Supreme Court of Florida

No. SC16-1884

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES—REPORT 2016-10.

[April 13, 2017]

PER CURIAM.

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases (Committee) has submitted a report proposing amendments to seven existing standard criminal jury instructions. We have jurisdiction. See art. V, § 2(a), Fla. Const.

The Committee proposes amending existing instructions: 19.1 (Bribery of a Public Servant); 19.2 (Bribery by a Public Servant); 19.3 (Unlawful Compensation or Reward to Public Servant for Official Behavior); 19.4 (Unlawful Compensation or Reward by Public Servant for Official Behavior); 19.5 (Unlawful Compensation or Reward to Public Servant for Official Behavior); 19.6 (Unlawful Compensation or Reward by Public Servant for Official Behavior); and 19.7 (Official

Misconduct).[1] The changes proposed by the Committee primarily stem from the enactment of chapter 2016-151, Laws of Florida, which revised chapter 838 (Bribery; Misuse of Public Office) of the Florida Statutes. The enactment of chapter 2016-151, Laws of Florida, among other things, changed the type of mens rea necessary for a violation of chapter 838 from "corruptly" to "knowingly and intentionally." It also amended section 838.014, Florida Statutes (2016), to include definitions for the phrases "Governmental entity" and "Public contractor." Ch. 2016-151, § 1, Laws of Fla.

Before filing its report with the Court, the Committee published its proposals for comment. No comments were received. The Court did not republish the Committee's proposals for comment. Having considered the Committee's report, we hereby authorize for publication and use instructions 19.1 through 19.7 as proposed by the Committee.

Accordingly, the instructions, as set forth in the appendix to this opinion, are authorized for publication and use.[2] In authorizing the publication and use of these

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1. The Committee's proposals in this case were initially filed in Case No. SC16-1184. Because the Committee's proposals contained a citation to the Fourth District Court of Appeal's decision in Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015), review discharged, 202 So. 3d 40 (Fla. 2016), a case then pending before this Court, the Court severed the proposals from Case No. SC16-1184 and instructed the Committee to resubmit the proposals when the case became final.

2. The amendments as reflected in the appendix are to the Criminal Jury Instructions as they appear on the Court's website at www.floridasupremecourt.org

instructions, we express no opinion on their correctness and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions nor contesting the legal correctness of the instructions. We further caution all interested parties that any comments associated with the instructions reflect only the opinion of the Committee and are not necessarily indicative of the views of this Court as to their correctness or applicability. New language is indicated by underlining and deleted language is indicated by struck-through type. The instructions as set forth in the appendix shall be effective when this opinion becomes final.

It is so ordered.

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

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

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

Judge F. Rand Wallis, Chair, Supreme Court Committee on Standard Jury Instructions in Criminal Cases, Daytona Beach, Florida; and Bart Schneider, Staff Liaison, Office of the State Courts Administrator, Tallahassee, Florida,

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/jury_instructions/instructions.shtml. We recognize that there may be minor discrepancies between the instructions as they appear on the website and the published versions of the instructions. Any discrepancies as to instructions authorized for publication and use after October 25, 2007, should be resolved by reference to the published opinion of this Court authorizing the instruction.

for Petitioner

Appendix

19.1 BRIBERY OF A PUBLIC SERVANT

§ 838.015(1), Fla._Stat.

To prove the crime of Bribery of a Public Servant, the State must prove the following ~~four~~five elements beyond a reasonable doubt:

1. ~~(Person bribed) **was a** (office of person bribed).~~ (Name of public servant) **was a public servant.**

2. (Defendant) ~~**[gave] [offered] [promised] to** (person bribed) **the thing described in the charge in this case as** (read from charge)~~**knew that** (name of public servant) **was a public servant.**

3. ~~**The** (read from charge) **was something of value, benefit, or advantage to [**(person bribed)**] [a person in whose welfare** (person bribed) **was interested] not authorized by law.**~~(Defendant) **knowingly and intentionally [gave] [offered] [promised]** (name of public servant) **a pecuniary or other benefit.**

4. ~~**The [gift] [offer] [promise] was made for the purpose of corruptly influencing (person bribed) in the performance of some act or omission that**~~

~~*Give 4a or 4b as applicable.*~~

~~**a.** **[**(defendant) **believed to be**~~

~~**[within the official discretion of** (person bribed)**].]**~~
~~**[in violation of a public duty of** (person bribed)**].]**~~
~~**[in performance of a public duty of** (person bribed)**].]**~~

~~**b.** **[**(person bribed) **represented as being**~~

~~**[within [his] [her] official discretion].]**~~
~~**[in violation of [his] [her] public duty].]**~~
~~**[in performance of [his] [her] public duty].]**~~

(Defendant's) **[gift] [offer] [promise] was made with the intent or purpose to influence** (name of public servant) **in the performance of any act [or omission] that**

Give 4a or 4b as applicable.

a. (defendant) **believed to be [within the official discretion of** (name of public servant)**] [in violation of a public duty of** (name of public servant)**] [in performance of a public duty of** (name of public servant)**].**

b. (name of public servant) **represented as being [within [his] [her] official discretion] [in violation of [his] [her] public duty] [in performance of [his] [her] public duty].**

5. The pecuniary or other benefit was not authorized by law.

Definitions.

~~*§ 838.014(6), Fla.Stat.*~~

~~**"Corruptly" means acting knowingly and dishonestly for a wrongful purpose.**~~

~~**The court now instructs you that a** (office of person bribed) **is a public servant.**~~

§ 838.014(7)(a), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit not authorized by law" in element #5. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

“Pecuniary” means in the form of money. “Benefit” means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable. § 838.015(2), Fla. Stat.

In order for the defendant to be guilty of Bribery of a Public Servant, it is not necessary that (name of public servant) **had assumed office.**

Give if applicable. § 838.015(2), Fla. Stat.

In order for the defendant to be guilty of Bribery of a Public Servant, it is not necessary that the act with respect to which the bribe was [given] [offered] [promised] was properly pending before (~~person bribed~~name of public servant)**, or that by law it might be properly brought before [him] [her], or that [he] [she] was qualified to act in the desired way, or that [he] [she] had jurisdiction over the matter, or that [his] [her] official action was necessary to achieve the purpose of the defendant.**

~~*Give if applicable. § 838.014(4), Fla.Stat.*~~

~~**For the purpose of the laws against bribery, any person who has been elected or appointed to, or who is a candidate for election or appointment to, any public office is regarded as already being in that office with respect to any transaction relating to an act to be done if and when [he] [she] actually assumes office.**~~

Lesser Included Offenses~~s~~

BRIBERY OF A PUBLIC SERVANT — 838.015(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt if only "give" is charged	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766] and 2017.

19.2 BRIBERY BY A PUBLIC SERVANT

§ 838.015(1), Fla. Stat.

To prove the crime of Bribery by a Public Servant, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was a** ~~(office of defendant)~~**public servant.**

2. (Defendant) **knowingly and intentionally [requested] [solicited] [accepted] [agreed to accept for [himself] [herself] [or another]] from** (person making bribe)~~ **the thing described in the charge in this case as** (read from charge)~~ **a pecuniary or other benefit.**

3. ~~**The** (read from charge) **was something of value, benefit, or advantage to [**(defendant)**] [a person in whose welfare (**defendant) **was interested] not authorized by law.**~~ (Defendant's) **[request] [solicitation] [acceptance] [agreement to accept] was made with the intent of being influenced in the performance of some act [or omission] that**

Give 3a or 3b as applicable.

a. (person making bribe) **believed to be**

[within the official discretion of (defendant)**.]**
[in violation of a public duty of (defendant)**.]**
[in performance of public duty of (defendant)**.]**

b. (defendant) **represented as being**

[within [his] [her] official discretion].
[in violation of [his] [her] public duty].
[in performance of [his] [her] public duty].

4. ~~**The [request] [solicitation] [acceptance] [agreement to accept] was made with intent of corruptly being influenced in the performance of some act or omission that**~~

~~*Give 4a or 4b as applicable.*~~

~~**a.** **[**(person making bribe) **believed to be**~~

~~**[within the official discretion of** (defendant)**].]**~~
~~**[in violation of a public duty of** (defendant)**].]**~~
~~**[in performance of public duty of** (defendant)**].]**~~

~~**b.** **[**(defendant) **represented as being**~~

~~**[within [his] [her] official discretion].]**~~
~~**[in violation of [his] [her] public duty].]**~~
~~**[in performance of [his] [her] public duty].]**~~

The pecuniary or other benefit was not authorized by law.

Definitions.

~~*§ 838.014(6), Fla.Stat.*~~

~~**"Corruptly" means acting knowingly and dishonestly for a wrongful purpose.**~~

~~**The court now instructs you that a** (office of defendant) **is a public servant.**~~

§ 838.014(7)(a), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit not authorized by law" in element #4. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any

time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable. § 838.015(2), Fla. Stat.

In order for the defendant to be guilty of Bribery by a Public Servant, it is not necessary that [he] [she] had assumed office.

Give if applicable. § 838.015(2), Fla. Stat.

In order for the defendant to be guilty of Bribery by a Public Servant, it is not necessary that the act with respect to which [the bribe was [requested] [solicited] [accepted]] [an agreement was reached for the bribe] was properly pending before the defendant, or that by law it might be properly brought before [him] [her], or that [he] [she] was qualified to act in the desired way, or that [he] [she] had jurisdiction over the matter, or that [his] [her] official action was necessary to achieve the purpose of the person making the bribe.

~~*Give if applicable. § 838.014(4), Fla.Stat.*~~

~~**For the purpose of the laws against bribery, any person who has been elected or appointed to, or who is a candidate for election or appointment to, any public office is regarded as already being in that office with respect to any transaction relating to an act to be done if and when [he] [she] actually assumes office.**~~

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in ~~September~~ 2005 [911 So. 2d 766] and 2017.

19.3 UNLAWFUL COMPENSATION OR REWARD TO PUBLIC SERVANT FOR OFFICIAL BEHAVIOR

§ 838.016(1), Fla. Stat.

To prove the crime of Unlawful Compensation or Reward to a Public Servant for Official Behavior, the State must prove the following ~~four~~five elements beyond a reasonable doubt:

1. (~~Person bribed~~Name of public servant) **was a public servant.**

2. (Defendant) **knew that** (name of public servant) **was a public servant.**

~~**2.**~~**3.** (Defendant) **knowingly and intentionally [gave] [offered] [promised] ~~money~~a pecuniary or ~~some~~ other benefit to** (~~person bribed~~name of public servant)**.**

~~**3. The money or other benefit was something of value or advantage to [**(person bribed)**] [a person in whose welfare** (person bribed) **was interested] and was not authorized by law.**~~

4. The [gift] [offer] [promise] was ~~corruptly~~ made for the past, present, or future performance, nonperformance, or violation of any act or omission of (~~person bribed~~name of public servant) **that**

Give relevant part of 4a or 4b as applicable.

a. [(defendant) **believed to be**

[within the official discretion of (~~person bribed~~name of public servant)**].]**
[in violation of a public duty of (~~person bribed~~name of public servant)**].]**
[in performance of a public duty of (~~person bribed~~name of public servant)**].]**

b. [(~~person bribed~~name of public servant) **represented as being**

[within [his] [her] official discretion].]
[in violation of [his] [her] public duty].]
[in performance of [his] [her] public duty].]

5. The pecuniary or other benefit was not authorized by law.

Definitions.
~~*§ 838.014(6), Fla. Stat.*~~
~~**"Public servant" means:**~~

~~**a) Any officer or employee of a state, county, municipal, or special district agency or entity;**~~

~~**b) Any legislative or judicial officer or employee;**~~

~~**c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or**~~

~~**d) A candidate for election or appointment to any of the positions listed in (a), (b), or (c), or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.**~~

~~*§ 838.014(4), Fla. Stat.*~~
~~**"Corruptly" means acting knowingly and dishonestly for a wrongful purpose.**~~

~~*§ 838.014(1), Fla. Stat.*~~
~~**"Benefit" means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.**~~

§ 838.014(7)(a), Fla. Stat.
"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.
"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an

individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit which was not authorized by law" in element #5. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable.

§ 838.016(3), Fla. Stat.

It is not necessary for the State to prove that the exercise of official discretion or violation of a public duty or performance of a public duty for

which the bribe was [given] [offered] [promised] was accomplished or was within the official discretion or public duty of the public servant whose action or omission was sought to be rewarded or compensated.

Lesser Included Offenses

19.3 UNLAWFUL COMPENSATION OR REWARD TO PUBLIC SERVANT FOR OFFICIAL BEHAVIOR — 838.016(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt if only "gave" is charged	777.04(1)	5.1

Comments

§ 838.016(1), Fla. Stat.

There is no prohibition against a public servant accepting a reward for services performed in apprehending a criminal. Therefore, if the evidence presents a factual issue on this point, a special instruction must be given.

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766], ~~and~~ 2013 [131 So. 3d 720], and 2017.

19.4 UNLAWFUL COMPENSATION OR REWARD BY PUBLIC SERVANT FOR OFFICIAL BEHAVIOR

§ 838.016(1), Fla. Stat.

To prove the crime of Unlawful Compensation or Reward by a Public Servant for Official Behavior, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was a public servant.**

2. (Defendant) **knowingly and intentionally [requested] [solicited] [agreed to accept or accepted] ~~money or some~~a pecuniary or other benefit from** (person making bribe)**.**

~~**3. The money or other benefit was something of value or advantage to [**(defendant)**] [a person in whose welfare** (defendant) **was interested] and was not authorized by law.**~~

~~**4.**~~**3.** **The [request] [solicitation] [agreement to accept or acceptance] was ~~corruptly~~ made for the past, present, or future performance, nonperformance or violation of any act or omission of** (defendant) **that**

Give relevant part of ~~4a or 4b~~3a or 3b as applicable.

a. **[**(person making bribe) **believed to be**

[within the official discretion of (defendant)**].]**
[in violation of a public duty of (defendant)**].]**
[in performance of a public duty of (defendant)**].]**

b. **[**(defendant) **represented as being**

[within [his] [her] official discretion].]
[in violation of [his] [her] public duty].]
[in performance of [his] [her] public duty].]

4. The pecuniary or other benefit was not authorized by law.

Definitions.
~~*§ 838.014(6), Fla. Stat.*~~
~~**"Public servant" means:**~~

~~**a) Any officer or employee of a state, county, municipal, or special district agency or entity;**~~

~~**b) Any legislative or judicial officer or employee;**~~

~~**c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or**~~

~~**d) A candidate for election or appointment to any of the positions listed in (a), (b), or (c), or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.**~~

~~*§ 838.014(1), Fla. Stat.*~~

~~**"Benefit" means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.**~~

~~*§ 838.014(4), Fla. Stat.*~~

~~**"Corruptly" means acting knowingly and dishonestly for a wrongful purpose.**~~

§ 838.014(7)(a), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit not authorized by law" in element #4. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable.

§ 838.016(3), Fla. Stat.

It is not necessary for the State to prove that the exercise of official discretion or violation of a public duty or performance of a public duty for which the bribe was requested or solicited was accomplished or was within the official discretion or public duty of the defendant.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

§ 838.016(1), Fla. Stat.

There is no prohibition against a public servant accepting a reward for services performed in apprehending a criminal. Therefore, if the evidence presents a factual issue on this point, an appropriate instruction should be given.

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766], ~~and~~ 2013 [131 So. 3d 720], and 2017.

19.5 UNLAWFUL COMPENSATION OR REWARD TO PUBLIC SERVANT FOR OFFICIAL BEHAVIOR

§ 838.016(2), Fla. Stat.

To prove the crime of Unlawful Compensation or Reward to a Public Servant for Official Behavior, the State must prove the following ~~four~~five elements beyond a reasonable doubt:

1. (~~Person bribed~~Name of public servant) **was a public servant.**

2. (Defendant) **~~[gave] [offered] [promised] money or some other benefit to~~** ~~(person bribed)~~**knew that** (name of public servant) **was a public servant.**

3. **~~The money or other benefit was something of value or advantage to [~~**~~(person bribed)~~**~~] [a person in whose welfare~~** ~~(person bribed)~~ **~~was interested] and was not authorized by law~~**(Defendant) **knowingly and intentionally [gave] [offered] [promised] a pecuniary or other benefit to** (name of public servant)**.**

4. **The [gift] [offer] [promise] was ~~corruptly~~ made for the past, present or future exertion of any influence upon or with** (~~person sought to be influenced~~name of public servant) **regarding any act or omission that**

Give 4a or 4b as applicable.

a. **[**(defendant) **believed to be**

[within the official discretion of (~~person sought to be influenced~~name of public servant)**].]**
[in violation of a public duty of (~~person sought to be influenced~~name of public servant)**].]**
[in performance of a public duty of (~~person sought to be influenced~~name of public servant)**].]**

b. **[was represented to** (defendant) **as being**

[within the official discretion of (~~person sought to be influenced~~name of public servant)**].]**
[in violation of the public duty of (~~person sought to be influenced~~name of public servant)**].]**

[in performance of the public duty of (~~person sought to be influenced~~name of public servant)**].]**

5. The pecuniary or other benefit was not authorized by law.

Definitions.
~~*§ 838.014(6), Fla. Stat.*~~
~~**"Public servant" means:**~~

~~**a) Any officer or employee of a state, county, municipal, or special district agency or entity;**~~

~~**b) Any legislative or judicial officer or employee;**~~

~~**c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or**~~

~~**d) A candidate for election or appointment to any of the positions listed in (a), (b), or (c), or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.**~~

~~*§ 838.014(1), Fla. Stat.*~~
~~**"Benefit" means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.**~~

~~*§ 838.014(4), Fla. Stat.*~~
~~**"Corruptly" means acting knowingly and dishonestly for a wrongful purpose.**~~

§ 838.014(7)(a), Fla. Stat.
"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit which was not authorized by law" in element #5. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable.
§ 838.016(3), Fla. Stat.

It is not necessary for the State to prove that the exercise of influence for which the bribe was [given] [offered] [promised] was accomplished or was within the influence of the public servant whose action or omission was sought to be rewarded or compensated.

Lesser Included Offenses

19.5 UNLAWFUL COMPENSATION OR REWARD TO PUBLIC SERVANT FOR OFFICIAL BEHAVIOR — 838.016(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt if only "gave" is charged	777.04(1)	5.1

Comments

§ 838.016(1), Fla. Stat.

There is no prohibition against a public servant accepting a reward for services performed in apprehending a criminal. Therefore, if the evidence presents a factual issue on this point, an appropriate instruction should be given.

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766]<u>,</u> ~~and~~ 2013 <u>[131 So. 3d 720], and 2017</u>.

19.6 UNLAWFUL COMPENSATION OR REWARD BY PUBLIC SERVANT FOR OFFICIAL BEHAVIOR

§ 838.016(2), Fla. Stat.

To prove the crime of Unlawful Compensation or Reward by a Public Servant for Official Behavior, the State must prove the following four elements beyond a reasonable doubt:

1. (~~Person bribed~~<u>Defendant</u>) **was a public servant.**

2. (Defendant) **<u>knowingly and intentionally</u> [requested] [solicited] [agreed to accept or accepted] ~~money or some~~<u>a pecuniary or</u> other benefit from** (person making bribe)**.**

~~**3. The money or other benefit was something of value or advantage to [**(defendant)~~**] [a person in whose welfare** (defendant) ~~**was interested] and was not authorized by law.**~~

~~**4.**~~**3.** **The [request] [solicitation] [agreement to accept or acceptance] was** ~~**corruptly**~~ **made for the past, present, or future exertion of any influence upon or with** (person sought to be influenced) **regarding any act or omission which**

Give ~~*4a or 4b*~~*3a or 3b as applicable.*

a. **[**(Person making bribe) **believed to be**

[within the official discretion of (~~person sought to be influenced~~name of public servant)**].]**
[in violation of a public duty of (~~person sought to be influenced~~name of public servant)**].]**
[in performance of a public duty of (~~person sought to be influenced~~name of public servant)**].]**

b. **[was represented to** (person making bribe) **as being**

[within the official discretion of (~~person sought to be influenced~~name of public servant)**].]**
[in violation of the public duty of (~~person sought to be influenced~~name of public servant)**].]**
[in performance of the public duty of (~~person sought to be influenced~~name of public servant)**].]**

4. The pecuniary or other benefit was not authorized by law.

Definitions.
~~*§ 838.014(6), Fla. Stat.*~~
~~**"Public servant" means:**~~

~~**a) Any officer or employee of a state, county, municipal, or special district agency or entity;**~~

~~**b) Any legislative or judicial officer or employee;**~~

~~**c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire,**~~

~~**referee, consultant, or hearing officer while performing a governmental function; or**~~

~~**d) A candidate for election or appointment to any of the positions listed in (a), (b), or (c), or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.**~~

~~*§ 838.014(1), Fla. Stat.*~~

~~**"Benefit" means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.**~~

~~*§ 838.014(4), Fla. Stat.*~~

~~**"Corruptly" means acting knowingly and dishonestly for a wrongful purpose.**~~

§ 838.014(7)(a), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit which was not authorized by law" in element #5. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable.

§ 838.016(3), Fla. Stat.

It is not necessary for the State to prove that the exercise of influence for which the bribe was [given] [offered] [promised] was accomplished or was within the influence of the public servant whose action or omission was sought to be rewarded or compensated.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

§ 838.016(1), Fla. Stat.

There is no prohibition against a public servant accepting a reward for services performed in apprehending a criminal. Therefore, if the evidence presents a factual issue on this point, an appropriate instruction should be given.

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766], ~~and~~ 2013 [131 So. 3d 720], and 2017.

19.7 OFFICIAL MISCONDUCT

§ 838.022, Fla. Stat.

To prove the crime of Official Misconduct, the State must prove the following ~~three~~two elements beyond a reasonable doubt:

1. (Defendant) **was a [public servant] [public contractor].**

2. **While a [public servant] [public contractor],** (defendant) **knowingly and intentionally [obtained a benefit for a person] [caused unlawful harm to another] by**

Give as applicable.

a. **[~~falsified~~falsifying] [~~caused~~causing another person to falsify] an [official record] [official document].**

b. **[~~concealed~~concealing] [~~covered~~covering up] [~~destroyed~~destroying] [~~mutilated~~mutilating] [~~altered~~altering] an [official record] [official document] except as authorized by law or contract [or ~~caused~~causing another person to perform such an act].**

c. **[~~obstructed~~obstructing] [~~delayed~~delaying] [~~prevented~~preventing] the communication of information relating to the commission of a felony that directly involved**

or affected the ~~public [agency] [~~government entity~~]~~ served by (defendant)**.**

~~**3.** (Defendant) **did so with corrupt intent to [obtain a benefit for a person] [cause harm to another].**~~

Definitions. Give as applicable.
~~Fla. Stat.~~ § 838.014(1), Fla. Stat.

"Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

Give the following three paragraphs to explain "not authorized by law" in the definition of "benefit." Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

§ 838.014(7)(a) Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

§ 838.014(7)(b), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function.

§ 838.022(2)(a), Fla. Stat.

"Public servant" does not include a candidate who does not otherwise qualify as a public servant.

§ 838.014(6), Fla. Stat.

"Public contractor" means any person, who has entered into a contract with a governmental entity or any officer or employee of a person, who has entered into a contract with a governmental entity.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

§ 1.01(3), Fla. Stat.

The terms "person" and "officer or employee of a person" as used in the definition of "public contractor" include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

~~*Fla. Stat. § 838.014(4).*~~

~~**"With corrupt intent" means acting knowingly and dishonestly for a wrongful purpose.**~~

~~*Fla. Stat.* ~~*§ 838.014(5), Fla. Stat.*

"Harm" means pecuniary or other loss, disadvantage, or injury to the person affected. "Pecuniary" means in the form of money.

~~*Fla. Stat. § 838.014(6).*~~

~~**"Public Servant" means:**~~

~~**a) Any officer or employee of any state, county, municipal or special district agency or entity;**~~

~~**b) Any legislative or judicial officer or employee;**~~

~~**c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function.**~~

~~*Fla. Stat.* §~~ *838.022(2)(b), Fla. Stat.*
"Official Record" or "Official Document" includes only public records.

~~*Fla. Stat.* §~~ *119.011(12), Fla. Stat.*
"Public Records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

~~*Give if applicable. Fla. Stat.* §~~ *775.08(1), Fla. Stat.*
"Felony" means any criminal offense punishable by death or imprisonment in excess of one year. The Court instructs you that the crime of (insert name of felony) **is a felony.**

Lesser Included Offenses

OFFICIAL MISCONDUCT — 838.022			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comment

~~Committee Note: A candidate for public office or a person who has been elected but has yet to officially assume the responsibilities of public office does not qualify as a public servant. § 838.022(2)(a), Fla. Stat. (2012).~~

This instruction was adopted in 2013 [123 So. 3d 54] and amended in 2017.