottery,” which has always required proof of: 1) a prize; 2) awarded by lot or chance; and 3) consideration.

The third benefit is that the existing language: “... **smaller sums of money or things of smaller value are risked for the chance of getting money or property of greater value ...**” can mislead jurors on Florida law. Specifically, the current instruction requires a lottery to involve “sums of money or things of smaller value.” This verbiage makes it unclear that something other than money or property can constitute consideration.

Pursuant to case law from this Court and from the Second District Court of Appeal, the state is not required to prove payment of money or property for the chance to win a prize. The consideration required to prove a “lottery” can also include (1) a benefit to a person or entity offering the prize or (2) a detriment to the customer or person submitting an entry or ticket with the hope of winning a prize based on chance. Cases that support this proposition are cited in the Committee’s proposed Comment section and include *Blackburn v. Ippolito*, 156 So. 2d 550 (Fla. 2d DCA 1963)(“[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.”) citing to *Dorman v. Publix-Saenger-Sparks*

Theatres, 135 Fla. 284 (Fla. 1938)(The consideration required to support a simple contract need not be money or anything having a monetary value, but may consist of either a benefit to the promisor or a detriment to the promisee.) and *Little River Theatre Corporation v. State*, 135 Fla. 854 (Fla. 1939)(increased attendance and receipts at a theater offering a “bank night” drawing satisfied the element of consideration, even though persons could participate in the drawing without purchasing a ticket).

The fourth benefit is that the Committee thought it would be helpful for jurors to have a more detailed explanation of “bet,” “thing ventured,” and “prize by lot or chance.” The description of “bet” covers the common type of lottery, that is, money or property risked with the expectation of gaining or losing based on the outcome of some uncertain event. In addition to the cases cited above, the Committee’s definition of “bet” is further supported by *Creash v. State*, 179 So. 149, 152 (1938), where the Court stated: “In gamblers’ lingo, ‘stake, bet or wager’ are synonymous and refer to the money or other thing or value put up by the parties thereto with the understanding that one or the other gets the whole for nothing but on the turn of a card, the result of a race, or some trick of magic.”

The explanation of “thing ventured” will make it easier for jurors to understand that there can be consideration other than money or property and that a lottery can exist even where no purchase was required to enter the drawing. The cases supporting that idea were listed above.

Finally, the explanation of the concept of “prize by lot or chance” makes it clear that skill cannot influence the uncertain event. Additionally, a non-exclusive list of examples (such as drawing entries or rolling dice) is provided in order to describe some common methods or games that inject chance into lottery schemes. Support for the explanation of “prize by lot or chance” is further provided by *Deeb v. Stoutamire*, 53 So. 2d 873, 875 (Fla. 1951), wherein the court examined the meaning of “chance” relative to machines alleged to be slot machines and equated “chance” with “unpredictability,” and then qualified the latter -- by saying that it did not include unpredictable variations on a player’s skill.

In summary, the Committee’s proposed revision for the definition of “lottery” in Instructions 22.5—22.11 is intended to eliminate redundancies, which will allow jurors to focus on the core three elements of “lottery.” The Committee maintains that its proposal will 1) give jurors better guidance as to what constitutes a “lottery” and 2) more accurately reflects Florida law than the existing instruction.

2. Rearranging “Coercion” in the Human Trafficking Instruction

In the existing Human Trafficking instruction (Instruction #29.24), the word “coercion” is used as part of the definition of “human trafficking.” However, in the

proposed human trafficking instruction, the term “coercion” is deleted from the definition of “human trafficking.”

The reason for the deletion of “coercion” from the definition of “human trafficking” is that before October 1, 2014, the crime of human trafficking in s. 787.06(3)(a)–(f), Fla. Stat., required the state to prove that the defendant used “coercion,” which is why the definition of “human trafficking” in the current instruction has an “a.–f.”

The proposed instruction removes “a.–f.” from the definition of “human trafficking.” Instead, the definition of “human trafficking” in the proposed instruction mirrors the definition of “human trafficking” in the current version of s. 787.06(2)(d), Fla. Stat., which does not mention “coercion” and does not include the “a.–f.” list.

Notwithstanding the proposed deletion of “coercion” from the definition of “human trafficking,” the idea that certain types of human trafficking require “coercion” is still incorporated within the proposal for element #2. Under the proposed instruction, the state must prove the defendant used coercion to prove a violation of:

- s. 787.06(3)(a)2, Fla. Stat.
- s. 787.06(3)(b), Fla. Stat.
- s. 787.06(3)(c)2, Fla. Stat.
- s. 787.06(3)(d), Fla. Stat.
- s. 787.06(3)(e)2, Fla. Stat.
- and
- s. 787.06(3)(f)2, Fla. Stat.

These statutes, which require “coercion,” are incorporated in the appropriate places in proposed element #2. However, other types of human trafficking within s. 787.06(3)(a)–(g), Fla. Stat., do not require “coercion,” and thus not all alternatives within proposed element #2 include “coercion.”

Separately, in the current instruction, the definition of “Coercion,” includes #7, which reads:

“Coercion” means....

7. Providing a controlled substance as outlined in Schedule [I] [II] of Florida Statute 893.03 to any person for the purpose of:

- a. [using coercion for labor or services].**
- b. [using coercion for commercial sexual activity].**
- c. [using coercion for labor or services of any individual who is an unauthorized alien].**

- d. [using coercion for commercial sexual activity of any individual who is an unauthorized alien].
- e. [using coercion for labor or services who does so by the transfer or transport of any individual from outside Florida to within Florida].
- f. [using coercion for commercial sexual activity who does so by the transfer or transport of any individual from outside Florida to within Florida].

The problem is that #7.a.–7.f. in the existing instruction was not – and is not - supported by s. 787.06(2)(a)7, Fla. Stat. Under both the pre-October 1, 2014 version of the human trafficking statute and the post-October 1, 2014 version of the human trafficking statute, s. 787.06(2)(a)7, Fla. Stat. actually states:

“7. Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03 to any person for the purpose of exploitation of that person.”

Additionally, the existing definition of “coercion” does not make sense because it reads: **“Coercion” means providing a Schedule 1 or Schedule 2 controlled substances to a person for the purpose of using coercion for [labor or services] [commercial sexual activity]...**” However, in the proposal, the Committee used the correct statutory definition of “coercion” in s. 787.06(2)(a), Fla. Stat., which does not include an **“a.–f.”** within item #7.

In summary, the explanation for the rearranging of “coercion” in the human trafficking instruction is that the Committee’s proposal now tracks the human trafficking statute.

Respectfully submitted this 30th day of
June, 2015.

s/ Judge Jerri L. Collins
The Honorable Jerri L. Collins
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
Criminal Justice Center
101 Bush Boulevard
Sanford, Florida 32773-6707
Florida Bar Number: 886981

407-665-4982
Jerri.Collins@flcourts18.org

CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that this Response 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 correct copy has been sent by e-mail to Assistant State Attorney Joseph Cocchiarella at jcocchiarella@sao9.org; The Honorable Julianne Holt at jholt@pd13.state.fl.us; Assistant Public Defender Glen Gifford at glen.gifford@flpd2.com; Mr. William Ponall at ponallb@criminaldefenselaw.com; Mr. Luke Newman at luke@lukenewmanlaw.com; and Mr. George Pavlidakey, Jr. at pavlida@law.stetson.edu, this 30th day of June, 2015.

s/ Judge Jerri L. Collins
The Honorable Jerri L. Collins
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
Criminal Justice Center
101 Bush Boulevard
Sanford, Florida 32773-6707
Florida Bar Number: 886981
407-665-4982
Jerri.Collins@flcourts18.org