

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY

INSTRUCTIONS IN CRIMINAL CASES —  
REPORT 2019-04 /

CASE NO.: SC19-

To the Chief Justice and Justices of the Supreme Court of Florida:

This report, proposing amended instructions to the Florida Standard Jury Instructions in Criminal Cases, is filed pursuant to Article V, section 2(a), Florida Constitution.

	<u>Instruction #</u>	<u>Title</u>
Proposal 1	10.7(a)	Possessing, Throwing, Making, Placing, Projecting, or Discharging a Destructive Device
Proposal 2	10.7(b)	Possessing, Throwing, Making, Placing, Projecting, or Discharging a Destructive Device [With Intent to Do [Bodily Harm] [Property Damage]] [Resulting in Disruption of [Governmental Operations] [Commerce] [The Private Affairs of Another Person]]
Proposal 3	10.7(c)	Possessing, Throwing, Making, Placing, Projecting, or Discharging a Destructive Device Resulting in [Bodily Harm to Another Person] [Property Damage]
Proposal 4	10.13	Shooting or Throwing [A Missile] [Stone] [Hard Substance] [At] [Within] [Into] [In] a[n] [Building] [Vehicle] [Vessel] [Aircraft]

The proposals are in Appendix A. Words and punctuation to be deleted are shown with strike-through marks; words and punctuation to be added are underlined. The proposals were published in the *Bar News* on December 15, 2018. No comments were received from publication.

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### **PROPOSAL #1: INSTRUCTION 10.7(a)**

Because the Committee and the Court recently updated instruction 10.7(d), the Committee decided to update instructions 10.7(a), (b), and (c).

Instruction 10.7(a) also requires only minor revisions. First, the Committee defined “willfully” as “intentionally, knowingly, and purposefully,” which is the explanation used in many other standard instructions. Second, the Committee inserted the format used to explain criminal possession that was promulgated in *In Re: Standard Jury Instructions in Criminal Cases - Report 2017-03*, 238 So. 3d 182 (Fla. 2018).

All votes to amend the instruction were unanimous. As mentioned above, no comments were received from publication. Upon final review, the Committee voted unanimously to file the proposal in Appendix A with the Court.

### **PROPOSAL #2: INSTRUCTION 10.7(b)**

For 10.7(b), the Committee changed the title of the crime to match the statute (§ 790.161(2), Fla. Stat.), added the word “person” in element #2a to track with the statute, and substituted “another person” for “(victim)” in element #2b to track with the statute. The explanations of “willfully” and “criminal possession of a destructive device” were inserted so that this instruction would be consistent with other standard instructions.

All votes to amend the instruction were unanimous. No comments were received from publication. Upon final review, the Committee voted unanimously to file the proposal in Appendix A with the Court.

### **PROPOSAL #3: INSTRUCTION 10.7(c)**

The Committee’s proposed changes for instruction 10.7(c) are designed so that this instruction will be consistent with the statute (§ 790.161(3), Fla. Stat.) and instructions 10.7(a) and (b).

In the title, the Committee added the option of “possessing” and “resulting in bodily harm/property damage” to track with the statute. In element #2, the Committee added “(Defendant)” to better tie element #1 in with element #2. Also, the word “person” is added so that element #2 tracks with the statute.

The Committee defined “willfully” as “intentionally, knowingly, and purposefully,” which is the definition used in many other standard instructions.

The Committee explained the concept of “possessed a destructive device” by using the format that was promulgated in *In Re: Standard Jury Instructions in Criminal Cases - Report 2017-03*, 238 So. 3d 182 (Fla. 2018).

All votes to amend the instruction were unanimous. No comments were received from publication. Upon final review, the Committee voted unanimously to file the proposal in Appendix A with the Court.

### **PROPOSAL #4 – INSTRUCTION 10.13**

Recently, the Committee filed a proposal to the Court for the Shooting a Missile instruction (#10.13) that noted the behavior of “shooting a firearm” is not explicitly contained within the underlying criminal statute. § 790.19, Fla. Stat. reads as follows:

Whoever, wantonly or maliciously, shoots at, within, or into, or throws any missile or hurls or projects a stone or other hard substance which would produce death or great bodily harm, at, within, or in any public or private building, occupied or unoccupied, or public or private bus or any train, locomotive, railway car, caboose, cable railway car, street railway car, monorail car, or vehicle of any kind which is being used or occupied by any person, or any boat, vessel, ship, or barge lying in or plying the waters of this state, or aircraft flying through the airspace of this state shall be guilty of a felony of the second degree....

Accordingly, the existing standard instruction tracks the statute and requires that a jury conclude that a bullet shot from a firearm qualifies as a missile or a hard substance that would produce death or great bodily harm.

However, the Committee learned that some lower appellate courts have interpreted the statute in a way that suggests shooting a firearm is an element of § 790.19, Fla. Stat. For example, the Third District Court of Appeal held that the use of a firearm is a necessary element of shooting into an occupied vehicle. *Jones v. Singletary*, 621 So. 2d 760 (Fla. 3d DCA 1993). Similarly, the First District Court of Appeal held in *Horn v. State*, 677 So. 2d 320 (Fla. 1st DCA 1996), that the use of a firearm was a necessary element of shooting into an occupied vehicle in violation of § 790.19, Fla. Stat. Although in *Robertson v. State*, 807 So. 2d 708 (Fla. 4th DCA 2002), the Fourth District Court of Appeal held it was proper to add 18 firearm points on the scoresheet because possession of a firearm is not an essential element of § 790.19, Fla. Stat., the Fourth District Court of Appeal has also held that § 790.19, Fla. Stat., cannot be reclassified pursuant to § 775.087(1), Fla. Stat. because the use of a weapon or a firearm is an essential element of the crime. *Jefferson v. State*, 927 So. 2d 1037 (4th DCA 2006).

The Committee was uncertain about how to reconcile the explicit statutory language with the case law.<sup>1</sup> Ultimately, the Committee decided to propose adding

an element 1c that would allow the jury to be instructed that they could find the defendant “shot a firearm that would produce death or great bodily harm.” If the Court agrees that element 1c should be added, the Committee also thought it necessary to define “firearm.” The proposal calls for element 1c to have an asterisk next to it, which refers to the comment section, which explains the case law. The proposed comment section also contains a sentence that states: “Trial judges should therefore consider whether to instruct on element #1c based on the charging document and the evidence.”

Independent of this firearm issue, the Committee added an abbreviated definition of “great bodily harm,” which is based on *Wheeler v. State*, 203 So. 3d 1007 (Fla. 4th DCA 2016).

The vote was unanimous. The proposal was published and no comments were received. Upon final review, every member agreed to send the proposal in Appendix A to the Court along with this explanation.

### **CONCLUSION**

The Standard Jury Instructions in Criminal Cases Committee respectfully requests the Court authorize for use the proposals in Appendix A, unless the Court has a better idea of how to address the discrepancy between the explicit language of § 790.19, Fla. Stat., and the lower appellate court case law.

Respectfully submitted this 5th day of April,  
2019.

s/ Judge F. Rand Wallis  
The Honorable F. Rand Wallis  
Chair, Supreme Court Committee on  
Standard Jury Instructions in Criminal Cases  
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### **CERTIFICATE OF FONT COMPLIANCE**

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<sup>1</sup> The statute includes the phrase “shoots at,” which could implicitly mean the shooting of a firearm.

I hereby certify that this report has been prepared using Times New Roman 14 point in compliance with the font requirements in Florida Rule of Appellate Procedure 9.210(a)(2).

s/ Judge F. Rand Wallis

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