

January 26, 2010

Council Members

Stephen D. Kelley  
Chair  
District Attorney  
Brunswick Judicial Circuit

Barry E. Morgan  
Vice Chair  
Solicitor-General  
Cobb County

Patrick H. Head  
Secretary  
District Attorney  
Cobb Judicial Circuit

Nina Markette Baker  
Solicitor-General  
Troup County

Richard Currie  
District Attorney  
Waycross Judicial Circuit

Tommy K. Floyd  
District Attorney  
Flint Judicial Circuit

N. Stanley Gunter  
District Attorney  
Enotah Judicial Circuit

Benjamin S. Richardson  
Solicitor-General  
Muscogee County

Peter J. Skandalakis  
District Attorney  
Coweta Judicial Circuit

## Anderson v. State: Don't let Alterations to Suggested Pattern Jury Instructions Amount to Reversible Error on Appeal

Modification of a suggested pattern jury instruction may result in structural error requiring automatic reversal. The risk of reversal becomes greater when a jury instruction serves to define certain fundamental legal principles such as reasonable doubt. In the recent case of *Anderson v. State*, 286 Ga. 57, 685 S.E.2d 716 (2009), the petitioner, convicted of several felony charges, claims that his due process rights were violated when the trial court added a phrase to the jury instruction on reasonable doubt that otherwise did not exist in the pattern instruction. Petitioner contends that the added language, in effect, lowered the State's burden of proof to something less than beyond a reasonable doubt<sup>1</sup>.

Our Supreme Court stated that

[w]hen a legal issue involves such well-established principles as the definition of reasonable doubt, there are few, if any, circumstances which would justify a trial court's failure to use the suggested pattern criminal charges compiled by the Council of Superior Court Judges of Georgia.

*Id.*, quoting *Coleman v. State*, 271 Ga. 800, 523 S.E.2d 852 (1999). *Anderson* aptly cautions that when courts deviate from the pattern instructions, they "**Run the risk of sabotaging the entire trial**" *Id.* at 719. (*Emphasis added*)

It is the court that proffers the instructions to the jury, but it is you, the prosecutor who suffers the consequence of reversible error.

To save yourselves from the risk of appeal and the ominous threat of reversal due to trial court error, it is the suggestion of PAC that you:

- (1) **Stick to the Suggested Pattern Jury Instructions for basic rules of law.** Redacting or "sprucing-up" instructions to better conform to the theme and theory of your case poses too great a risk. The pattern instructions were promulgated for a reason and both appellate courts accept them.
- (2) **Use your copy of the jury instructions to read along as the judge recites them to the jury.** Besides adding or missing wording in jury instructions, it is not unheard of for a judge to accidentally misread or skip over a jury instruction all together. Should this occur, an appeal is inevitable. Silently reading the instructions along with your judge is an easy way to assure that the jury is properly instructed. Should the court misread an instruction, the State can bring the mistake to the court's attention at a time in which the mistake can be remedied. Your vigilance will pay off.



January 26, 2010

## Endnotes

<sup>1</sup> The challenged jury instruction on reasonable doubt contested in *Anderson v. State*: “[T]he State is not required to prove the defendant guilty beyond all doubt or to a mathematical certainty. A reasonable doubt means just what it says. It is not an imaginary, fanciful, or arbitrary doubt. *It is not a best possibility of doubts.* It is the doubt of a fair minded, impartial juror honestly seeking the truth. It may arise from the evidence, from a lack of evidence, from a conflict in the evidence, or from the defendant’s testimony” (emphasis supplied) *Id.* at 718.

Appellant claims that the italicized phrase lowered the State’s burden of proof because it emphasized what does *not* constitute reasonable doubt rather than what does.

The Supreme Court found that the trial court’s addition to the pattern instruction on reasonable doubt did not violate the petitioners due process rights based on the following reasons: (1) Viewing the charge as a whole, there is not a “reasonable likelihood” that the jury applied the instruction in a constitutionally impermissible manner; (2) But for the italicized language, the jury instruction matches verbatim to the pattern jury instruction on reasonable doubt; and (3) Appellant actually requested the change to the challenged instruction.