

Supreme Court of Florida

WEDNESDAY, FEBRUARY 27, 2019

CASE NO.: SC18-1860

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES –
REPORT 2018-12

Upon review of the proposals of the Committee on Standard Jury Instructions in Criminal Cases (Committee) in the instant case, the Court is considering additional revisions to the proposed amendments to jury instructions 25.17 (Contraband in County Detention Facility), 25.18 (Contraband in Juvenile [Detention Facility] [Commitment Program]), and 25.21 ([Introduction] [Removal] of Contraband [into] [from] a State Correctional Institution), consistent with the Committee's amendments to instructions 25.2 (Sale, Purchase, Manufacture, Delivery, or Possession with Intent to Sell, Purchase, Manufacture, or Deliver a Controlled Substance), 25.3 (Sale, Purchase, Delivery, or Possession in Excess of Ten Grams of a Controlled Substance), 25.4 (Delivery of a Controlled Substance To or Use of Minor); 25.5 (Bringing a Controlled Substance into the State), and 25.6 (Sell, Manufacture, Deliver, or Possession with Intent to Sell, Manufacture or Deliver a Controlled Substance in Specified Locations). The Court seeks the Committee's comment limited to the revisions indicated in underlined text in the attached appendix to this order. The comments are to be filed on or before March 29, 2019.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



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Served:

BART NEIL SCHNEIDER
HON. F. RAND WALLIS, JUDGE

APPENDIX

25.17 CONTRABAND IN COUNTY DETENTION FACILITY § 951.22, Fla. Stat.

To prove the crime of Contraband in a County Detention Facility, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **had knowledge of the presence of an item.**
2. (Defendant)
Give as applicable.
 - a. **introduced the item into a county detention facility.**
 - b. **possessed the item upon the grounds of a county detention facility.**
 - c. **gave the item to an inmate of a county detention facility.**
 - d. **received the item from an inmate of a county detention facility.**
 - e. **took the item from a county detention facility.**
 - f. **attempted to [take] [send] the item from a county detention facility.**
3. **The item was:**
Give as applicable.
 - a. **a written communication to give to or receive from an inmate.**
 - b. **a recorded communication to give to or receive from an inmate.**
 - c. **currency or coin to give to or receive from an inmate.**

- d. an article of [food] [clothing] to give to or receive from an inmate.
- e. a tobacco product.
- f. a cigarette.
- g. a cigar.
- h. a beverage that causes or may cause an intoxicating effect.
- i. a narcotic, hypnotic, or excitative drug or drug of any kind or nature.
- j. a controlled substance.
- k. a firearm.
- l. any instrumentality customarily used or which is intended to be used as a dangerous weapon.
- m. any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.

Definitions.

Give in all cases. § 951.23(1)(a), Fla. Stat.

“County detention facility” means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.

§ 951.23(1)(b), Fla. Stat.

“County residential probation center” means a county-operated facility housing offenders serving misdemeanor sentences or first-time felony sentences.

§ 951.23(1)(d), Fla. Stat.

“Municipal detention facility” means a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.

Give as applicable.

To “introduce” means to put inside or into.

Give when the evidence involves an inmate who is not in the facility.

It is unlawful to [give] [receive] a contraband item [to] [from] an inmate of a county detention facility even if the inmate was outside the facility at the time the contraband item was [given] [received].

Give if clothing is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

“Clothing” means things worn to cover the body and limbs.

Give if currency is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

“Currency” means money or another commodity which is in circulation as a medium of exchange.

Give if weapon is alleged. State v. Fleming, 606 So. 2d 1229 (Fla. 1st DCA 1992).

A “weapon” is an instrument that is designed and constructed for use as a weapon, or, if the instrument is capable of being used as a weapon, the defendant used, threatened to use, or intended to use the instrument as a weapon.

Give if tobacco product is alleged. § 210.25(11), Fla. Stat.

“Tobacco products” means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes or cigars.

Give if cigarette is alleged. § 210.01(1), Fla. Stat.

“Cigarette” means any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Give if a drug or controlled substance is alleged.

A “drug of any kind” includes [nasal inhalators] [sleeping pills] [barbiturates] [a controlled substance]. (Name of drug or controlled substance) is a [drug] [controlled substance].

Give if firearm is alleged. § 790.001(6), Fla. Stat.

“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]. [A destructive device is (insert definition in § 790.001(4), Fla. Stat.).] [A “machine gun” is (insert definition in § 790.001(9), Fla. Stat.).]

Give if possession is alleged.

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

Give if applicable.

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

Joint possession. Give if applicable.

Possession of an item may be sole or joint, that is, two or more persons may possess an item.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to possession of a controlled substance. Accordingly, the defendant is not guilty of possessing a controlled substance if [he] [she] did not know of the illicit nature of the substance.

You may but are not required to infer that (defendant) was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.

If you are convinced beyond a reasonable doubt that (defendant) knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty.

If you have a reasonable doubt on the question of whether (defendant) knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of possession of a controlled substance.

Affirmative defense of permission. Give if the defendant has satisfied his or her burden of production. See Wright v. State, 442 So. 2d 1058 (Fla. 1st DCA 1983).

It is a defense to the crime of Contraband in a County Detention Facility if the defendant used regular channels and was authorized by the sheriff or officer in charge of the detention facility to [introduce] [possess] [give] [receive] [take] [attempt to take or send] the contraband item [into] [from] the facility. The defendant has raised this defense.

If you have a reasonable doubt as to whether the defendant used regular channels and had authorization from the sheriff or officer in charge of the detention facility, you should find [him] [her] not guilty.

If the State proved beyond a reasonable doubt that the defendant did not use regular channels or did not have authorization from the sheriff or officer in charge of the detention facility, you should find [him] [her] guilty, if

all the elements of the charge have also been proven beyond a reasonable doubt.

Lesser Included Offenses

CONTRABAND IN COUNTY DETENTION FACILITIES — 951.22			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Possession of a Controlled Substance if a controlled substance is the contraband alleged		893.13(6)	25.7
	Carrying a Concealed Firearm	790.01(2)	10.1
	Carrying a Concealed Weapon	790.01(1)	10.1
	Attempt	777.04(1)	5.1

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of Contraband in County Detention Facility. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

This instruction was adopted in 1987 and amended in 1989 [543 So. 2d 1205], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and 2019.

**25.18 CONTRABAND IN JUVENILE [DETENTION FACILITY]
[COMMITMENT PROGRAM]
§ 985.711, Fla. Stat.**

To prove the crime of Contraband in Juvenile [Detention Facility] [Commitment Program], the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) had knowledge of the presence of an item.**
- 2. (Defendant)**
Give as applicable.
 - a. possessed an item while upon the grounds of a juvenile [detention facility] [commitment program].**
 - b. introduced the item into or upon the grounds of a juvenile [detention facility] [commitment program].**
 - c. [took] [attempted to take] [sent] [attempted to send] an item from a juvenile [detention facility] [commitment program].**
 - d. [transmitted] [attempted to transmit] an item to a juvenile offender into or upon the grounds of a juvenile [detention facility] [commitment program].**
 - e. [caused] [attempted to cause] an item to be [transmitted to] [received by] a juvenile offender upon the grounds of a juvenile [detention facility] [commitment program].**
- 3. The item was:**
Give as applicable.
 - a. an unauthorized article of [food] [clothing].**
 - b. a beverage that causes or may cause an intoxicating effect.**

- c. **a controlled substance.** (Name of controlled substance alleged) **is a controlled substance.**
- d. **a prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.**
- e. **a firearm.**
- f. **a weapon of any kind.**
- g. **an explosive substance.**

Definitions. Give as applicable.

§ 985.03(19), Fla. Stat.

A “juvenile detention facility” is a facility used pending court adjudication or disposition or execution of a court order for the temporary care of a child alleged or found to have committed a violation of law.

A “juvenile commitment program” is a facility used for the commitment of adjudicated delinquents.

“Introduce” means to put inside or into.

Give if clothing is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

“Clothing” means things worn to cover the body and limbs.

Give if weapon is alleged. State v. Fleming, 606 So. 2d 1229 (Fla. 1st DCA 1992).

A “weapon” is an instrument that is designed and constructed for use as a weapon, or, if the instrument is capable of being used as a weapon, the defendant used, threatened to use, or intended to use the instrument as a weapon.

Give if firearm is alleged. § 790.001(6), Fla. Stat.

“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]. [A destructive device is (insert definition in § 790.001(4), Fla. Stat.)] [A “machine gun” is (insert definition in § 790.001(9), Fla. Stat.)]

Give if possession is alleged.

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

Give if applicable.

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

Joint possession. Give if applicable.

Possession of an item may be sole or joint, that is, two or more persons may possess an item.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to possession of a controlled substance. Accordingly, the defendant is not guilty of possessing a controlled substance if [he] [she] did not know of the illicit nature of the substance.

You may but are not required to infer that (defendant) was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.

If you are convinced beyond a reasonable doubt that (defendant) knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty.

If you have a reasonable doubt on the question of whether (defendant) knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of possession of a controlled substance.

Affirmative defense of permission. Give if the defendant has satisfied his or her burden of production. See Wright v. State, 442 So. 2d 1058 (Fla. 1st DCA 1983).

It is a defense to the crime of Contraband in Juvenile [Detention Facility] [Commitment Program] if the defendant was authorized through program policy or operating procedure or had the permission of the facility superintendent, program director, or manager of the [detention facility] [commitment program] to [possess] [introduce] [take] [attempt to take] [send] [attempt to send] [transmit] [attempt to transmit] [cause to transmit] [attempt to cause to transmit] the contraband item [into] [from] the facility. The defendant has raised this defense.

If you have a reasonable doubt as to whether the defendant was authorized through program policy or operating procedure or had the permission of the facility superintendent, program director, or manager of the [detention facility] [commitment program], you should find [him] [her] not guilty of Contraband in a Juvenile [Detention Facility] [Commitment Program].

If the State proved beyond a reasonable doubt that the defendant did not have authorization through program policy or operating procedure or did not have the permission of the facility superintendent, program director, or manager of the [detention facility] [commitment program], you should find [him] [her] guilty, if all the elements of the charge have also been proven beyond a reasonable doubt.

Lesser Included Offenses

CONTRABAND IN JUVENILE FACILITY — 985.4046711			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None*Possession of a Controlled Substance			

<u>if a controlled substance is the contraband alleged</u>			
	Attempt (although some attempts are included as elements)	777.04(1)	5.1

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of Contraband in Juvenile [Detention Facility] [Commitment Program]. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

This instruction was adopted in March 2000 and amended in 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and 2019.

25.21 [INTRODUCTION] [REMOVAL] OF CONTRABAND [INTO] [FROM] A STATE CORRECTIONAL INSTITUTION § 944.47(1)(a), Fla. Stat.

To prove the crime of [Introduction] [Removal] of Contraband [into] [from] a State Correctional Institution, the State must prove the following [three] [four] elements beyond a reasonable doubt:

- 1. (Defendant) [introduced into or upon the grounds of] [took] [attempted to [take] [send]] an item [into] [from] a state correctional institution.**
- 2. (Defendant) had knowledge of the presence of the item.**
- 3. The item was:**

Give as applicable.

- a. a [written] [recorded] communication.
- b. [currency] [or] [coin].
- c. an article of [food] [clothing].
- d. an intoxicating beverage or a beverage which causes or may cause an intoxicating effect.
- e. a controlled substance. (Name of controlled substance) is a controlled substance.
- f. any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
- g. [a firearm] [a weapon of any kind] [an explosive substance].
- h. any [cellular telephone] [or] [portable communication device] intentionally and unlawfully introduced inside the secure perimeter of a state correctional institution].

Give element #4 if element #3a, 3b, or 3c is given.

- 4. (Defendant) [gave or transmitted] [or] [intended to give or transmit] the [written communication] [recorded communication] [currency] [coin] [article of food] [article of clothing] to an inmate of the state correctional institution.

Give in all cases. State Correctional Facility. § 944.02(8), Fla. Stat.

“State correctional facility” means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections.

Give if firearm is alleged. § 790.001(6), Fla. Stat.

“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]. [A destructive device is (insert definition in § 790.001(4), Fla. Stat.)] [A “machine gun” is (insert definition in § 790.001(9), Fla. Stat.)]

Give if clothing is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

“Clothing” means things worn to cover the body and limbs.

Give if currency is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

“Currency” means money or another commodity which is in circulation as a medium of exchange.

Give if weapon is alleged. State v. Fleming, 606 So. 2d 1229 (Fla. 1st DCA 1992).

A “weapon” is an instrument that is designed and constructed for use as a weapon, or, if the instrument is capable of being used as a weapon, the defendant used, threatened to use, or intended to use the instrument as a weapon.

Give if portable communication device is alleged. § 944.47(1)(a)(6), Fla. Stat.

“Portable communication device” means any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA’s, laptop computers, or any components of these devices which are intended to be used to assemble such devices. The term also includes any new technology that is developed for similar purposes. [Excluded from this definition is any device having communication capabilities which has been approved or issued by the department for investigative or institutional security purposes or for conducting other state business.]

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to this charge. Accordingly, the defendant is not guilty of this charge if [he] [she] did not know of the illicit nature of the controlled substance.

You may but are not required to infer that (defendant) was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.

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

Give if applicable.

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

Joint possession. Give if applicable.

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

If you are convinced beyond a reasonable doubt that (defendant) knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proven, you should find [him] [her] guilty.

If you have a reasonable doubt as to whether (defendant) knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty.

Affirmative defense: Authorization. Give if the defendant has satisfied his or her burden of production. See Wright v. State, 442 So. 2d 1058 (Fla. 1st DCA 1983).

It is a defense to the crime of [Introduction] [Removal] of Contraband [into] [from] a State Correctional Institution if the defendant used regular channels and was authorized by the officer in charge of the correctional institution to [introduce] [take] [send] the item [into] [from] the state correctional institution. The defendant has raised this defense.

If you have a reasonable doubt as to whether the defendant used regular channels and had authorization from the officer in charge of the correctional institution, you should find [him] [her] not guilty.

If the State proved beyond a reasonable doubt that the defendant did not use regular channels or did not have authorization from the officer in charge of the correctional institution, you should find [him] [her] guilty, if all the elements of the charge have also been proven beyond a reasonable doubt.

Lesser Included Offenses

[INTRODUCTION] [REMOVAL] OF CONTRABAND [INTO] [FROM] A STATE CORRECTIONAL INSTITUTION — 944.47(1)(a)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Possession of a Controlled Substance, if a controlled substance is the contraband alleged		893.13	25.7
	Possession of a Firearm or a Concealed Weapon By a Convicted Felon, if a firearm or concealed weapon is the contraband alleged and the possessor is an inmate.	790.23	10.15
	Carrying a Concealed Firearm	790.01(2)	10.1

	Carrying a Concealed Weapon	790.01(1)	10.1
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Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of [Introduction] [Removal] of Contraband [Into] [From] a State Correctional Institution. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

This instruction was adopted in 2014 [153 So. 3d 192] and amended in 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and 2019.