

Proposed amendments to jury instructions in criminal cases

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

3.3(i) – DOMESTIC VIOLENCE

8.29 – CYBERINTIMIDATION BY PUBLICATION

10.15 – CONVICTED FELON CARRYING A CONCEALED WEAPON OR CONVICTED FELONY POSSESSING [A FIREARM] [AMMUNITION] [AN ELECTRIC WEAPON OR DEVICE]

10.15(a) – [POSSESSION OF [A FIREARM] [AN ELECTRIC WEAPON OR DEVICE] [AMMUNITION]] [OR] [CARRYING A CONCEALED WEAPON] BY A PERSON UNDER THE AGE OF 24 WHO HAS BEEN FOUND DELINQUENT OF AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT

13.6 – TRESPASS ON DESIGNATED PROPERTY

27.1 – [ATTEMPTED] ESCAPE

28.4 – LEAVING THE SCENE OF A CRASH INVOLVING [DEATH] [SERIOUS BODILY INJURY] [INJURY]

28.4(a) – LEAVING THE SCENE OF A CRASH INVOLVING ONLY DAMAGE TO AN ATTENDED VEHICLE OR ATTENDED PROPERTY

28.4(b) – LEAVING THE SCENE OF A CRASH INVOLVING DAMAGE TO AN UNATTENDED VEHICLE OR UNINTENDED PROPERTY

28.8(b) – AGGRAVATED FLEEING OR ELUDING

28.8(d) – AGGRAVATED FLEEING OR ELUDING

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 February 28, 2022. 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.

3.3(i) DOMESTIC VIOLENCE

§ 741.281, Fla. Stat.; § 741.283(1), Fla. Stat.

Give only if § 741.281, Fla. Stat., is charged. The statute requires a minimum 1 year of probation with the batterers' intervention program as a condition of probation unless the judge states why the batterers' intervention program is inappropriate.

If you find (defendant) guilty of committing a[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [or] [any crime that resulted in physical injury or death] upon (victim), you must further determine if the State proved beyond a reasonable doubt that (defendant) was a family or household member of (victim).

Give only if § 741.283(1)(a), Fla. Stat., is charged. The statute requires a certain number of days in jail depending on priors, however, mandatory jail is not required if the judge sentences the defendant to prison or withholds adjudication.

If you find (defendant) guilty of committing a[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [or] [a crime that resulted in physical injury or death] upon (victim), you must further determine if the State proved the following two elements beyond a reasonable doubt:

- 1. (Defendant) was a family or household member of (victim).**
- 2. (Defendant) intentionally caused bodily harm to (victim).**

Give only if § 741.283(1)(b), Fla. Stat., is charged. The statute requires a certain number of days in jail depending on priors, however, mandatory jail is not required if the judge sentences the defendant to prison or withholds adjudication.

If you find (defendant) guilty of committing a[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [or] [any crime that resulted in physical injury or death] upon (victim), you must further determine if the State proved the following five elements beyond a reasonable doubt:

- 1. (Defendant) was a family or household member of (victim).**
- 2. (Defendant) intentionally caused bodily harm to (victim).**
- 3. The [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [crime that resulted in physical injury or death] took place in the presence of (child).**
- 4. At the time of the crime, (child) was under 16 years of age.**
- 5. (Child) was a family or household member of (victim) or (defendant).**

Give in all cases where minimum domestic violence sentence is at issue. § 741.281, Fla. Stat. or § 741.283, Fla. Stat.

“Family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in

the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

Comments

Alleyne v. United States, 570 U.S. 99 (2013), requires that any fact that increases the required minimum sentence must be found by the jury. Accordingly, it is probably necessary to have jury findings for mandatory sentencing provisions in cases where domestic violence is alleged. However, because Apprendi v. New Jersey, 530 U.S. 466 (2000) exempts recidivism from jury fact-finding, it is unlikely that the existence of domestic violence priors, which leads to an increase in the mandatory number of days in jail, require a jury finding.

As of January 2022, the phrase “in the presence of a child” has not been interpreted for this statute. In the context of Lewd and Lascivious Act in Presence of a Child, § 800.04(3), Fla. Stat., the same phrase was interpreted to mean that the child must have seen, heard, or otherwise sensed that the act was taking place. State v. Werner, 609 So. 2d 585 (Fla. 1992).

This instruction was adopted on [month, day,] 2022.

8.29 CYBERINTIMIDATION BY PUBLICATION

§ 836.115, Fla. Stat.

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

- 1. (Defendant) electronically published (victim’s) personal identification information.**
- 2. (Defendant) did so with the intent to [or with the intent that a third party will use the information to] [incite violence or commit a crime against (victim)] [or] [threaten or harass (victim), placing (victim) in reasonable fear of bodily harm].**

§ 836.115(1)(a), Fla. Stat.

“Electronically publish” means to disseminate, post, or otherwise disclose information to an Internet site or forum.

§§ 836.115(1)(c), 817.568(1)(f), Fla. Stats.

“Personal identification information” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any:

- 1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account**

number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;

2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

3. Unique electronic identification number, address, or routing code;

4. Medical records;

5. Telecommunication identifying information or access device; or

6. Other number or information that can be used to access a person's financial resources.

Give if applicable. §§ 836.115(1)(b), 817.568(1)(c), Fla. Stats.

“Harass” means to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose. “Harass” does not mean to use personal identification information for accepted commercial purposes. The term does not include constitutionally protected conduct such as organized protests or the use of personal identification information for accepted commercial purposes.

Lesser Included Offense

<u>CYBERINTIMIDATION BY PUBLICATION — 836.115</u>			
<u>CATEGORY ONE</u>	<u>CATEGORY TWO</u>	<u>FLA. STAT.</u>	<u>INS. NO.</u>
<u>None</u>			
	<u>Attempt</u>	<u>777.04(1)</u>	<u>5.1</u>

Comment

This instruction was approved on [month day,] 2022.

10.15(a) [POSSESSION OF [A FIREARM] [AN ELECTRIC WEAPON OR DEVICE] [AMMUNITION]] [OR] [CARRYING A CONCEALED WEAPON] BY A PERSON UNDER THE AGE OF 24 WHO HAS BEEN FOUND DELINQUENT OF AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT § 790.23(1)(b) or (1)(d), Fla. Stat.

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

- 1. (Defendant) had been found by [a court of this state] [a court of another [state] [territory] [country]] to have committed a delinquent act that would be a felony if committed by an adult [and which was punishable by imprisonment for a term exceeding 1 year].**

Give 2a or 2b or both as applicable.

- 2. After being found to have committed that delinquent act, (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.
3. (Defendant) was under 24 years of age at the time [he] [she] [owned or had in [his] [her] care, custody, possession, or control, [the firearm] [the electric weapon or device] [the ammunition]] [or] [carried the concealed weapon].

“Found” refers to a finding of fact by a court of competent jurisdiction and does not require an adjudication of guilt. State v. Menuto, 912 So. 2d 603 (Fla. 2d DCA 2005).

Give if applicable. § 790.23(1)(b) or (1)(d), Fla. Stat.

The court instructs you that (name of felony) was a felony under [Florida state law] [(insert the name of the state, territory, or country where the delinquent act occurred) law and was punishable by imprisonment for a term exceeding 1 year] on (insert relevant date).

Definitions.

§ 985.03(89), Fla. Stat.

“Delinquent act” is a violation of law found by a court to have been committed by any married or unmarried child under 18 years of age.

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 such weapon; any firearm muffler or firearm silencer; any destructive device; or 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(19), Fla. Stat.

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

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

§ 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(3)(a), Fla. Stat. Give only if element 2b alleged.

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 a 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 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. Absolute invisibility is not a necessary element to a finding of concealment.

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

CARRYING A CONCEALED WEAPON OR POSSESSING FIREARM/AMMUNITION/ELECTRIC WEAPON OR DEVICE BY A PERSON UNDER THE AGE OF 24 WHO HAS BEEN FOUND DELINQUENT OF AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT– 790.23(1)(b) or (d)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Carrying a Concealed Weapon if Carrying a Concealed Weapon is charged		790.01(1)	10.1

	Attempt	777.04(1)	5.1
	Carrying concealed firearm	790.01(2)	10.1

Comments

The 3-year minimum mandatory sentence for actual possession of a firearm does not apply because this crime is not listed in § 775.087(2), Fla. Stat. *Potter v. State*, 997 So. 2d 1215 (Fla. 1st DCA 2008).

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

This instruction was adopted in 2012 [95 So. 3d 868] and amended in 2018 [253 So. 3d 1024], ~~and~~ on April 3, 2020, and on [month day,] 2022.

13.6 TRESPASS ON DESIGNATED PROPERTY

§ 810.09(2)(d), (e), (f), (g), or (i), Fla. Stat.

To prove the crime of Trespass on [a Construction Site [Less than or Equal to] [Greater than] One Acre in Area] [Commercial Horticulture Property] [an Agricultural Site for Testing or Research] [a Certified Domestic Violence Center] [an Agricultural Chemical Manufacturing Facility], the State must prove the following five elements beyond a reasonable doubt:

- 1. (Defendant) willfully entered upon property other than a structure or conveyance.**
- 2. The property was [owned by] [in the lawful possession of] (person alleged).**
- 3. The property was legally posted.**
- 4. The property was [a construction site] [commercial horticulture property] [an agricultural site for testing or research] [a domestic violence center certified under s. 39.905] [an agricultural chemical manufacturing facility].**
- 5. (Defendant) entered the property without authorization, license, or invitation from (person alleged) or any other person authorized to give that permission.**

Rozier v. State, 402 So. 2d 539 (Fla. 5th DCA 1981).

“Willfully” means intentionally, knowingly, and purposely.

§ 810.011(1), Fla. Stat.; State v. Hamilton, 660 So. 2d 1038 (Fla. 1995); and DuBose v. State, 210 So. 3d 641 (Fla. 2017).

“Structure” means a building of any kind, either temporary or permanent, which has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

“Conveyance” means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and “to enter a conveyance” includes taking apart any portion of the conveyance.

§ 810.09(3), Fla. Stat.

“Person authorized” means any owner, his or her agent, or a community association authorized as an agent for the owner, or any law enforcement officer whose department has received written authorization from the owner, his or her agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to public safety or welfare.

Authority to enter upon in property need not be given in express words. It may be implied from the circumstances. It is lawful to enter upon the property of another if, under all the circumstances, a reasonable person would believe that [he] [she] had the permission of the owner, lawful occupant, or any other person authorized to give that permission.

Give as applicable.

§ 810.011(11), Fla. Stat.

“Commercial horticulture property” means any property that is cleared of its natural vegetation and is planted in commercially cultivated horticulture products that are planted, grown, or harvested. The term also includes property that is used for the commercial sale, use, or distribution of horticulture products.

§ 810.011(12), Fla. Stat.

“Agricultural chemicals manufacturing facility” means any facility, and any properties or structures associated with the facility, used for the manufacture, processing, or storage of agricultural chemicals classified in Industry Group 287 contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

§ 810.011(13), Fla. Stat.

“Construction site” means any property upon which there is construction that is subject to building permit posting requirements.

Give the appropriate designation as alleged in the charging document:

Construction Site less than or equal to 1 acre in area. § 810.09(2)(d)2., Fla. Stat.

“Legally posted” means:

- 1. The property was less than or equal to one acre in area.**
- 2. The property was identified as a construction site with a sign prominently placed on the property where the construction permits were located.**
- 3. The letters on the sign were not less than two inches in height and the sign read in substantially the following manner: THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.**

Construction Site greater than 1 acre in area. § 810.09(2)(d)1., Fla. Stat.; § 810.011(5)(a), Fla. Stat.; Borrigo v. State, 276 So. 3d 458 (Fla. 5th DCA 2019).

“Legally posted” means:

- 1. The property was greater than one acre in area;**
- 2. The property was identified as a construction site with signs that read in substantially the following manner: THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO**

TRESPASSES ON THIS PROPERTY COMMITS A FELONY. The lettering for this part of the signs must be no less than 2 inches in height;

- 3. The signs were placed not more than 500 feet apart;**
- 4. The signs were located at each corner of the boundaries of the property;**
- 5. The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs; and,**
- 6. The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.**

Commercial Horticulture Property § 810.09(2)(e), Fla. Stat. § 810.011(5)(a), Fla. Stat.; Couch v. State, 326 So. 3d 750 (Fla. 3d DCA 2021).

“Legally posted” means:

- 1. The property was identified as a commercial horticulture property with signs that read in substantially the following manner: THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURAL PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY. The lettering for this part of the signs must be no less than 2 inches in height.**
- 2. The signs were placed not more than 500 feet apart.**
- 3. The signs were located at each corner of the boundaries of the property.**
- 4. The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.**

- 5. The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.**

Agricultural Site for Testing § 810.09(2)(f), Fla. Stat. § 810.011(5)(a), Fla. Stat.

“Legally posted” means:

- 1. The property was identified as an agricultural site for testing with signs that read in substantially the following manner: THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY. The lettering for this part of the signs must be no less than 2 inches in height.**
- 2. The signs were placed not more than 500 feet apart.**
- 3. The signs were located at each corner of the boundaries of the property.**
- 4. The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.**
- 5. The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.**

Certified Domestic Violence Center § 810.09(2)(g), Fla. Stat. § 810.011(5)(a), Fla. Stat.

“Legally posted” means:

- 1. Signs were located on the property that read in substantially the following manner: THIS AREA IS A DESIGNATED RESTRICTED SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY. The lettering for this part of the signs must be no less than 2 inches in height.**

- 2. The signs were placed not more than 500 feet apart.**
- 3. The signs were located at each corner of the boundaries of the property.**
- 4. The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.**
- 5. The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.**

Agricultural Chemical Manufacturing Facility § 810.09(2)(i), Fla. Stat.
§ 810.011(5)(a), Fla. Stat.

“Legally posted” means:

- 1. The property was identified as an agricultural chemical manufacturing facility with signs that read in substantially the following manner: THIS AREA IS A DESIGNATED AGRICULTURAL CHEMICALS MANUFACTURE FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY. The lettering for this part of the signs must be no less than 2 inches in height.**
- 2. The signs were placed not more than 500 feet apart.**
- 3. The signs were located at each corner of the boundaries of the property.**
- 4. The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.**
- 5. The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.**

Lesser Included Offenses

TRESPASS ON DESIGNATED PROPERTY — 810.09(2)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
<u>None</u>			
	<u>Trespass on Property Other than a Structure or Conveyance</u>	<u>810.09</u>	<u>13.4</u>
	<u>Attempt</u>	<u>777.04(1)</u>	<u>5.1</u>

Comments

This instruction was adopted on [month day,] 2022.

**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.**

Give if applicable. § 790.23(1)(a), (1)(c), or (1)(e), Fla. Stat.,

The court instructs you that (name of felony) was a felony under [Florida state] [federal] [(insert the name of the state, territory, or country) law and was punishable by imprisonment for a term exceeding 1 year] on (insert relevant date).

Definitions.

For purposes of § 790.23(1)(a), Fla. Stat., a withhold of adjudication does not qualify as a “conviction.” State v. Menuto, 912 So. 2d 603 (Fla. 2d DCA 2005).

“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], on April 3, 2020, and on July 9, 2021, and on [month day], 2022.

27.1 [ATTEMPTED] ESCAPE

§ 944.40, Fla. Stat.

(including § 945.091(4), Fla. Stat. and § 951.24(4), Fla. Stat.)

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

Give as applicable.

1. (Defendant) was a prisoner
 - a. under arrest.
 - b. convicted of a crime, sentenced to a term of imprisonment, and confined to a [prison] [jail] [private correctional facility] [road camp] [penal institution].
 - c. being transported to or from a place of confinement.
 - d. released on furlough from a [prison] [jail] [private correctional facility] [road camp] [penal institution].
 - e. in a [prison] [jail] [private correctional facility] [road camp] [penal institution] and was [working on a public road] [participating in a work release program].

2. (Defendant)
 - a. escaped,
 - b. attempted to escape by (read overt act from charge),
 - c. willfully failed to return to [his] [her] place of confinement within the time prescribed,
 - d. willfully failed to remain within the extended limits of [his] [her] confinement, intending to avoid confinement.

§ 944.02(6), Fla. Stat.

“Prisoner” means any person who is under civil or criminal arrest and in the lawful custody of any law enforcement official, or any person committed to or detained in any municipal or county jail or state prison, prison farm, or penitentiary, or to the custody of the Department of Corrections pursuant to lawful authority.

Give if requested and applicable. See Kearse v. State, 662 So. 2d 677 (Fla. 1995), ~~and~~ Applewhite v. State, 874 So. 2d 1276 (Fla. 5th DCA 2004), and Sweeney v. State, 633 So. 2d 66 (Fla. 4th DCA 1994).

“Transportation to a place of confinement” begins at the time an individual is placed under arrest.

An “arrest” takes place when the arresting officer intends to arrest; the arresting officer actually or constructively seizes the person to be arrested; the officer’s intent to arrest is communicated by the arresting officer to the person to be arrested; and the person to be arrested understands that communication. [The communication from the officer to the person to be arrested may be by words or actions, or both, and would lead a reasonable person or the average citizen in similar circumstances to think that he or she was under arrest.] An “arrest” does not require that the law enforcement officer complete the act of acquiring total physical control over the person to be arrested.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The State is not required to prove the technical correctness of the original arrest. *Marquez v. State*, 450 So. 2d 345, 345 (Fla. 2d DCA 1984). Once under legal incarceration, a defendant must avail himself of help through the court system, not self-help via an escape. *Lawson v. State*, 312 So. 2d 522, 524 (Fla. 4th DCA 1975).

This instruction was adopted in 1981 and amended in 1989, 2007 [962 So. 2d 310], 2016 [199 So. 3d 234], and 2020 [290 So. 3d 864], and on [month day,] 2022.

28.4 LEAVING THE SCENE OF A CRASH INVOLVING [DEATH] [SERIOUS BODILY INJURY] [INJURY] § 316.027(2), Fla. Stat.; § 316.062, Fla. Stat.

To prove the crime of Leaving the Scene of a Crash Involving [Death] [Serious Bodily Injury] [Injury], the State must prove the following four elements beyond a reasonable doubt:

- 1. (Defendant) was the driver of a vehicle involved in a crash occurring on public or private property resulting in [injury to] [death of] any person.**
- 2. (Defendant) knew that [he] [she] was involved in a crash.**

Give 3a if death is charged or 3b if injury or serious bodily injury is charged.

- 3. a. (Defendant) knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to or**

death of the person.

- b. (Defendant) knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to the person.

Give 4a, or 4b, or both as applicable. See Comment section for cases involving death.

4. ~~a.~~ (Defendant) willfully failed to immediately stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given “identifying information” to the [injured person] [driver] [occupant] [person attending the vehicle] and to any police officer investigating the crash and rendered reasonable assistance to an injured person if such treatment appeared to be necessary or was requested by an injured person.

~~{or}~~

- ~~b. (Defendant) willfully failed to render “reasonable assistance” to the injured person if such treatment appeared to be necessary or was requested by the injured person.~~

~~If the State proves that the defendant willfully failed to give any part of the “identifying information” or willfully failed to give reasonable assistance, the State satisfies this element of the offense.~~

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means knowingly, intentionally, and purposely.

§ 316.062, Fla. Stat.

“Identifying information” means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant’s license or permit to drive.

“Reasonable assistance” includes carrying or making arrangements to carry the injured person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016).

A vehicle is “involved in a crash” if it collides with another vehicle, person, or object.

§ 316.003(103), Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

A “vehicle” is any device in, upon, or by which any person or property is, or may be, transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Give if serious bodily injury is charged. § 316.027(1)(a), Fla. Stat.;

§ 316.027(2)(b), Fla. Stat.

If you find that (defendant) committed the crime of Leaving the Scene of a Crash Involving Injury, you must then determine whether the State proved beyond a reasonable doubt that the injury was a serious bodily injury.

“Serious bodily injury” means an injury to a person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

Give if it is alleged in the charging document that the defendant caused victim injury or death. § 921.0021(7)(e), Fla. Stat.

If you find that (defendant) committed the crime of Leaving the Scene of a Crash Involving [Death] [Serious Bodily Injury] [Injury], you must then determine whether the State proved beyond a reasonable doubt that [he] [she] caused [death] [or] [severe injury] [or] [moderate injury] [or] [slight injury] to (victim).

Give when the State alleged the victim was a “vulnerable road user.”

§ 316.027(2)(f), Fla. Stat.

If you find that (defendant) committed the crime of Leaving the Scene of a Crash Involving [Death] [Serious Bodily Injury] [or] [Injury], you must then determine whether the State proved beyond a reasonable doubt that the [injured person] [person who died] was:

[a pedestrian].

[actually engaged in work upon a highway].

[actually engaged in work upon utility facilities along a highway].

[engaged in the provision of emergency services within the right-of-way].

[operating a [bicycle] [an electric bicycle] [motorcycle] [scooter] [moped] lawfully on the roadway].

[riding an animal].

[lawfully operating [a farm tractor or similar vehicle designed primarily for farm use] [a skateboard] [roller-skates] [in-line skates] [a horse-drawn carriage] [an electric personal assistive mobility device] [a wheelchair] on [a public right-of-way] [crosswalk] [shoulder of the roadway]].

Definitions.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016).

A vehicle is “involved in a crash” if it collides with another vehicle, person, or object.

§ 316.003(103), Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

~~A “vehicle” is any device in, upon, or by which any person or property is, or may be, transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].~~

§ 316.062, Fla. Stat.

~~“Identifying information” means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant’s license or permit to drive.~~

~~“Reasonable assistance” includes carrying or making arrangements to carry the injured person to a physician or hospital for medical treatment.~~

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

~~“Willfully” means knowingly, intentionally and purposely.~~

If the “vulnerable road user” enhancement is given, insert applicable definitions from § 316.003, Fla. Stat.

Lesser Included Offenses

LEAVING THE SCENE OF A CRASH INVOLVING DEATH — 316.027(2)(c)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving the Scene of a Crash Involving Serious Bodily Injury*		316.027(2)(b)	28.4
Leaving the Scene of a Crash Involving Injury*		316.027(2)(a)	28.4
	Attempt	777.04(1)	5.1

LEAVING THE SCENE OF A CRASH INVOLVING SERIOUS BODILY INJURY — 316.027(2)(b)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving the Scene of a Crash Involving Injury		316.027(2)(a)	28.4
	Attempt	777.04(1)	5.1

Comments

Element #4 will need to be modified in cases where someone died because the deceased cannot receive information or assistance to which he or she is entitled under § 316.062(1), Fla. Stat. The revised instruction on element #4 will also depend on whether a police officer is present. In a case where someone died and no police officer was present, § 316.062(2), Fla. Stat., requires the driver of a vehicle involved in the crash to forthwith report the crash to the nearest office of a duly authorized police authority and provide the information specified in § 316.062(1), Fla. Stat.

*In *Williams v. State*, 732 So. 2d 431 (Fla. 2d DCA 1999), the court stated in dictum that Leaving the Scene of a Crash Involving Injury is a necessarily lesser-included offense of Leaving the Scene of a Crash Involving Death. In other areas, however, where there is no dispute that a person was killed as a result of an incident giving rise to criminal charges, non-death lessers are not appropriate. *See, e.g., State v. Barritt*, 531 So. 2d 338 (Fla. 1988); *Humphrey v. State*, 690 So. 2d 1351 (Fla. 3d DCA 1997).

As of ~~September 2020~~ December 2021, it was unclear whether the courts would interpret the statutory phrase of “the driver of a vehicle involved in a crash” as including instances where the

defendant's vehicle did not collide with another vehicle, person, or object, but the defendant's driving pattern caused vehicle 2 to collide with a person, an object, or vehicle 3. *See State v. Elder*, 975 So. 2d 481 (Fla. 2d DCA 2007) (which was decided before *Gaulden v. State*, 195 So. 3d 1123 (Fla. 2016) but may still be good law).

This instruction was adopted in 1995 [665 So. 2d 212] and amended in 2008 [973 So. 2d 432], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 2d 244], 2019 [262 So. 3d 59], and on October 2, 2020, and on [month day,] 2022.

28.4(a) LEAVING THE SCENE OF A CRASH INVOLVING ONLY DAMAGE TO AN ATTENDED VEHICLE OR ATTENDED PROPERTY

§ 316.061(1), Fla. Stat.

To prove the crime of Leaving the Scene of a Crash Involving Only Damage to an Attended Vehicle or Attended Property, the State must prove the following four elements beyond a reasonable doubt:

- 1. (Defendant) was the driver of a vehicle involved in a crash.**
- 2. The crash resulted only in damage to a vehicle or other property.**
- 3. The [vehicle] [other property] was [driven] [attended] by [a person] [(name of person)].**
- 4. (Defendant) failed to stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given "identifying information" to the [driver or occupant of the damaged vehicle] [person attending the damaged vehicle or property] [and to any police officer at the scene of the crash or who is investigating the crash].**

~~If the State proves that the defendant failed to give any part of the "identifying information," the State satisfies this element of the offense.~~

Definitions.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016).

A vehicle is "involved in a crash" if it collides with another vehicle, person, or object.

§ 316.062(1), Fla. Stat.

"Identifying information" means the name, address, vehicle registration number, and if available and requested, the exhibition of the defendant's license or permit to drive.

§ 316.003(103), Fla. Stat. *Some of these terms have their own statutory definitions, which should be given if necessary.*

“Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Lesser Included Offenses

LEAVING THE SCENE OF A CRASH INVOLVING ONLY DAMAGE TO AN ATTENDED VEHICLE OR ATTENDED PROPERTY—316.061(1)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

As of ~~September 2020~~ December 2021, it was unclear whether the courts would interpret the statutory phrase of “the driver of a vehicle involved in a crash” as including instances where the defendant’s vehicle did not collide with another vehicle, person, or object, but the defendant’s driving pattern caused vehicle 2 to collide with a person, an object, or vehicle 3. *See State v. Elder*, 975 So. 2d 481 (Fla. 2d DCA 2007) (which was decided before *Gaulden v. State*, 195 So. 3d 1123 (Fla. 2016) but may still be good law).

As of ~~September 2020~~ December 2021, there was no case law directly addressing the issue of whether the State must prove the defendant knew, or should have known, of either the crash or the property damage. *Compare State v. Dorsett*, 158 So. 3d 557 (Fla. 2015), and *Mancuso v. State*, 652 So. 2d 370 (Fla. 1995), dealing with § 316.027, Fla. Stat., which, unlike § 316.061, Fla. Stat., contains an explicit willfulness requirement.

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], and on October 2, 2020, and on [month day,] 2022.

28.4(b) LEAVING THE SCENE OF A CRASH INVOLVING DAMAGE TO AN UNATTENDED VEHICLE OR UNATTENDED PROPERTY § 316.063(1), Fla. Stat.

To prove the crime of Leaving the Scene of a Crash Involving Damage to an Unattended Vehicle or Unattended Property, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) was the driver of a vehicle involved in a crash or collision.

2. The crash or collision resulted in damage to another vehicle or other property.
3. The vehicle or other property was not driven or attended by any person.
4. (Defendant) failed to immediately stop at the scene of the crash or collision and then and there either
 - a. locate and notify the operator or owner of the vehicle or other property of [his] [her] name and address and the registration number of the vehicle [he] [she] was driving, or
 - b. attach securely in a conspicuous place in or on the vehicle or other property a written notice giving [his] [her] name and address and the registration number of the vehicle [he] [she] was driving, and, without unnecessary delay, notify the nearest office of a duly authorized police authority.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016).

A vehicle is “involved in a crash” if it collides with another vehicle, person, or object.

§ 316.003(103), Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

“Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Lesser Included Offense

LEAVING THE SCENE OF A CRASH INVOLVING DAMAGE TO AN UNATTENDED VEHICLE OR UNATTENDED PROPERTY—316.063(1)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

As of ~~September 2020~~ December 2021, it was unclear whether the courts would interpret the statutory phrase of “the driver of a vehicle involved in a crash” as including instances where the defendant’s vehicle did not collide with another vehicle, person, or object, but the defendant’s driving

pattern caused vehicle 2 to collide with a person, an object, or vehicle 3. *See State v. Elder*, 975 So. 2d 481 (Fla. 2d DCA 2007) (which was decided before *Gaulden v. State*, 195 So. 3d 1123 (Fla. 2016) but may still be good law).

As of ~~September 2020~~ December 2021, there was no case law directly addressing the issue of whether the State must prove the defendant knew, or should have known, of either the crash or the property damage. *Compare State v. Dorsett*, 158 So. 3d 557 (Fla. 2015), and *Mancuso v. State*, 652 So. 2d 370 (Fla. 1995), dealing with § 316.027, Fla. Stat., which, unlike § 316.063, Fla. Stat., contains an explicit willfulness requirement.

This instruction was adopted in 2016 [192 So. 3d 1190] and amended in 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], and on October 2, 2020, and on [month day], 2022.

28.8(b) AGGRAVATED FLEEING OR ELUDING
(Leaving a Crash Involving Serious Bodily Injury, Injury or Death then
Causing Serious Bodily Injury or Death)

§ 316.1935(4)(b) and § 316.027, Fla. Stat.

To prove the crime of Aggravated Fleeing or Eluding, the State must prove the following seven elements beyond a reasonable doubt:

- 1. (Defendant) was the driver of a vehicle involved in a crash occurring on public or private property resulting in [serious bodily injury to] [injury to] [the death of] any person.**
- 2. (Defendant) knew that [he] [she] was involved in a crash.**

Give 3a if death is charged or 3b if injury or serious bodily injury is charged.

- 3. a. (Defendant) knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to or death of the person.**
- b. (Defendant) knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to the person.**

~~*Give 4a or 4b or both as applicable. See Comment section for cases involving death.*~~

- 4. (Defendant)**

a. willfully failed to immediately stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given “identifying information” to the [injured person] [driver] [occupant] [person attending the vehicle or other damaged property] and to any police officer investigating the crash and rendered reasonable assistance to an injured person if such treatment appeared to be necessary or was requested by an injured person.

~~{or}~~

b. ~~willfully failed to render “reasonable assistance” to the injured person if such treatment appeared to be necessary or was requested by the injured person.~~

5. A duly authorized law enforcement officer ordered (defendant) to stop.
6. (Defendant), knowing [he][she] had been ordered to stop by a law enforcement officer, [willfully refused or failed to stop [his][her]vehicle in compliance with the order to stop] [and after having stopped in knowing compliance with the order to stop, willfully fled in a vehicle in an attempt to elude the law enforcement officer.]
7. As a result of (defendant) fleeing or eluding, [he] [she] caused [serious bodily injury to] [the death of] (name of victim).

~~§ 316.027, Fla. Stat.~~

~~A driver has the legal duty to immediately stop [his] [her] vehicle at the scene of the crash or as close to the scene of the crash as possible and provide “identifying information.”~~

~~If the State proves beyond a reasonable doubt that the defendant willfully failed to give any part of the “identifying information” or willfully failed to give reasonable assistance, the State satisfies this element of the offense.~~

Give if it is alleged in the charging document that the defendant caused victim injury or death as part of violating § 316.027, Fla. Stat. § 921.0021(7)(e), Fla. Stat.

If you find that (defendant) committed Aggravated Fleeing, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] caused [death] [or] [severe injury] [or] [moderate injury] [or] [slight injury] to (victim).

*Give when the State alleged the victim was a “vulnerable road user.” § 316.027(2)(f), Fla. Stat.
Insert applicable definitions from § 316.003, Fla. Stat.*

If you find that the State proved beyond a reasonable doubt that (defendant) committed elements #1 – #4, you must then determine whether the State also proved beyond a reasonable doubt that the [injured person] [person who died] in element #1 was:

[a pedestrian].

[actually engaged in work upon a highway].

[actually engaged in work upon utility facilities along a highway].

[engaged in the provision of emergency services within the right-of-way].

[operating a [bicycle] [electric bicycle] [motorcycle] [scooter] [moped] lawfully on the roadway].

[riding an animal].

[lawfully operating [a farm tractor or similar vehicle designed primarily for farm use] [a skateboard] [roller-skates] [in-line skates] [a horse-drawn carriage] [an electric personal assistive mobility device] [a wheelchair] on [a public right-of-way] [crosswalk] [shoulder of the roadway]].

Definitions.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016).

A vehicle is “involved in a crash” if it collides with another vehicle, person, or object.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means intentionally, knowingly, and purposely.

§ 316.062, Fla. Stat.

“Identifying information” means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant’s license or permit to drive.

“Reasonable assistance” includes carrying or making arrangement to carry the injured person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

§ 316.003(103), Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

“Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.027(1)(a), Fla. Stat.

“Serious bodily injury” means an injury to a person [including the driver,] which consists of a physical condition that creates a substantial risk of death, serious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

Lesser Included Offenses

AGGRAVATED FLEEING OR ELUDING (Leaving a Crash Involving Death and then Causing Serious Injury Bodily Injury or Death) — 316.1935(4)(b) and 316.027(2)(c)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving Scene of a Crash Involving Death*		316.027(2)(c)	28.4
Leaving the Scene of a Crash Involving Serious Bodily Injury*		316.027(2)(b)	28.4
Aggravated Fleeing		316.1935(4)(a)	28.8(d)
Leaving Scene of a Crash Involving Injury*		316.027(2)(a)	28.4
Fleeing to Elude LEO		316.1935(1)	28.6
	Fleeing to Elude LEO	316.1935(3)(b)	28.8(a)
	Fleeing to Elude LEO	316.1935(3)(a)	28.8
	Fleeing to Elude LEO	316.1935(2)	28.7
Reckless Driving (if there was evidence that the fleeing was in a motor		316.192(1)(b)	28.5

vehicle)			
	Disobedience to Police or Fire Department Officials**	316.072(3)	28.18

Comments

Element #4 will need to be modified in cases where someone died because the deceased cannot receive information or assistance to which he or she is entitled under § 316.062(1), Fla. Stat. The revised instruction on element #4 will also depend on whether a police officer is present. In a case where someone died and no police officer was present, § 316.062(2), Fla. Stat., requires the driver of a vehicle involved in the crash to forthwith report the crash to the nearest office of a duly authorized police authority and provide the information specified in § 316.062(1), Fla. Stat.

*§ 316.1935(4), Fla. Stat., states that a person may be charged with both Aggravated Fleeing or Eluding and Leaving the Scene of a Crash Involving Death, Serious Bodily Injury, or Injury. Therefore, if a Leaving the Scene crime is charged as a separate count, then Leaving the Scene should not be given as a lesser-included offense of Aggravated Fleeing or Eluding.

**The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State*, 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

As of ~~September 2020~~ December 2021, it was unclear whether the courts would interpret the statutory phrase of “the driver of a vehicle involved in a crash” as including instances where the defendant’s vehicle did not collide with another vehicle, person, or object, but the defendant’s driving pattern caused vehicle 2 to collide with a person, an object, or vehicle 3. *See State v. Elder*, 975 So. 2d 481 (Fla. 2d DCA 2007) (which was decided before *Gaulden v. State*, 195 So. 3d 1123 (Fla. 2016) but may still be good law).

This instruction was adopted in 2008 [976 So. 2d 1081] and amended in 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59] and on October 2, 2020, and on [month day], 2022.

28.8(d) AGGRAVATED FLEEING OR ELUDING (Leaving a Crash Involving Serious Bodily Injury, Injury or Death then Causing Injury or Property Damage to Another)

§ 316.1935(4)(a) and § 316.027 Fla. Stat.

To prove the crime of Aggravated Fleeing or Eluding, the State must prove the following seven elements beyond a reasonable doubt:

1. (Defendant) was the driver of a vehicle involved in a crash occurring on public or private property resulting in [serious bodily injury to] [injury to] [the death of] any person.
2. (Defendant) knew that [he] [she] was involved in a crash.

Give 3a if death is charged or 3b if serious bodily injury or injury is charged.

3. a. (Defendant) knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to or death of the person.
- b. (Defendant) knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to the person.

~~Give 4a or 4b or both as applicable.~~ See Comment section for cases involving death.

4. (Defendant)
 - a. willfully failed to stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given “identifying information” to the [injured person] [driver] [occupant] [person attending the vehicle or other damaged property] and to any police officer investigating the crash and _____ rendered reasonable assistance to an injured person if such treatment appeared to be necessary or was requested by an injured person.

~~{or}~~

- ~~b. _____ willfully failed to render “reasonable assistance” to the injured person if such treatment appeared to be necessary or was requested by the injured person.~~

5. A duly authorized law enforcement officer ordered (defendant) to stop.
6. (Defendant) knowing [he] [she] had been ordered to stop by a law enforcement officer, [willfully refused or failed to stop [his][her]vehicle in compliance with the order to stop][and after having stopped in knowing compliance with the order to stop, willfully fled in a vehicle in an attempt to elude the law enforcement officer.]
7. As a result of (defendant) fleeing or eluding, [he] [she] caused [an injury to] [damage to the property of] (name of victim).

~~§ 316.027, Fla. Stat.~~

~~A driver has the legal duty to immediately stop [his] [her] vehicle at the scene of the crash or as close to the scene of the crash as possible and provide “identifying information.”~~

~~If the State proves beyond a reasonable doubt that the defendant willfully failed to give any part of the “identifying information” or willfully failed to give reasonable assistance, the State satisfies this element of the offense.~~

Give if it is alleged in the charging document that the defendant caused victim injury or death as part of violating § 316.027, Fla. Stat. § 921.0021(7)(e), Fla. Stat.

If you find that (defendant) committed **Aggravated Fleeing**, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] caused [death] [or] [severe injury] [or] [moderate injury] [or] [slight injury] to (victim).

Give when the State alleged the victim was a “vulnerable road user.” § 316.027(2)(f), Fla. Stat.

Insert applicable definitions from § 316.003, Fla. Stat.

If you find that the State proved beyond a reasonable doubt that (defendant) committed elements #1 – #4, you must then determine whether the State also proved beyond a reasonable doubt that the [injured person] [person who died] in element #1 was:

[a pedestrian].

[actually engaged in work upon a highway].

[actually engaged in work upon utility facilities along a highway].

[engaged in the provision of emergency services within the right-of-way].

[operating a [bicycle] [electric bicycle] [motorcycle] [scooter] [moped] lawfully on the roadway].

[riding an animal].

[lawfully operating [a farm tractor or similar vehicle designed primarily for farm use] [a skateboard] [roller-skates] [in-line skates] [a horse-drawn carriage] [an electric personal assistive mobility device] [a wheelchair] on [a public right-of-way]

[crosswalk] [shoulder of the roadway]].

Definitions.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016).

A vehicle is “involved in a crash” if it collides with another vehicle, person, or object.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means intentionally, knowingly, and purposely.

§ 316.062, Fla. Stat.

“Identifying information” means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant’s license or permit to drive.

“Reasonable assistance” includes carrying or making arrangement to carry the injured person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

§ 316.003(103), Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

“Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.027(1)(a), Fla. Stat.

“Serious bodily injury” means an injury to a person [including the driver,] which consists of a physical condition that creates a substantial risk of death, serious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

Lesser Included Offenses

AGGRAVATED FLEEING OR ELUDING (Leaving a Crash Involving Death and then Causing Injury or Property Damage to Another) — 316.1935(4)(a) and § 316.027(2)(c)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving Scene of a Crash Involving Death*		316.027(2)(c)	28.4
Leaving Scene of Crash Involving Serious Bodily Injury*		316.027(2)(b)	28.4
Leaving Scene of a Crash Involving Injury*		316.027(2)(a)	28.4

Fleeing to Elude LEO		316.1935(1)	28.6
	Fleeing to Elude LEO	316.1935(3)(b)	28.8(a)
	Fleeing to Elude LEO	316.1935(3)(a)	28.8
	Fleeing to Elude LEO	316.1935(2)	28.7
Reckless Driving (if there was evidence that the fleeing was in a motor vehicle)		316.192(1)(b)	28.5
	Disobedience to Police or Fire Department Officials**	316.072(3)	28.18

Comments

Element #4 will need to be modified in cases where someone died because the deceased cannot receive information or assistance to which he or she is entitled under § 316.062(1), Fla. Stat. The revised instruction on element #4 will also depend on whether a police officer is present. In a case where someone died and no police officer was present, § 316.062(2), Fla. Stat., requires the driver of a vehicle involved in the crash to forthwith report the crash to the nearest office of a duly authorized police authority and provide the information specified in § 316.062(1), Fla. Stat.

*§ 316.1935(4), Fla. Stat., states that a person may be charged with both Aggravated Fleeing or Eluding and Leaving the Scene of a Crash Involving Death, Serious Bodily Injury, or Injury. Therefore, if a Leaving the Scene crime is charged as a separate count, then Leaving the Scene should not be given as a lesser-included offense of Aggravated Fleeing or Eluding.

**The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State*, 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

As of ~~September 2020~~ December 2021, it was unclear whether the courts would interpret the statutory phrase of “the driver of a vehicle involved in a crash” as including instances where the defendant’s vehicle did not collide with another vehicle, person, or object, but the defendant’s driving pattern caused vehicle 2 to collide with a person, an object, or vehicle 3. *See State v. Elder*, 975 So. 2d

481 (Fla. 2d DCA 2007) (which was decided before *Gaulden v. State*, 195 So. 3d 1123 (Fla. 2016) but may still be good law).

This instruction was adopted in 2008 [976 So. 2d 1081] and amended in 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], and on October 2, 2020, and on [month day], 2022.