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IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

PATRICK NEAL WOLF, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D11-3145

Opinion filed July 3, 2013.

Appeal from the Circuit Court for  
Hillsborough County; Emmett Lamar  
Battles, Judge.

Howard L. Dimmig, II, Public Defender,  
and Judith Ellis, Assistant Public  
Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Timothy A. Freeland,  
Assistant Attorney General, Tampa,  
for Appellee.

KELLY, Judge.

Patrick Neal Wolf challenges his conviction for burglary of a dwelling. The dwelling he was accused of burglarizing was his former residence. His defense was based in part on the contention that the victim had wrongfully evicted him; therefore, he

had a legal right to enter the home. In this appeal he argues that the trial court abused its discretion when it denied his request for a special jury instruction that was a recitation of various subsections of chapter 83, Florida Statutes, the Florida Residential Landlord-Tenant Act. We conclude that the trial court acted well within its discretion when it found Mr. Wolf had failed to establish that he was entitled to the requested instruction. Accordingly, we affirm.

The victim, Richard Schmid, rented a bedroom in his home to Mr. Wolf on a month-to-month basis. After the first month, Mr. Wolf failed to timely pay his rent and the victim asked him to leave. He gave Mr. Wolf until the next day to move out, which Mr. Wolf did, leaving his house key but taking most of his belongings with him. The victim had the locks changed the same day Mr. Wolf left.

Approximately two weeks later, the victim returned home from work and noticed that several items of his personal property were missing. He suspected Mr. Wolf was the culprit and confronted him about the theft. Mr. Wolf admitted to taking the items and told the victim that he used a garage door opener to gain entry into the home. When questioned by police, however, Mr. Wolf said he entered the victim's home through an unlocked window, removed the victim's property, and left through the garage. At trial, Mr. Wolf did not testify in his own defense and he called no witnesses.

Mr. Wolf's primary defense to the burglary charge was that the State had not proven he had the intent to take the victim's property at the time he entered the home. Although Mr. Wolf had not testified at trial, his attorney nevertheless argued that Mr. Wolf had gone back to the home only intending to retrieve some belongings he had left there, but after entering the home he decided to take the things belonging to the

victim as an "afterthought" to "teach [the victim] a lesson" for the way he was "kicked out" without advance notice. Counsel also argued that Mr. Wolf had a right to be in the home because the victim had terminated the rental agreement without advance notice, a fact the victim acknowledged during his testimony.

At the charge conference, defense counsel requested the following special jury instruction, based on what trial counsel referenced as the "relevant portions" of sections 83.46, 83.56, 83.57, and 83.43, Florida Statutes, which are part of the Florida Landlord-Tenant Act:

1. Landlord and Tenant Law: Residential Tenancies

A landlord cannot terminate a tenancy on the spot by an immediate "verbal eviction."

Termination of rental agreement

(1) If the tenant materially fails to comply with material provisions of the rental agreement, other than a failure to pay rent, or reasonable rules or regulations, the landlord may:

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be adequate if it is in substantially the following form:

You are advised that your lease is terminated effective immediately. You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because (cite the noncompliance).

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof.

Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. The notice shall be adequate if it is in substantially the following form:

You are hereby notified that (cite the noncompliance). Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without your being given an opportunity to cure the noncompliance.

(2) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of \_\_\_\_\_ dollars for the rent and use of the premises (address of leased premises, including county), Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding

Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the \_\_\_\_ day of \_\_\_\_\_ (year).

(landlord's name, address and phone number)

(3) The delivery of the written notices required shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence.

#### Rent; duration of tenancies

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

#### Termination of tenancy without specific term

A tenancy without a specific duration may be terminated by either party giving written notice in the manner provided in s. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

#### Definitions

As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) "Landlord" means the owner or lessor of a dwelling unit.

(2) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

(3) "Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.

(4) "Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.

(5) "Rental agreement" means any written agreement, including amendments or addenda, or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.

The trial court declined to give the instruction.

A trial court has wide discretion in deciding whether to give or withhold a jury instruction. See Petrucelli v. State, 855 So. 2d 150 (Fla. 2d DCA 2003). In criminal trials, "[t]he standard jury instructions are presumed correct and are preferred over special instructions." Stephens v. State, 787 So. 2d 747, 755 (Fla. 2001). In order to establish entitlement to a special jury instruction, a defendant "must prove: (1) the special instruction was supported by the evidence; (2) the standard instruction did not adequately cover the theory of defense; and (3) the special instruction was a correct

statement of the law and not misleading or confusing." Id. at 756. In rejecting Mr. Wolf's proposed instruction, the trial court stated, in part,

[t]his special instruction that you asked [sic] while is a correct statement in part of Chapter 83, there's no question in this Court's mind under the entire circumstances of this case that that would, in fact, be confusing to and mislead the jury. And I'll specifically find that the standard instructions, you'll have to work with them, they – any theory of defense that you posited here, I believe the standard instruction applies to that. I don't think you have met the burden for a special instruction.

We agree with the trial court.

First, it is self-evident that the special instruction would have been confusing to the jury. As the trial court aptly stated, "even I have to read through [the instruction] very carefully to even begin to understand in the context of all that's being said and done here." For this reason alone, we would affirm the trial court.

Second, we also agree with the trial court that Mr. Wolf did not meet his burden to demonstrate that the standard jury instruction did not adequately cover his theory of defense. The standard jury instruction for burglary provides in pertinent part:

To prove the crime of Burglary, the State must prove the following [two] [three] elements beyond a reasonable doubt:

1. (Defendant) entered a [structure] [conveyance] owned by or in the possession of (person alleged).
2. At the time of entering the [structure] [conveyance], (defendant) had the intent to commit [an offense] [(the crime alleged)] in that [structure] [conveyance].

*The offense intended cannot be trespass or burglary.*

*Give element 3 only if defendant meets his or her burden of production that he or she had an invitation or license to enter, or that the premises were open to the public. [Citations omitted].*

3. [(Defendant) was not [licensed] [invited] to enter the [structure][conveyance].] [The premises were not open to the public at the time of the entering.]

*Give if applicable. § 810.07, Fla. Stat.*

. . . .

You may infer that (defendant) had the intent to commit a crime inside a [structure][conveyance] if the [entering][attempted entering] of the [structure][conveyance] was done stealthily and without the consent of the owner or occupant.

Element 3 is given if the defendant is claiming as an affirmative defense that he has an invitation or license to enter or that the premises were open to the public. See State v. Hicks, 421 So. 2d 510, 511 (Fla. 1982) (holding that consent or license to enter is an affirmative defense, and that "nonconsent" to enter was not an essential element of burglary).

Mr. Wolf's counsel argued that the manner of the eviction was "tantamount to an affirmative defense, that if [Mr. Wolf] had a lawful right to be there or believed he had a lawful right to be there" he was protected against unlawful eviction or termination of his rental agreement under the statutes governing residential tenancies. Yet, despite this argument, counsel rejected element 3 of the standard jury instruction as inapplicable. Thus, whatever defense Mr. Wolf thought the "unlawful eviction" provided, he apparently did not believe it meant he was licensed to enter the home. Mr. Wolf's rejection of element 3 of the standard instruction is problematic for an additional



reason—without any reference to license or consent to enter the premises as a defense to burglary, it is hard to imagine what the jury was supposed to glean from the special instruction.

Because we conclude that the trial court did not abuse its discretion when it found Mr. Wolf failed to establish his entitlement to the special jury instruction, we affirm.

PETERS, R. TIMOTHY, ASSOCIATE JUDGE, Concurs specially.  
DAVIS, C.J., Dissents with opinion.

PETERS, R. TIMOTHY, Associate Judge, Concurring specially.

I concur without reservation and add these comments. Patrick Wolf's primary response to the charge of residential burglary, simply stated, was that he had a right to be in the home; he had been wrongly evicted. That is an affirmative defense addressed by element 3 of Florida Standard Jury Instruction 13.1. Arguably, a special instruction containing specific, applicable provisions of the Florida Residential Landlord and Tenant Act together with such other principles of law as may be required to make any such special instruction both accurate and complete could have been given to augment the standard instruction. However, no such instruction was presented or requested. The special instruction that was requested was confusing, misleading, and incomplete. Mr. Wolf was not entitled to any such instruction. To compound the difficulty, Mr. Wolf's

counsel rejected element 3 of the standard instruction as inapplicable; she wanted the special instruction read and element 3 not read. Had that been done, the resulting jury instruction on burglary would have been incomprehensible. There was no abuse of discretion by the trial court in refusing to give the requested special instruction.

DAVIS, Chief Judge, Dissenting.

I would respectfully dissent from the majority's decision regarding the trial court's failure to give the requested jury instruction and would reverse for a new trial.

Patrick Neal Wolf challenges his conviction for burglary of a residence. He argues that the trial court erroneously denied his request to give a special jury instruction thereby depriving him of a defense. The facts of this case are unusual and must be fully set forth to understand the areas of the law implicated. Richard Schmid owns title to a residential home in Hillsborough County. In May 2010, he began to look for another person who would be willing to rent a bedroom in the home. Following an internet search for a tenant, Schmid and Wolf negotiated a rental agreement that was reduced to a written document.<sup>1</sup> The agreement was a month-to-month rental agreement with no specified duration and called for Wolf to pay monthly rent of \$550 on the third of each month. It required Wolf to give at least thirty days' notice of his intent to terminate the agreement, but it was silent regarding Schmid's rights of termination. By the agreement, Wolf was entitled to exclusive use and possession of the guest

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<sup>1</sup>Schmid did not retain a copy of the agreement, no copy was produced at trial, and the record does not otherwise contain a copy. However, Schmid testified to the details of the agreement.

bedroom and joint possession with Schmid as to the common areas of the home, including the garage where the laundry facilities were located.

Wolf paid the first month's rent on a prorated basis; however, he did not timely pay June's rent. On the evening of June 8, Schmid advised Wolf that he needed to move out of the home the next day. On June 9, Wolf went to work, and Schmid stayed at home and called a locksmith to change the locks on the doors. When Wolf returned home that evening, he "complied" with Schmid's request that he leave and gave Schmid the key to the residence. At that time, Wolf removed a few personal items but left behind some larger items of personal property, including a bicycle, a bed, and a boombox. He did not indicate to Schmid when he would return to retrieve these items.

Upon his returning to his home on June 18, Schmid found that several items of his personal property were missing. Wolf's personal property remained in the home. The next day, Schmid called Wolf on his cell phone and asked Wolf about the missing property. Wolf admitted taking the property and indicated that he had sold some of it. Wolf advised Schmid that he used the garage door opener to get into the garage and entered the unlocked door leading from the garage into the home. At trial, Schmid denied that he previously gave Wolf a garage door opener, but he did agree that under the rental agreement Wolf had access to the garage. There were no signs of forced entry.

Upon finding that his personal property was missing, Schmid called the sheriff's office and advised that he suspected Wolf of taking the property. A deputy sheriff then contacted Wolf, who voluntarily met with detectives and, after waiving his

Miranda<sup>2</sup> rights, admitted entering the home and taking the property. Wolf was charged with burglary of a residence, grand theft, and two counts of dealing in stolen property.<sup>3</sup>

In order to prove that Wolf committed burglary pursuant to section 810.02(1)(b)(1), Florida Statutes (2009), the State had to show that Wolf entered the house "with the intent to commit an offense therein, unless . . . [Wolf was] licensed or invited to enter." At trial, the State presented three witnesses, Schmid and the two detectives who investigated the case. After the State rested, Wolf moved for judgment of acquittal on the burglary charge, arguing that he had a rental agreement with Schmid that gave him license to enter the home. Wolf further argued that Schmid had not given him the notice to terminate the rental agreement that is required by section 83.57(3), Florida Statutes, and that therefore Wolf continued to have legal license to occupy the premises at the time of the entry. Although Wolf did not challenge the sufficiency of the evidence related to the grand theft charge, he argued that he could not be convicted of burglary because the State failed to show that he did not have the legal right to be in the home.

The State responded that because Schmid, as the owner of the property, told Wolf to leave, Wolf no longer had the right to enter the home. According to the State, if Wolf had further rights against Schmid for improperly evicting him, his only recourse was to bring a civil action for damages. The trial court denied Wolf's motion

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<sup>2</sup>Miranda v. Arizona, 384 U.S. 436 (1966).

<sup>3</sup>The two counts of dealing in stolen property were charged in a separate case. After Wolf's conviction for the burglary and grand theft at jury trial, Wolf entered a negotiated plea on the dealing in stolen property charges. The only conviction being challenged on appeal is the burglary conviction.

for judgment of acquittal, concluding that the State presented a prima facie case under section 810.02(1)(b)(1).

Wolf chose not to testify, and the defense rested. Wolf renewed his motion for judgment of acquittal, and the trial court affirmed its prior ruling. At the charge conference that followed, Wolf requested a special instruction that advised the jury of the requirements of chapter 83, Florida Statutes, which deals with landlords and tenants. Specifically, Wolf requested that the jury be instructed that under section 83.57(3), in order to terminate a month-to-month lease, a landlord must give the tenant at least "[fifteen] days' notice prior to the end of any monthly period." Wolf argued that the jury should be advised regarding the necessary steps Schmid was legally required to take if he had wanted to terminate the rental agreement that he entered into with Wolf. Wolf pointed out that the jury should be aware of these requirements so it could determine if, in fact, he was in the home with the legal right to be there.

The trial court determined that the proposed special instruction was an accurate statement of the law but that the facts of the case did not support the giving of the proposed instruction, that the proposed instruction was misleading, and that the standard instruction was sufficient. Wolf responded that the standard instruction denied him the right to argue his theory of defense, namely that he did not commit burglary because he had a right to enter the property. Wolf also pointed out that the standard instruction provided an inference that a defendant found to be in possession of recently stolen property intended to commit a crime inside the property. According to Wolf, that inference amounted to the court instructing the jury that a burglary had occurred regardless of Wolf's right to be on the premises. Wolf maintained that for the defense to

suggest to the jury that a burglary did not occur because he had the right to be in the home was futile when the court essentially advised the jury that a burglary did occur because items were taken from the house. The trial court rejected Wolf's argument and submitted the case to the jury with the standard instruction, denying the request for the special instruction.

In closing argument, Wolf's counsel admitted that Wolf committed the theft. However, he challenged the burglary charge, arguing that the State had failed to prove Wolf's intent at the time he entered the home. Counsel suggested that Wolf did not break into the home or enter by darkness of night but rather walked up to the home in broad daylight and used the garage door opener to enter the garage. He then entered the unlocked door leading from the garage into the home.<sup>4</sup> Counsel argued that the manner of entry did not support an inference that Wolf's intent upon entering the home was to commit a crime.

He also attempted to argue Wolf's right to be in the home:

So even if you believe that Mr. Wolf had no legal right to be there, which we're asserting he did based on the way he was kicked out. He was not given notice, which is what Mr. Schmid required if Mr. Wolf wanted to vacate, did not afford him the reciprocal right.

The State responded to Wolf's argument as follows: "This is criminal court. This is not landlord/tenant court. So we're not dealing with any landlord/tenant issues in this case. We are dealing with crimes . . . ." The State went on to argue that

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<sup>4</sup>Schmid testified that Wolf told him he entered the home through the garage using the garage door opener. However, the investigating detective testified that Wolf's statement to police indicated that he crawled through an unlocked window to gain access to the home.

after Wolf left the home on June 9, he did not contact Schmid or give any indication that he was coming back for his property. The State argued that Wolf had abandoned his personal property and had left the property for Schmid to "deal with."

The trial court instructed the jury as follows:

To prove the crime of Burglary, the State must prove the following two elements beyond a reasonable doubt:

1. Patrick Neal Wolf entered a structure owned by or in the possession of Richard Schmid.
2. At the time of entering the structure, Patrick Neal Wolf had the intent to commit a theft in that structure.

You may infer that Patrick Neal Wolf had the intent to commit a crime inside a structure if the entering of the structure was done stealthily and without the consent of the owner or occupant.

The jury returned its verdict of guilty on both the burglary charge and the grand theft charge. Wolf now appeals only the conviction on the count of burglary.

To be entitled to a special jury instruction, a defendant must show that the facts of the case support the instruction, that the instruction is an accurate statement of the law, that the requested instruction is not misleading, that the standard instruction is not adequate to meet the need of the special instruction, and that there is evidence to support the requested special instruction. See DeJesus v. State, 98 So. 3d 105, 107 (Fla. 2d DCA 2012).

In considering the specific instruction that Wolf requested, the trial court concluded that the instruction was a correct statement of the law. However, the court also determined that the issue before it was a question of actual possession at the time

of the incident and that the standard instruction thus applied to any theory of defense Wolf wished to argue. The court also found that Wolf had failed to meet "the burden for special instruction." This seems to suggest that the trial court believed the legal relationship between Schmid as owner of the property and Wolf as the tenant was not relevant as to who had actual physical control of the property at the time of the incident. But section 810.02(1)(b)(1) clearly anticipates that a defense to burglary is having a license to enter the property. And caselaw is clear that the owner of a property must be established as someone other than the accused defendant. See Anderson v. State, 356 So. 2d 382, 384 (Fla. 3d DCA 1978) ("One of the essential elements of the crime of burglary relevant here is that the burglarized structure or conveyance must be that of another; that is, it must be lawfully possessed at the time of the offense by someone other than the defendant."); see also Andria v. State, 379 So. 2d 690, 691-92 (Fla. 4th DCA 1980) (concluding that where "the police officer knew . . . that the person was either the tenant or the former tenant" of the residence he was observed entering, "[p]robable cause did not exist for the arrest").

In analyzing the facts of this case and the law as it applies to those facts, it first should be noted that the concept of ownership in the context of the burglary statute is different from the general concept of ownership in real property law, although both contexts are applicable here. Ownership in the burglary context is not limited to the title holder of the real property. Rather, anyone who has the legal right to occupy, including a tenant who has license to enter based on a lease agreement, is considered to be an "owner" for the purpose of the burglary statute. Anderson, 356 So. 2d at 385 ("It is . . . well-settled that a legal tenant who occupies the burglarized premises at the time of the



offense is the 'owner' thereof under the burglary statute . . . ."), disapproved on other grounds by *In the Interest of M.E.*, 370 So. 2d 795 (Fla. 1979); see also *Harper v. State*, 169 So. 2d 512, 514 (Fla. 2d DCA 1964) ("The general rule applicable in cases of this type is that the ownership of the building should be laid, not in the holder of the legal title where he is not in possession, but in the actual occupant, the party in possession and control of the building . . . . Under this rule, where property is occupied by a lawful tenant, the ownership should be laid in the tenant . . . ."); *Haugland v. State*, 374 So. 2d 1026, 1032 (Fla. 3d DCA 1979) ("The state here incorrectly laid the ownership of the burglarized premises solely in the landlord fee-title owner when the proof at trial clearly established that such owner as pled was not in possession of such premises at the time of the burglary. Such was fatal to the state's case.").

In the context of real property law, the ownership of title is akin to holding the proverbial "bundle of sticks." See generally *City of Orlando v. MSD-Mattie, L.L.C.*, 895 So. 2d 1129, 1130 (Fla. 5th DCA 2005) ("[P]roperty ownership . . . is a bundle of rights analogous to a bundle of sticks."). The owner can transfer to another person one of the "sticks" and still retain title ownership. *Id.* (noting that in the case of an easement "all rights not granted are retained by the grantor"). But once an owner has transferred that stick in the form of a particular ownership interest, the owner usually does not retain any rights to that interest.

The circumstances here, however, are somewhat unusual because although Schmid transferred to Wolf the legal right to occupy the property, Schmid reserved for himself a right of joint occupancy with Wolf. That fact, however, does not

negate the legal license to occupy that Schmid conferred on Wolf via the lease agreement.

And Schmid's attempt to simply assert actual physical control over the premises does not, in and of itself, terminate the lease agreement or the rights conveyed thereunder. See § 83.57(3). Schmid did not give Wolf the statutorily required notice that he was terminating the lease or file a complaint for possession; therefore he did not legally terminate the rental agreement with Wolf.

I do recognize that a tenant can abandon or waive his possessory interest rights by his actions or words. Whetstone v. State, 778 So. 2d 338, 342 (Fla. 1st DCA 2000) ("[P]roof of abandonment of leased premises requires that there must be an intent to abandon and conduct by which the intention is carried into effect . . . ." (internal quotation marks omitted)), receded from on other grounds by Jones v. State, 790 So. 2d 1194 (Fla. 1st DCA 2001).

In Washington v. State, 11 So. 3d 980 (Fla. 5th DCA 2009), Washington and the victim were joint tenants who lived together prior to the burglary. The victim ordered Washington to leave and changed the locks after he left. Upon leaving, Washington took all of his possessions with him. The victim then asked the landlord to remove Washington's name from the lease, and she paid the full rent herself. The trial court denied Washington's motion for judgment of acquittal, which was based on the premise that as a cotenant he still had a right to enter the premises. Id. at 981. The Fifth District affirmed, finding that "a jury question was presented as to whether [the victim] had a superior interest in the premises." Id. at 982.

Based on the same reasoning, I conclude that whether Wolf's actions exhibited an abandonment of his possessory interest is a question of fact for the jury to determine and that the trial court was correct to deny Wolf's motion for judgment of acquittal and to submit the issue to the jury.

However, I further conclude that Wolf was entitled to have the jury advised as to his legal rights under chapter 83. That is, if he held a legal right to possess/occupy the property and if that legal right had not been terminated in the statutorily prescribed manner, then Wolf was licensed to enter under section 810.02(1)(b)(1) and could present a defense that he did not commit burglary. Advising the jury of his rights under the statute would give the jury the opportunity to consider all of the factors in deciding whether he maintained a legal right to possess/occupy the premises. See Pierre v. State, 77 So. 3d 699, 701-02 (Fla. 3d DCA 2011) ("Pierre's legal interest as a lessee is but one factor among the totality of circumstances to be considered in determining whether the victim had a superior possessory interest on the night in question.").

With regard to whether Wolf's requested instruction was misleading, I acknowledge that it did not explain that a tenant may waive his legal standing as an owner by his acts, such as voluntarily leaving the premises and returning the key. However, I would suggest that when presented with the proposed instruction, it is the State's responsibility to request further modification in order to clarify the issue of waiver or abandonment. But I do not see that the requested instruction in any way misleads the jury as to Wolf's rights under the law, and I would not find the requested instruction fatally flawed because it did not also provide the State's theory of its case. Furthermore,

even without the State requesting further clarification, Wolf's proposed instruction is a more accurate statement of the law as it would pertain to the instant facts than is the standard jury instruction.

For these reasons, I believe the trial court erred in denying Wolf's request and I would reverse.