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APPENDIX A

**COMMITTEE ON STANDARD JURY INSTRUCTIONS IN CRIMINAL
CASES
THE HONORABLE F. RAND WALLIS, CHAIR
REPORT 2019-04**

**10.7(a) POSSESSING, THROWING, MAKING, PLACING, PROJECTING,
OR DISCHARGING A DESTRUCTIVE DEVICE**
§ 790.161(1), Fla. Stat.

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

(Defendant) **willfully and unlawfully**

[made]
[possessed]
[threw]
[placed]
[projected]
[discharged]
[attempted to [make] [possess] [throw] [place] [project]
[discharge]]

a destructive device.

Definition

A **“destructive device”** is defined as (adapt from § 790.001(4), Fla. Stat., as required by the allegations).

“Willfully” means intentionally, knowingly, and purposely.

Possession. Give if applicable.

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

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a destructive device may be sole or joint, that is, two or more persons may possess a destructive device.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and was amended in 1989, ~~and~~ 1992, and 2019.

**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]]**
§ 790.161(2), Fla. Stat.

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

1. (Defendant) willfully and unlawfully

**[made]
[possessed]
[threw]
[placed]
[projected]
[discharged]
[attempted to [make] [possess] [throw] [place] [project]
[discharge]]**

a destructive device.

Give those parts of ~~paragraph~~ element 2 as applicable.

2. a. ~~The~~(Defendant's) act was committed with the intent to

[do bodily harm to another person].

[do property damage].

b. ~~The~~(Defendant's) act resulted in

[a disruption of governmental operations].

[a disruption of commerce].

[a disruption of the private affairs of ~~(victim)~~another person].

Definition

A “destructive device” is defined as (adapt from § 790.001(4), Fla. Stat., as required by the allegations).

“Willfully” means intentionally, knowingly, and purposely.

Possession. Give if applicable.

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

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a destructive device may be sole or joint, that is, two or more persons may possess a destructive device.

Lesser Included Offenses

POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING DESTRUCTIVE DEVICE, ETC. — 790.161(2)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Possessing, throwing, making placing, projecting, or discharging destructive device		790.161(1)	10.7(a)
	Aggravated assault	784.021	8.2
	Assault	784.011	8.1

Comment

This instruction was adopted in 1992 and amended in 2019.

10.7(c) POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING A DESTRUCTIVE DEVICE RESULTING IN [BODILY HARM TO ANOTHER PERSON] [PROPERTY DAMAGE]

§ 790.161(3), Fla. Stat.

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

1. (Defendant) **willfully and unlawfully**

**[made]
 [possessed]
 [threw]
 [placed]
 [projected]
 [discharged]
 [attempted to [make] [possess] [throw] [place] [project]
 [discharge]]**

a destructive device.

2. ~~The~~(Defendant's) act resulted in

[bodily harm to another person].
[property damage].

Definition

A "destructive device" is defined as (adapt from § 790.001(4), Fla. Stat., as required by the allegations).

"Willfully" means intentionally, knowingly, and purposely.

Possession. Give if applicable.

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

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a destructive device may be sole or joint, that is, two or more persons may possess a destructive device.

Lesser Included Offenses

POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING DESTRUCTIVE DEVICE <u>RESULTING IN</u> [BODILY HARM TO ANOTHER PERON] [PROPERTY DAMAGE]— 790.161(3)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Possessing, throwing, making, placing, projecting, or discharging destructive device		790.161(1)	10.7(a)
	Possessing, throwing, making, placing, projecting, or discharging destructive device, etc.	790.161(2)	10.7(b)
	Aggravated assault	784.021	8.2
	Assault	784.011	8.1

Comment

This instruction was adopted in 1992 and amended in 2019.

10.13 SHOOTING OR THROWING A [MISSILE] [STONE] [HARD SUBSTANCE] [AT] [WITHIN] [INTO] [IN] A[N] [BUILDING] [VEHICLE] [VESSEL] [AIRCRAFT]

§ 790.19, Fla. Stat.

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

Give ~~1a and/or 1b~~ 1a–1c as applicable.

1. (Defendant)

a. [shot] [or] [threw] a missile that would produce death or great bodily harm.

b. hurled or projected a stone or other hard substance that would produce death or great bodily harm.

***c. shot a firearm that would produce death or great bodily harm.**

Give 2a–2f as applicable.

2. [He] [She] did so [at] [within] [into] [in]

a. a public or private building, occupied or unoccupied.

b. a public or private bus, that was being used or occupied by any person.

c. a train, locomotive, railway car, caboose, cable railway car, street railway car, or monorail car that was being used or occupied by any person.

d. a vehicle of any kind that was being used or occupied by any person.

e. a boat, vessel, ship, or barge lying in or plying the waters of this state.

f. an aircraft flying through the air space of this state.

3. The defendant’s act was done wantonly or maliciously.

State v. Kettell, 980 So. 2d 1061 (Fla. 2008).

“Wantonly” means consciously and intentionally, with reckless indifference to consequences and with the knowledge that damage is likely to be done to some person.

State v. Kettell, 980 So. 2d 1061 (Fla. 2008).

“Maliciously” means wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to another person or the property of another person.

Give if applicable. § 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.)]

Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

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

Give if applicable. Polite v. State, 454 So. 2d 769 (Fla. 1st DCA 1984).

It is not necessary for the State to prove a defendant acted with malevolence toward a vehicle or structure itself if the State proved [he] [she] acted with a wanton or malicious attitude directed toward an individual within or near the vehicle or structure.

Lesser Included Offenses

SHOOTING OR THROWING A [MISSILE] [STONE] [HARD SUBSTANCE][[AT] [WITHIN] [INTO] [IN] A[N] [BUILDING] [VEHICLE] [VESSEL] [AIRCRAFT] — 790.19			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Criminal Mischief	806.13	12.4
	Discharging firearm in public	790.15	10.6

Comments

*According to the Fourth District Court of Appeal, § 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). However, in *Robertson v. State*, 807 So. 2d 708 (Fla. 4th DCA 2002), the Fourth District also held it was proper to add 18 firearm points on the scoresheet because possession of a firearm is not an essential element of the crime. 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 at an occupied vehicle in violation of § 790.19, Fla. Stat. The Third District Court of Appeal has also 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).

Trial judges should therefore consider whether to instruct on element #1c based on the charging document and the evidence.

This instruction was adopted in 1981 and amended in 2018 [253 So. 3d 1024] and 2019.