

# Supreme Court of Florida

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No. SC12-2248

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## **IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES— INSTRUCTION 11.16(A).**

[June 20, 2013]

PER CURIAM.

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases (Committee) has submitted proposed changes to the standard jury instructions and asks that the Court authorize instruction 11.16(a) (Dangerous Sexual Felony Offender). We have jurisdiction. See art. V, § 2(a), Fla. Const.

Section 794.0115 sets forth the requirements for establishing that an individual is a “dangerous sexual felony offender.” § 794.0115, Fla. Stat. (2012). First, the defendant must have been convicted of violating one of the statutory provisions set out in section 794.0115(2)—i.e., section 787.025(2)(c); section 794.011(2), (3), (4), (5), or (8); section 800.04(4) or (5); section 825.1025(2) or (3); section 827.071(2), (3), or (4); or section 847.0145; or of any similar offense under a former designation. Second, the defendant must have been eighteen years

or older at the time he or she committed the offense. Third, the defendant must have done one of the following: (a) caused serious personal injury to the victim as the result of the commission of the offense; (b) used or threatened to use a deadly weapon during the commission of the offense; (c) victimized more than one person during the course of the criminal episode applicable to the offense; (d) been under the jurisdiction of a court for a felony offense under the laws of Florida, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in Florida; or (e) previously been convicted of violating sections 787.025(2)(c), 794.011(2), (3), (4), (5), or (8), 800.04(4) or (5), 825.1025(2) or (3), 827.071(2), (3), or (4), or 847.0145; of any offense under a former statutory designation which is similar in elements to an offense described in this paragraph; or of any offense that is a felony in another jurisdiction, or would be a felony if that offense were committed in this state, and which is similar in elements to an offense described in this paragraph.

Jury instruction 11.16(a) is limited to the last two alternatives under the third requirement—i.e., the defendant committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in Florida; or has previously been convicted of violating an offense listed under section 794.0115(2) or of any offense that is a

felony in another jurisdiction or would be a felony if that offense were committed in this state and which is similar in elements to an offense described in section 794.0115(2)(e).<sup>1</sup>

We amend instruction 11.16(a) to clarify the requirement of finding that the date of the offense in the prior conviction was before the commission of the instant offense. The amendment requires that the offense for which the defendant was previously convicted occurred prior to the instant offense, and not necessarily that the defendant was convicted of the prior offense before committing the instant offense. See § 794.0115(4), Fla. Stat. (2012). (“The offense described in subsection (2) which is being charged must have been committed after the date of commission of the last prior conviction for an offense that is a prior conviction described in paragraph (2)(e).”).

Accordingly, we hereby authorize the publication and use of instruction 11.16(a) as amended, set forth in the appendix to this opinion. In doing so, we express no opinion on the correctness of the instruction and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions, nor contesting the legal correctness of the instruction. We further caution all interested parties that any comments associated with the instruction reflect only the opinion of the Committee on Standard Jury Instructions in

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1. Instruction 11.16 (Dangerous Sexual Felony Offender) covers the first three alternatives under the third requirement.

Criminal Cases and are not necessarily indicative of the views of this Court as to their correctness or applicability. New language is indicated by underlining, and deleted language is struck-through. The instruction as set forth in the appendix shall be effective when this opinion becomes final.<sup>2</sup>

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Supreme Court Committee on Standard Jury Instructions in Criminal Cases

Honorable Joseph A. Bulone, Chair, Clearwater, Florida, and Honorable Jacqueline Hogan Scola, Past Chair, Standard Jury Instruction in Criminal Cases Committee, Miami, Florida, and Bart Schneider, Senior Attorney, Office of State Court Administrator, Tallahassee, Florida,

for Petitioner

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2. The amendments as reflected in the appendix are to the Criminal Jury Instructions as they appear on the Court's website at [www.floridasupremecourt.org/jury\\_instructions/instructions.shtml](http://www.floridasupremecourt.org/jury_instructions/instructions.shtml). We recognize that there may be minor discrepancies between the instructions as they appear on the website and the published versions of the instructions. Any discrepancies as to instructions authorized for publication and use after October 25, 2007, should be resolved by reference to the published opinion of this Court authorizing the instruction.

**APPENDIX**

**11.16(a) DANGEROUS SEXUAL FELONY OFFENDER**

§ 794.0115, Fla. Stat.

*(For crimes committed on or after July 1, 2003.)*

*(For use when defendant has been found guilty of s. 794.0115(2)(d) or (e), Fla. Stat.).*

**Having found** (defendant) **guilty of** (felony, as identified by section 794.0115(2), Fla. Stat., that defendant has been found guilty of committing) **you must now determine whether the State has proven beyond a reasonable doubt whether** (defendant):

- 1. (Defendant) was 18 years of age or older at the time of the commission of the offense**

**and**

*Give 2a or 2b as applicable.*

- 2. (Defendant)**

- a. committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in this state.**
- b. had been convicted of** (felony, as identified by section 794.0115(2)(e), Fla. Stat.) **and the date of the offense in the prior conviction was before the commission of this offense.**

**Comment**

This instruction was adopted in 2008 [980 So. 2d 1054] and 2013.