

RECEIVED, 03/26/2019 01:33:33 PM, Clerk, Supreme Court

APPENDIX A

**COMMITTEE ON STANDARD JURY INSTRUCTIONS IN
CRIMINAL CASES
THE HONORABLE F. RAND WALLIS, CHAIR
REPORT 2019-03**

**25.13(f) [OWNERSHIP] [LEASE] [RENTAL] OF A PLACE FOR
[[TRAFFICKING IN] [SALE OF] A CONTROLLED SUBSTANCE]
[MANUFACTURING A CONTROLLED SUBSTANCE INTENDED FOR
SALE OR DISTRIBUTION]**

§ 893.1351(1), Fla. Stat.

Certain drugs and chemical substances are by law known as “controlled substances.” (Insert name(s) of controlled substance(s)) [is a] [are] controlled substance[s].

To prove the crime of [Ownership] [Lease] [Rental] of a Place for [[Trafficking in] [Sale of] a Controlled Substance] [Manufacturing a Controlled Substance Intended for Sale or Distribution], the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) [owned] [leased] [rented] any [place] [structure [or part thereof]] [conveyance].**
- 2. At that time, (defendant) knew the [place] [structure [or part thereof]] [conveyance] would be used for the purpose of [Trafficking in (insert name(s) of controlled substance)] [Sale of a Controlled Substance] [Manufacture of a Controlled Substance that was intended for sale or distribution to another].**

Inference. Give if applicable. § 893.1351(4), Fla. Stat.

You may conclude that cannabis was intended for sale or distribution upon proof of the possession of 25 or more cannabis plants.

§ 893.02(3), Fla. Stat.

“Cannabis” means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Definitions. Give as applicable.

§ 810.011(1), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it together with the curtilage. The

“curtilage” is the enclosed land adjoining the structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

A “conveyance” means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

Insert elements of Trafficking alleged, if applicable.

“Sell” means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

§ 893.02(15)(a), Fla. Stat.

“Manufacture” means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

Give if applicable.

The term “manufacture” does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

- 1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.**
- 2. A practitioner, or by his or her authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.**

Lesser Included Offense

~~If a person owns, leases, or rents a place knowing that the place will be used for trafficking, sale or manufacture of drugs, then the person is guilty of Trafficking, Sale, or Manufacture of drugs as an aider or abettor. Therefore, Trafficking or Sale or Manufacture are Category One lesser included offenses~~

depending on what is charged. Moreover, Trafficking can be committed by sale, purchase, manufacture, delivery, bringing into this state, or actual or constructive possession of various amounts of drugs. Trial judges must review not only the evidence but also the charging document to determine all of the appropriate lesser included offenses. Attempted Trafficking in a Controlled Substance has a higher maximum penalty than the crime in § 893.1351(1), Fla. Stat., and therefore is not listed as a lesser included offense below.

| <u>[OWNERSHIP] [LEASE] [RENTAL] OF A PLACE FOR [TRAFFICKING IN] [SALE OF] A CONTROLLED SUBSTANCE] [MANUFACTURING A CONTROLLED SUBSTANCE INTENDED FOR SALE OR DISTRIBUTION] — 893.1351(1)</u> | | | |
|---|---|-----------------------------------|---------------------------------------|
| CATEGORY ONE | CATEGORY TWO | FLA. STAT. | INS. NO. |
| None | | | |
| | <u>Attempted [Sale] [Manufacture] of a Controlled Substance</u> | <u>777.04(1) & 893.13</u> | <u>5.1 & 25.2 or 25.3</u> |
| | <u>Attempt</u> | <u>777.04(1)</u> | <u>5.1</u> |

Comments

It is unlawful to sell or manufacture all of the controlled substances listed in §893.02, Florida Statutes. However, only certain controlled substances qualify for prosecution under the trafficking statute, § 893.135, Florida Statutes. Accordingly, the exact nature of the substance must be proven if the State is prosecuting under the trafficking prong of § 893.1351(1), Florida Statutes.

A special instruction will be required if the defense is that the defendant did not know of the illicit nature of the controlled substance. *See* § 893.101, Fla. Stat.

§ 893.1351(1), Florida Statutes, requires that the place will be used for certain drug-related activity while § 893.1351(3), Florida Statutes, requires that the place was being used to manufacture a controlled substance. *See Zeigler v. State*, 198 So. 3d 1005 (Fla. 1st DCA 2016).

A special instruction may be required to address the nexus between a conveyance, place, structure, and the drug activity. *See Hunt v. State*, 256 So. 3d 243 (Fla. 2d DCA 2018) and *Delgado-George v. State*, 125 So. 3d 1031 (Fla. 2d DCA 2013).

This instruction was adopted in 2018 [238 So. 3d 192] and amended in 2019.

**25.13(g) POSSESSION OF A PLACE FOR [[TRAFFICKING IN] [SALE
OF] A CONTROLLED SUBSTANCE] [MANUFACTURING A
CONTROLLED SUBSTANCE INTENDED FOR SALE OR
DISTRIBUTION]**

§ 893.1351(2), Fla. Stat.

Certain drugs and chemical substances are by law known as “controlled substances.” (Insert name(s) of controlled substance(s)) [is a] [are] controlled substance[s].

To prove the crime of Possession of a Place for [[Trafficking in] [Sale of] a Controlled Substance] [Manufacturing a Controlled Substance Intended for Sale or Distribution], the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) was knowingly in possession of a [place] [structure [or part thereof]] [conveyance].**
- 2. At the time, (defendant) knew the [place] [structure [or part thereof]] [conveyance] would be used for the purpose of [Trafficking in (insert name(s) of controlled substance)] [Sale of a Controlled Substance] [Manufacture of a Controlled Substance that was intended for sale or distribution to another].**

Inference. Give if applicable. § 893.1351(4), Fla. Stat.

You may, but are not required to, infer that cannabis was intended for sale or distribution upon proof of the possession of 25 or more cannabis plants.

§ 893.02(3), Fla. Stat.

“Cannabis” means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Definitions. Give as applicable.

§ 810.011(1), Fla. Stat. *Dubose v. State*, 210 So. 3d 641 (Fla. 2017).

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it together with the curtilage. The “curtilage” is the enclosed land adjoining the structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

A “conveyance” means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

Insert elements of Trafficking alleged, if applicable.

“Sell” means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

§ 893.02(15)(a), Fla. Stat.

“Manufacture” means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

Give if applicable.

The term “manufacture” does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.

2. A practitioner, or by his or her authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

Possession.

To prove (defendant) “possessed a [place] [structure [or part thereof]] [conveyance],” the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [place] [structure [or part thereof]] [conveyance], and b) intentionally exercised control over it.

Give if applicable.

Control can be exercised over a [place] [structure [or part thereof]] [conveyance] regardless of whether it is near a person or in a completely separate location. Mere proximity to a [place] [structure [or part thereof]] [conveyance] 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 [place] [structure [or part thereof]] [conveyance] or the present ability to direct its control by another.

Joint possession. Give if applicable.

Possession of a [place] [structure [or part thereof]] [conveyance] may be sole or joint, that is, two or more persons may possess a [place] [structure [or part thereof]] [conveyance].

Lesser Included Offenses

| <u>POSSESSION OF A PLACE FOR [[TRAFFICKING IN] [SALE OF] A CONTROLLED SUBSTANCE] [MANUFACTURING A CONTROLLED SUBSTANCE INTENDED FOR SALE OR DISTRIBUTION — § 893.1351(2)</u> | | | |
|---|---|------------------------------------|---------------------------------------|
| <u>CATEGORY ONE</u> | <u>CATEGORY TWO</u> | <u>FLA. STAT.</u> | <u>INS. NO.</u> |
| <u>None</u> | | | |
| | <u>Attempted Trafficking of a Controlled Substance</u> | <u>777.04(1) & 893.135</u> | |
| | <u>Attempted [Sale] [Manufacture] of a Controlled Substance</u> | <u>777.04(1) & 893.13</u> | <u>5.1 & 25.2 or 25.3</u> |
| | <u>[Ownership] [Lease] [Rental] of a Place for [[Trafficking in] [Sale of] a Controlled Substance] [Manufacturing a Controlled Substance Intended for Sale or Distribution]</u> | <u>893.1351(1)</u> | <u>25.13(f)</u> |
| | <u>Attempt</u> | <u>777.04(1)</u> | <u>5.1</u> |

Comments

It is unlawful to sell or manufacture all of the controlled substances listed in § 893.02, Fla. Stat. However, only certain controlled substances qualify for prosecution under the trafficking statute, § 893.135, Fla. Stat. Accordingly, the exact nature of the substance must be proven if the State is prosecuting under the trafficking prong of § 893.1351(2), Fla. Stat.

A special instruction will be required if the defense is that the defendant did not know of the illicit nature of the controlled substance. See § 893.101, Fla. Stat.

A special instruction may be required to address the nexus between a conveyance, place, structure, and the drug activity. See *Hunt v. State*, 256 So. 3d 243 (Fla. 2d DCA 2018) and *Delgado-George v. State*, 125 So. 3d 1031 (Fla. 2d DCA 2013).

§ 893.1351(1) and (2), Fla. Stat., require that the place *will* be used for certain drug-related activity while § 893.1351(3), Fla. Stat., requires that the place *was* being used to manufacture a controlled substance. See *Zeigler v. State*, 198 So. 3d 1005 (Fla. 1st DCA 2016).

This instruction was adopted in 2019.

25.13(h) POSSESSION OF A PLACE USED TO MANUFACTURE A CONTROLLED SUBSTANCE INTENDED FOR SALE OR DISTRIBUTION (MINOR PRESENT OR IN RESIDENCE)

§ 893.1351(3), Fla. Stat.

Certain drugs and chemical substances are by law known as “controlled substances.” (Insert name(s) of controlled substance(s)) [is a] [are] controlled substance[s].

To prove the crime of Possession of a Place Used to Manufacture a Controlled Substance Intended for Sale or Distribution (Minor Present or in Residence), the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) was knowingly in possession of a [place] [structure] [conveyance].**
- 2. At the time, (defendant) knew the [place] [structure] [conveyance] was being used to manufacture a controlled substance that was intended for sale or distribution to another.**
- 3. At the time, (defendant) knew or should have known that a minor was present or resided in the [place] [structure] [conveyance].**

Inference. Give if applicable. § 893.1351(4), Fla. Stat.

You may, but are not required to, infer that cannabis was intended for sale or distribution upon proof of the possession of 25 or more cannabis plants.

§ 893.02(3), Fla. Stat.

“Cannabis” means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Definitions. Give as applicable.

§ 810.011(1), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it together with the curtilage. The “curtilage” is the enclosed land adjoining the structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

A “conveyance” means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

“Sell” means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

§ 893.02(15)(a), Fla. Stat.

“Manufacture” means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

Give if applicable.

The term “manufacture” does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.

2. A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

Possession.

To prove (defendant) "possessed a [place] [structure] [conveyance]," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [place] [structure] [conveyance], and b) intentionally exercised control over it.

Give if applicable.

Control can be exercised over a [place] [structure] [conveyance] regardless of whether it is near a person or in a completely separate location. Mere proximity to a [place] [structure] [conveyance] 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 [place] [structure] [conveyance] or the present ability to direct its control by another.

Joint possession. Give if applicable.

Possession of a [place] [structure] [conveyance] may be sole or joint, that is, two or more persons may possess a [place] [structure] [conveyance].

§ 847.0137(1)(a), Fla. Stat.

"Minor" means any person less than 18 years of age.

Lesser Included Offenses

| <u>POSSESSION OF A PLACE USED TO MANUFACTURE A CONTROLLED SUBSTANCE INTENDED FOR SALE OR DISTRIBUTION (MINOR PRESENT OR IN RESIDENCE) — § 893.1351(3)</u> | | | |
|--|---|--------------------------|------------------------|
| <u>CATEGORY ONE</u> | <u>CATEGORY TWO</u> | <u>FLA. STAT.</u> | <u>INS. NO.</u> |
| <u>Manufacture of a Controlled Substance</u> | | <u>893.13(1)(a)</u> | <u>25.2</u> |
| | <u>Contributing to the delinquency of a minor</u> | <u>827.04(1)</u> | <u>16.4</u> |
| | <u>Manufacture methamphetamine and other drugs in presence of child younger than 16</u> | <u>893.13(1)(g)</u> | <u>--</u> |
| | <u>Attempt</u> | <u>777.04(1)</u> | <u>5.1</u> |

Comments

The crimes in §§ 893.1351(1), and 893.1351(2), Fla. Stats., are not necessary lesser included offenses because they have an element that is not present in § 893.1351(3), Fla. Stat. Specifically, § 893.1351(1) and (2), Fla. Stats., require that the place *will* be used for certain drug-related activity while § 893.1351(3), Fla. Stat., requires that the place *was* being used to manufacture a controlled substance. See *Zeigler v. State*, 198 So. 3d 1005 (Fla. 1st DCA 2016).

A special instruction will be required if the defense is that the defendant did not know of the illicit nature of the controlled substance. See § 893.101, Fla. Stat.

This instruction was adopted in 2019.