

Proposed amendments to Standard Jury Instructions in Criminal Cases

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases submits the following amended instructions for comment. The committee proposes the following:

- 10.9 – FALSE REPORT CONCERNING THE [PLACING OR PLANTING OF A BOMB, DYNAMITE, OTHER DEADLY EXPLOSIVE, OR A WEAPON OF MASS DESTRUCTION] [USE OF FIREARMS IN A VIOLENT MANNER AGAINST A PERSON]**
- 10.10 – FALSE REPORT CONCERNING [THE PLACING OR PLANTING OF A BOMB, DYNAMITE, OTHER DEADLY EXPLOSIVE, OR A WEAPON OF MASS DESTRUCTION] [AN ACT OR ARSON OR OTHER VIOLENCE] TO PROPERTY OWNED BY THE STATE [OR ANY POLITICAL SUBDIVISION]**
- 10.15 - CONVICTED FELON CARRYING A CONCEALED WEAPON OR CONVICTED FELON POSSESSING [A FIREARM] [AMMUNITION] [AN ELECTRIC WEAPON OR DEVICE]**

The committee invites all interested persons to comment on the proposals, reproduced in full below. Comments must be received by the committee in either electronic format or hard copy on or before June 30, 2021. The committee will review all comments received in response to the proposals at its next meeting and will consider amendments based upon the comments received. File your comments electronically to CrimJuryInst@flcourts.org, in the format of a Word document. If you cannot file electronically, mail a hard copy of the comment to Standard Jury Instructions Committee in Criminal Cases, c/o Bart Schneider, General Counsel's Office, Office of the State Courts Administrator, 500 S. Duval Street, Tallahassee 32399-1900.

10.9 FALSE REPORT CONCERNING THE [PLACING OR PLANTING OF A BOMB, DYNAMITE, OTHER DEADLY EXPLOSIVE, OR A WEAPON OF MASS DESTRUCTION] [USE OF FIREARMS IN A VIOLENT MANNER AGAINST A PERSON]

§ 790.163(1), Fla. Stat.

To prove the crime of False Report Concerning the [Placing or Planting of a Bomb, Dynamite, Other Deadly Explosive, or a Weapon of Mass Destruction] [Use of Firearms in a Violent Manner Against a Person], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) made a false report to any person concerning [the placing or planting of a bomb, dynamite, other deadly explosive, or a weapon of mass destruction] [the use of firearms in a violent manner against a person].
2. (Defendant) knew the report was false.

3. The report was made with intent to deceive, mislead, or otherwise misinform any person.

§ 790.163(3), Fla. Stat.

~~Proof that a person knowingly made a false report is prima facie evidence of that person's intent to deceive, mislead, or otherwise misinform any person. You may infer that a person who knowingly made a false report had the intent to deceive, mislead, or otherwise misinform any person.~~

Definitions. Give if applicable.

§ 790.166(1)(a), Fla. Stat.

“Weapon of mass destruction” means:

1. Any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;
2. Any device or object involving a biological agent;
3. Any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or
4. Any biological agent, toxin, vector, or delivery system.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

There are no definitions for “bomb,” “dynamite,” or “deadly explosive” in the statutes or case law, although there is a definition of “explosive” in § 790.001(5), Fla. Stat.

A special instruction may be necessary in cases where there is a dispute about whether the report pertained to a present threat or a threat of future action. A threat of future action is not covered by § 790.163(1), Fla. Stat. See J.A.W. v. State, 283 So. 3d 896 (Fla. 1st DCA 2019).

This instruction was adopted in 1981 and was amended in 1985, and 2017 [217 So. 3d 965], and 2021.

10.10 FALSE REPORT CONCERNING [THE PLACING OR PLANTING OF A BOMB, DYNAMITE, OTHER DEADLY EXPLOSIVE, OR A WEAPON OF MASS DESTRUCTION] [AN ACT OF ARSON OR OTHER VIOLENCE] TO PROPERTY OWNED BY THE STATE [OR ANY POLITICAL SUBDIVISION]

§ 790.164(1), Fla. Stat.

To prove the crime of False Report Concerning [the Placing or Planting of a Bomb, Dynamite, Other Deadly Explosive or a Weapon of Mass Destruction] [an Act of Arson or Other Violence] to Property Owned by the State [or any Political Subdivision], the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) made a false report to any person concerning [the placing or planting of a bomb, dynamite, other deadly explosive, or a weapon of mass destruction] [an act of arson or other violence] to property.
2. The property was owned by the State [or any political subdivision].
3. (Defendant) knew the report was false.
4. The report was made with the intent to deceive, mislead, or otherwise misinform any person.

§ 790.164(3), Fla. Stat.

~~Proof that a person knowingly made a false report is prima facie evidence of that person's intent to deceive, mislead, or otherwise misinform any person. You may infer that a person who knowingly made a false report had the intent to deceive, mislead, or otherwise misinform any person.~~

Definitions. Give if applicable.

§ 790.166(1)(a), Fla. Stat.

“Weapon of mass destruction” means:

1. Any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;
2. Any device or object involving a biological agent;
3. Any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or
4. Any biological agent, toxin, vector, or delivery system.

§ 1.01(8), Fla. Stat.

"Political subdivision" means counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

Lesser Included Offenses

FALSE REPORT CONCERNING THE [PLACING OR PLANTING OF A BOMB, DYNAMITE, OTHER DEADLY EXPLOSIVE, OR A WEAPON OF MASS DESTRUCTION] [AN ACT OF ARSON OR OTHER VIOLENCE] TO PROPERTY OWNED BY THE STATE [OR ANY POLITICAL SUBDIVISION] — 790.164(1)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
False report concerning the placing or planting of a bomb, dynamite, other deadly explosive, or a weapon of mass destruction (if charged)		790.163(1)	10.9
	Attempt	777.04(1)	5.1
	False report concerning the use of firearms in a violent manner against a person*	790.163(1)*	10.9*

Comments

*Although the crime set forth in § 790.164(1), Fla. Stat., includes language covering a false report concerning the use of firearms in a violent manner against a person, that part of the statute does not pertain to a threat against property owned by the state or a political subdivision. For an allegation involving a false report concerning the use of firearms in a violent manner against a person, the trial judge should refer to Instruction 10.9

There are no definitions for "bomb," "dynamite," or "deadly explosive" in the statutes or case law, although there is a definition of "explosive" in § 790.001(5), Fla. Stat.

A special instruction may be necessary in cases where there is a dispute about whether the report pertained to a present threat or a threat of future action. A threat of future action is not covered by § 790.164(1), Fla. Stat. See *J.A.W. v. State*, 283 So. 3d 896 (Fla. 1st DCA 2019).

This instruction was adopted in 1981 and was amended in 1985, and 2017 [217 So. 3d 965], and 2021.

**10.15 CONVICTED FELON CARRYING A CONCEALED WEAPON
OR CONVICTED FELON POSSESSING [A FIREARM] [AMMUNITION]
[AN ELECTRIC WEAPON OR DEVICE]**
§ 790.23, Fla. Stat.

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

- 1. (Defendant) had been convicted of a felony.**

Give 2a or 2b or both as applicable.

- 2. After the conviction, (defendant) knowingly**

- a. owned or had in [his] [her] care, custody, possession, or control [a firearm] [an electric weapon or device] [ammunition].**
- b. carried a concealed weapon.**

Definitions.

“Convicted” means that a judgment has been entered in a criminal proceeding by a court pronouncing the accused guilty.

Give as appropriate.

§ 790.001(6), Fla. Stat.

A “firearm” means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is (insert definition in § 790.001(1), Fla. Stat.). [A destructive device is (insert definition in § 790.001(4), Fla. Stat.).]

§ 790.001(14), Fla. Stat.

An “electric weapon or device” means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

§ 790.001(19), Fla. Stat.

“Ammunition” means an object consisting of all of the following:

- a. A fixed metallic or nonmetallic hull or casing containing a primer.**
- b. One or more projectiles, one or more bullets, or shot.**
- c. Gunpowder.**

Give only if defendant is charged with Convicted Felon Carrying a Concealed Weapon. See § 790.001(3)(a), Fla. Stat.

A “concealed weapon” means any dirk, metallic knuckles, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such manner as to conceal the weapon from the ordinary sight of another person.

Give the following paragraph only if applicable.

A “deadly weapon” is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give the following paragraph only if applicable.

An object not designed to inflict bodily harm may nonetheless be a “deadly weapon” if it was intended [or threatened] to be used in a manner likely to cause death or great bodily harm.

Give the following paragraph only if applicable.

“Great bodily harm” means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

The explanations of “on or about a person” and “ordinary sight of another person” apply only in cases involving an allegation that a convicted felon carried a concealed weapon.

The term “on or about a person” means physically on the person or readily accessible to [him] [her].

The term “ordinary sight of another person” means the casual and ordinary observation of another in the normal associations of life. A weapon need not be completely hidden for you to find that it was concealed. However, a weapon is not concealed if, although not fully exposed, its status as a weapon is detectable by ordinary observation.

Give only if element 2a alleged.

“Care” and “custody” mean immediate charge and control exercised by a person over the named object. The terms care, custody, and control may be used interchangeably.

Possession. Give only if element 2a alleged.

To prove (defendant) “possessed” [a firearm] [an electric weapon or device] [ammunition], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [firearm] [electric weapon or device] [ammunition] and b) intentionally exercised control over it.

Give if applicable and only if element 2a alleged.

Control can be exercised over [a firearm] [an electric weapon or device] [ammunition] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to [a firearm] [an electric weapon or device] [ammunition] does not establish that the person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the [firearm] [electric weapon or device] [ammunition] or the present ability to direct its control by another.

Joint possession. Give if applicable and only if element 2a alleged.

Possession of [a firearm] [an electric weapon or device] [ammunition] may be sole or joint, that is, two or more persons may possess it.

Optional Definitions. Shaw v. State, 510 So. 2d 349 (Fla. 2d DCA 1987).

“Knowingly” means with actual knowledge and understanding of the facts or the truth.

“Knowingly” means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Lesser Included Offenses

CONVICTED FELONS CARRYING A CONCEALED WEAPON OR CONVICTED FELON POSSESSING [A FIREARM] [AMMUNITION] [AN ELECTRIC WEAPON OR DEVICE] — 790.23			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Carrying a Concealed Weapon if Carrying a Concealed Weapon by a Convicted Felon is charged		790.01(1)	10.1
	Attempt	777.04(1)	5.1
	Carrying concealed firearm	790.01(2)	10.1

Comments

A special instruction will be necessary in cases where the concealed weapon was an animal or a substance or something that is not commonly referred to as an “object.”

The term “possession” in what is commonly referred to as the “10-20-life” statute is defined in § 775.087(4), Fla. Stat. Because the definition of “actual possession” for purposes of § 775.087(2), Fla. Stat., differs from the definition of “actual possession” in the opinions that explain the difference between actual and constructive possession, judges should consider using instruction 3.3(d) for “10-20-life” cases.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1992 [603 So. 2d 1175], 2007 [953 So. 2d 495], 2013 [131 So. 3d 720], 2018 [253 So. 3d 1024], and on April 3, 2020, and in 2021.