

Supreme Court of Florida

No. SC05-1936

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES (NO. 2004-1)

[November 17, 2005]

PER CURIAM.

The Chair of the Supreme Court Committee on Standard Jury Instructions (Criminal) has filed a letter with the Court concerning the revised theft instruction that the Court recently authorized for publication and use in In re Standard Jury Instructions in Criminal Cases (No. 2004-1), 30 Fla. L. Weekly S621 (Fla. Sept. 1, 2005). Because the decision in the prior case is now final, we treat the letter as a request to consider further revision to Florida Standard Jury Instruction (Criminal) 14.1, Theft. We have jurisdiction. See art. V, § 2(a), Fla. Const.

The Chair of the Committee points out that the revised theft instruction that was submitted by the Committee in the prior case and authorized for publication and use by the Court contains an error in the new paragraph i, which reads:

The value of the property taken was \$100 or more but less than \$300, and was taken from [a dwelling] [the enclosed curtilage of a dwelling].

(Emphasis added.) According to the Chair, the revised instruction should read:

The value of the property taken was \$100 or more but less than \$300, and was taken from [a dwelling] [the unenclosed curtilage of a dwelling].

(Emphasis added.)

Having considered the revised theft instruction that the Committee intended to submit to the Court, we hereby authorize its publication and use as set forth in the appendix attached to this opinion. New language is indicated by underlining. In authorizing the publication and use of the revised instruction, we express no opinion on the correctness of this instruction and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions or contesting the legal correctness of this instruction. We further caution all interested parties that the notes and comments associated with the instruction reflect only the opinion of the Committee and are not necessarily indicative of the views of this Court as to their correctness or applicability. The instruction as set forth in the appendix shall be effective when this opinion becomes final.

It is so ordered.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS, QUINCE, CANTERO, and BELL, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE
EFFECTIVE DATE OF THESE AMENDMENTS

Original Proceeding – Standard Jury Instructions in Criminal Cases (No. 2004-1)

Honorable Dedee S. Costello, Chair, Supreme Court Committee on Standard Jury
Instructions in Criminal Cases, Fourteenth Judicial Circuit, Panama City, Florida,

for Petitioner

APPENDIX

14.1 THEFT

§ 812.014, Fla. Stat.

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

1. (Defendant) **knowingly and unlawfully [obtained] [used] [endeavored to obtain] [endeavored to use] the (property alleged) of (victim).**
2. **[He] [She] did so with intent to, either temporarily or permanently,**

[deprive (victim) of [his] [her] right to the property or any benefit from it.]

[appropriate the property of (victim) to [his] [her] own use or to the use of any person not entitled to it.]

Degrees; give if property is of monetary value up to extent of charge

If you find the defendant guilty of theft, you must determine by your verdict whether:

- a. **[The value of the property taken was \$100,000 or more.]**
- b. **[The property taken was cargo valued at \$50,000 or more that has entered the stream of commerce from the shipper's loading platform to the consignee's receiving dock.]**
- c. **[The property taken was cargo valued at less than \$50,000 that has entered the stream of commerce from the shipper's loading platform to the consignee's receiving dock.]**
- d. **[The property taken was emergency medical equipment valued at \$300 or more that was taken from a licensed facility or from an emergency medical aircraft or vehicle.]**
- e. **[The value of the property taken was \$20,000 or more but less than \$100,000.]**

- f. [The value of the property taken was \$300 or more but less than \$20,000.]
- g. [The value of the property taken was less than \$300.]

Give if applicable

- h. [The property was [a will, codicil, or other testamentary instrument.] [a firearm.] [a motor vehicle.] [a commercially farmed animal.] [an aquaculture species raised at a permitted aquaculture facility.] [a fire extinguisher.] [2,000 or more pieces of fruit.] [taken from a posted construction site.] [a stop sign.] [anhydrous ammonia.]]
- i. [The value of the property taken was \$100 or more but less than \$300, and was taken from [a dwelling] [the unenclosed curtilage of a dwelling].]

Inferences; give if applicable § 812.022(1), Fla. Stat.

Proof that a person presented false identification not current in respect to name, address, place of employment, or other material aspect in connection with the leasing of personal property, or failed to return leased property within 72 hours of the termination of the leasing agreement, unless satisfactorily explained, gives rise to an inference that the property was obtained or is now used with unlawful intent to commit theft.

Inferences; give if applicable § 812.022(2), Fla. Stat.

Proof of possession of recently stolen property, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.

Definitions; give if applicable

§ 812.012(1), Fla. Stat.

“Cargo” means partial or entire shipments, containers, or cartons of property which are contained in or on a trailer, motortruck, aircraft, vessel, warehouse, freight station, freight consolidation facility, or air navigation facility.

§ 812.014(2)(b)3, Fla. Stat.

“Emergency medical equipment” means mechanical or electronic apparatus used to provide emergency service and care or to treat medical emergencies.

§ 395.002(10), Fla. Stat.

“Emergency service and care” means medical screening, examination, and evaluation by a physician, or other medically appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists, and if it does, the care, treatment or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.

§ 395.002(17), Fla. Stat.

“Licensed facility” means a hospital, ambulatory surgical center, or mobile surgical facility licensed by the Florida Agency for Health Care Administration. *See Ch. 395, Fla. Stat.*

§ 812.014(2)(b)3, Fla. Stat.

“Emergency medical aircraft or vehicle” means any aircraft, ambulance or other vehicle used as an emergency medical service vehicle that has been issued a permit in accordance with Florida law.

§ 812.012(3), Fla. Stat.

“Obtains or uses” means any manner of

- (a) Taking or exercising control over property.**
- (b) Making any unauthorized use, disposition, or transfer of property.**
- (c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise.**
- (d) (1) Conduct previously known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, deception; or**
 - (2) Other conduct similar in nature.**

“Endeavor” means to attempt or try.

§ 812.012(4), Fla. Stat.

“Property” means anything of value, and includes:

real property, including things growing on, affixed to and found in land;

tangible or intangible personal property, including rights, privileges, interests, and claims; and
services.

§ 812.012(6), Fla. Stat.

“Services” means anything of value resulting from a person’s physical or mental labor or skill, or from the use, possession, or presence of property, and includes:

repairs or improvements to property;

professional services;

private, public or government communication, transportation, power, water, or sanitation services;

lodging accommodations; and

admissions to places of exhibition or entertainment.

§ 812.012(10), Fla. Stat.

“Value” means:

The market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

In the case of a written instrument that does not have a readily ascertainable market value, such as a check, draft, or promissory note, the value is the amount due or collectible.

In the case of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege, or obligation, the value is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner suffered by reason of losing an advantage over those who do not know of or use the trade secret.

If the exact value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine the minimum value, you must find the value is less than \$300.

Amounts of value of separate properties, involved in thefts committed pursuant to one scheme or course of conduct, whether the thefts are from the same person or several persons, may be totaled in determining the grade of the offense.