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IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY

INSTRUCTIONS CRIMINAL CASES

REPORT 2013-02

CASE NO.: SC13-456

**STANDARD JURY INSTRUCTION COMMITTEE'S RESPONSE TO
COMMENT FROM THE FLORIDA ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS**

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases (Committee) files the following Response to a comment from the Florida Association of Criminal Defense Lawyers (FACDL). After consideration of the comment, the Committee did not change its proposals.

FACDL supports the inclusion of a section on heat-of-passion. The Committee agrees. As mentioned in the initial report, the Committee's vote was 8-1 to include this section. The sole dissenter did not think there should be a standard heat-of-passion instruction based on his fear that trial judges would give the instruction out of an abundance of caution, even when defendants were simply angry.

FACDL also argues that the Committee's proposals fail to inform the jury that the state must prove that the defendant was a law enforcement officer in order to obtain the enhancement within Fla. Stat. 782.065. In response, the Committee notes that the plain language of that statute has no requirement of knowledge and there is no case law that interprets Fla. Stat. 782.065 in a way that adds a knowledge requirement. The Committee unanimously agreed to maintain its proposals, which inform criminal law practitioners of the issue in the Comment sections.

Finally, FACDL disagrees with this Court's opinions regarding the existence of the crimes of Attempted Felony Murder and Attempted Second Degree Murder. The Committee's obligation is, of course, to accurately reflect the law as written by the legislature and as interpreted by the courts. Accordingly, the Committee voted unanimously to maintain its Attempted Felony Murder and Attempted Second Degree proposals.

Respectfully submitted this 26th day of
September, 2013.

s/ Judge Joseph A. Bulone
The Honorable Joseph A. Bulone
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
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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 true and correct copy has been sent by e-mail to Atty. Adam Tebrugge at adam@tebruggelegal.com; to Atty. Sonya Rudenstine at srudenstine@yahoo.com; and to Atty. Karen Gottlieb at karen.m.gottlieb@gmail.com, this 26th day of September, 2013.

s/ Bart Schneider
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