

# Supreme Court of Florida

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No. SC07-1420

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## **IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES— REPORT NO. 2007-5.**

[May 15, 2008]

PER CURIAM.

We have for consideration thirteen proposed amended or new Standard Jury Instructions in Criminal Cases.<sup>1</sup> The Supreme Court Committee on Standard Jury Instructions in Criminal Cases (Committee) proposes Standard Jury Instructions 10.19 (Use of a Self-Defense Weapon) (amended); 11.13 (Voyeurism) (amended); 11.13(a)–(b) (Video Voyeurism) (new); 11.13(c)–(d) (Video Voyeurism Dissemination) (new); 11.13(e)–(g) (Commercial Video Voyeurism) (new); 14.7 (False Verification of Ownership or False Identification to a Pawnbroker) (new); 15.1 (Robbery) (amended); 15.2 (Carjacking) (amended); and 15.3 (Home Invasion Robbery) (amended).

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1. We have jurisdiction. See art. V, § 2(a), Fla. Const.

The proposals were published for comment by the Court in the September 15, 2007, edition of The Florida Bar News. Three comments were received. In response to the comments, the Committee revised several of its proposals.

Having considered the Committee's report, the comments that were filed, and the Committee's response to those comments, we authorize the publication and use of all of the amended and new instructions.<sup>2</sup> The instructions, as authorized, are set forth in the appendix to this opinion. New language is indicated by underlining, and deleted language is struck through. In authorizing the instructions for publication and use, we express no opinion on their correctness and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions, nor contesting the legal correctness of the instructions. We further caution all interested parties that any notes and comments associated with the instructions 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

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2. One of the comments filed with this Court raised the issue of whether Judge Benton's dissenting opinion in Cliett v. State, 951 So. 2d 3 (Fla. 1st DCA 2007), warrants amendments to instruction 15.1 (Robbery). Judge Benton asserted that "the failure to instruct the jury that it had to determine whether what [Cliett] said and did would have placed a reasonable person in fear . . . was fundamental error, in my view, requiring reversal and remand for a new trial." Id. at 4. In response, the Committee rejected that comment, determining that the majority view in Cliett was correct. We decline to address the issue here. Such determination must be left for a proper case and controversy.

instructions as set forth in the appendix<sup>3</sup> shall be effective when this opinion becomes final.

It is so ordered.

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

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Original Proceeding – Standard Jury Instructions in Criminal Cases

Judge Terry David Terrell, Chair, Committee on Standard Jury Instructions in Criminal Cases, First Judicial Circuit, Pensacola, Florida,

for Petitioner

Bart Schneider, Assistant State Attorney, Seventh Judicial Circuit, Lake Mary, Florida; and R. Blaise Trettis, Executive Assistant Public Defender, Eighteenth Judicial Circuit, Viera, Florida,

Responding with comments

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3. The amendments to the instructions as reflected in the appendix are to the Criminal Jury Instructions as they appear on the Court's website at [www.floridasupremecourt.org/jury\\_instructions/instructions.shtml](http://www.floridasupremecourt.org/jury_instructions/instructions.shtml). We recognize that there may be minor discrepancies between the instructions as they appear on the website and the published versions of the instructions. Any discrepancies as to instructions authorized for publication and use after October 25, 2007, should be resolved by reference to the published opinion of this Court authorizing the instruction.

## APPENDIX

### 10.19 USE OF A SELF-DEFENSE WEAPON

§ 790.054, Fla. Stat.

To prove the crime of ~~u~~Using a ~~s~~Self-d~~e~~Defense ~~w~~Weapon against a law enforcement officer, the ~~s~~State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **intentionally used a [self-defense chemical spray] [nonlethal stun gun] [nonlethal electric weapon] [~~remote-dart firing~~ stun gun] against (victim).**
2. (Victim) **was at the time a law enforcement officer.**
3. (Defendant) **knew (victim) was a law enforcement officer.**
4. **At the time of the incident, (victim) was engaged in the lawful performance of [his] [her] duties.**

**The court now instructs you that** (name of official position of victim designated in charge) **is a law enforcement officer.** *Do not read the name of the victim in this part of the instruction.*

#### Lesser Included Offenses

USE OF A SELF-DEFENSE WEAPON § 790.054			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Battery	784.03(1)(a)	8.3

#### Comment

This instruction is based on section 790.054, Florida Statutes (1997). In giving this instruction, do not refer to the victim by name in the last sentence of the instruction. That sentence must state the class of officers to which the victim belongs, e.g., probation officer, correctional officer. *See Wright v. State*, 586 So. 2d 1025 (Fla. 1991).

This instruction was adopted in 2000 [765 So. 2d 692] and amended in 2008.

## 11.13 VOYEURISM

§ 810.14, Fla. Stat.

To prove the crime of Voyeurism, the sState must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **secretly**

[observed]  
~~{photographed}~~  
~~{filmed}~~  
~~{videotaped}~~  
~~{recorded}~~

(victim).

2. **The (act alleged) was done with a [lewd] [lascivious] [indecent] intent.**

3. **When (victim) was [observed] ~~{photographed}~~ ~~{filmed}~~ ~~{videotaped}~~ ~~{recorded}~~ [he] [she] was in a [dwelling] [structure] [conveyance] in which [he] [she] had a reasonable expectation of privacy.**

The words lewd, lascivious, and indecent mean the same thing, a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing the act.

### *Definitions.*

“Dwelling” means a building [or conveyance] of any kind, including any attached porch, whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it.

“Structure” means any kind of building, either temporary or permanent, that has a roof over it, together with the enclosed space of ground and outbuildings immediately surrounding it.

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

### **Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

### **Comment**

~~This instruction is based on § 810.14, Fla. Stat. (Supp. 1998.). It is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room. If the defendant is convicted of the current charge, the historical fact of a previous conviction shall be determined separately. *State v. Harris*, 356 So. 2d 315 (Fla. 1978). beyond a reasonable doubt by the jury in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).~~

This instruction was adopted in 2000 [765 So. 2d 692], and amended in 2008.

### **11.13(a) VIDEO VOYEURISM**

§ 810.145(2)(a) or (b), Fla. Stat.

**To prove the crime of Video Voyeurism, the State must prove the following four elements beyond a reasonable doubt:**

*Give 1a or 1b as applicable.*

**1.** (Defendant)

**a. intentionally [used] [or] [installed] an imaging device to secretly [view] [broadcast] [or] [record] (victim) for [his] [her] own [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [or] [for the purpose of degrading or abusing (victim)].**

**b. intentionally permitted [the use] [or] [installation] of an imaging device to secretly [view] [broadcast] [or] [record] (victim) for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [of another or on behalf of another].**

**2. (Victim) was thereby [viewed] [broadcast] [or] [recorded] at a time when the (victim) was [dressing] [undressing] [or] [privately exposing [his] [her] body].**

**3. At the place and time when (victim) was [viewed] [broadcast] [or] [recorded] [he] [she] had a reasonable expectation of privacy.**

**4. The [viewing] [broadcast] [or] [recording] of (victim) was without the knowledge and consent of (victim).**

*Definitions.*

**“Broadcast” means electronically transmitting a visual image with the intent that it be viewed by another person.**

**“Imaging device” means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.**



**“Place and time when a person has a reasonable expectation of privacy” means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that his or her undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.**

**“Privately exposing the body” means exposing a sexual organ.**

### **Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

### **Comment**

It is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room. If the defendant is convicted of the current charge, the historical fact of a previous conviction shall be determined beyond a reasonable doubt by the jury in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2008.

## **11.13(b) VIDEO VOYEURISM**

§ 810.145(2)(c), Fla. Stat.

**To prove the crime of Video Voyeurism, the State must prove the following three elements beyond a reasonable doubt:**

- 1. (Defendant) intentionally used an imaging device to secretly [view] [broadcast] [or] [record] [under] [or] [through] the clothing worn by (victim) for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of [himself] [herself] [or] [another].**
- 2. (Defendant's) use of the imaging device was for the purpose of viewing [the body of] [or] [the undergarments worn by] (victim).**
- 3. (Defendant's) use of the imaging device was without the knowledge and consent of (victim).**

### *Definitions.*

**“Broadcast” means electronically transmitting a visual image with the intent that it be viewed by another person.**

**“Imaging device” means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.**

### **Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

### **Comment**

It is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room. If the defendant is convicted of the current charge, the historical fact of a previous conviction shall be determined beyond a reasonable doubt by the jury in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2008.

**11.13(c) VIDEO VOYEURISM DISSEMINATION**  
**(Image created in violation of section 810.145(2)(a) and (b))**  
**§ 810.145(3), Fla. Stat.**

**To prove the crime of Video Voyeurism Dissemination, the State must prove the following six elements beyond a reasonable doubt:**

*Give 1a or 1b as applicable.*

**1.** (Defendant)

**(a) intentionally [used] [or] [installed] an imaging device to secretly [view] [broadcast] [or] [record] (victim) for [his] [her] own [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [or] [for the purpose of degrading or abusing (victim)].**

**(b) intentionally permitted [the use] [or] [installation] of an imaging device to secretly [view] [broadcast] [or] [record] (victim) for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [of another or on behalf of another].**

**2.** (Victim) was thereby [viewed] [broadcast] [or] [recorded] at a time when the [he] [she] was [dressing] [undressing] [or] [privately exposing [his] [her] body].

**3.** At the place and time when (victim) was [viewed] [broadcast] [or] [recorded] [he] [she] had a reasonable expectation of privacy.

**4.** The [viewing] [broadcast] [or] [recording] of (victim) was without the knowledge and consent of (victim).

**5.** (Defendant) intentionally [disseminated] [distributed] [or] [transferred] an image of (victim) created in this manner to another person for the purpose of [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [or for the purpose of degrading or abusing (victim)].

**6.** At the time (defendant) [disseminated] [distributed] [or] [transferred] the image of (victim), (defendant) knew or had reason

**to believe that the image of (victim) had been created in this manner.**

*Definitions.*

**“Broadcast” means electronically transmitting a visual image with the intent that it be viewed by another person.**

**“Imaging device” means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.**

**“Place and time when a person has a reasonable expectation of privacy” means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that their undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.**

**“Privately exposing the body” means exposing a sexual organ.**

**Lesser Included Offenses**

**No lesser included offenses have been identified for this offense.**

**Comment**

**It is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room. If the defendant is convicted of the current charge, the historical fact of a previous conviction shall be determined beyond a reasonable doubt by the jury in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).**

**This instruction was adopted in 2008.**

**11.13(d) VIDEO VOYEURISM DISSEMINATION**  
**(Image created in violation of section 810.145(2)(c))**  
**§ 810.145(3), Fla. Stat.**

**To prove the crime of Video Voyeurism Dissemination, the State must prove the following five elements beyond a reasonable doubt:**

- 1. (Defendant) intentionally used an imaging device to secretly [view] [broadcast] [or] [record] [under] [or] [through] the clothing worn by (victim) for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of [himself] [herself] [or] [another].**
- 2. (Defendant's) use of the imaging device was for the purpose of viewing [the body of] [or] [the undergarments worn by] (victim).**
- 3. (Defendant's) use of the imaging device was without the knowledge and consent of (victim).**
- 4. (Defendant) intentionally [disseminated] [distributed] [or] [transferred] an image of (victim) created in this manner to another person for the purpose of [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [or for the purpose of degrading or abusing (victim)].**
- 5. At the time (defendant) [disseminated] [distributed] [or] [transferred] the image of (victim), (defendant) knew or had reason to believe that the image of (victim) had been created in this manner.**

*Definitions.*

**“Broadcast” means electronically transmitting a visual image with the intent that it be viewed by another person.**

**“Imaging device” means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.**

**Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

**Comment**

It is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room. If the defendant is convicted of the current charge, the historical fact of a previous conviction shall be determined beyond a reasonable doubt by the jury in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2008.

**11.13(e) COMMERCIAL VIDEO VOYEURISM**  
**(Image created in violation of section 810.145(2)(a) or (b))**  
**§ 810.145(4)(a), Fla. Stat.**

**To prove the crime of Commercial Video Voyeurism, the State must prove the following six elements beyond a reasonable doubt:**

*Give 1a or 1b as applicable.*

- 1. (Defendant)**
  - a. intentionally [used] [or] [installed] an imaging device to secretly [view] [broadcast] [or] [record] (victim) for [his] [her] own [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [or] [for the purpose of degrading or abusing (victim)].**
  - b. intentionally permitted [the use] [or] [installation] of an imaging device to secretly [view] [broadcast] [or] [record] (victim) for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [of another or on behalf of another].**
- 2. (Victim) was thereby [viewed] [broadcast] [or] [recorded] at a time when the (victim) was [dressing] [undressing] [or] [privately exposing [his] [her] body].**
- 3. At the place and time when (victim) was [viewed] [broadcast] [or] [recorded] [he] [she] had a reasonable expectation of privacy.**
- 4. The [viewing] [broadcast] [or] [recording] of (victim) was without the knowledge and consent of (victim).**
- 5. (Defendant) sold an image of (victim) created in this manner to another person for consideration.**
- 6. (Defendant) knew or had reason to believe that the image of (victim) sold had been created in this manner.**

*Definitions.*



**“Broadcast” means electronically transmitting a visual image with the intent that it be viewed by another person.**

**“Imaging device” means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.**

**“Place and time when a person has a reasonable expectation of privacy” means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that their undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.**

**“Privately exposing the body” means exposing a sexual organ.**

#### **Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

#### **Comment**

It is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room. If the defendant is convicted of the current charge, the historical fact of a previous conviction shall be determined beyond a reasonable doubt by the jury in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2008.

**11.13(f) COMMERCIAL VIDEO VOYEURISM**  
**(Image created in violation of section 810.145(2)(c))**  
**§ 810.145(4)(a), Fla. Stat.**

**To prove the crime of Commercial Video Voyeurism, the State must prove the following five elements beyond a reasonable doubt:**

- 1. (Defendant) intentionally used an imaging device to secretly [view] [broadcast] [or] [record] [under] [or] [through] the clothing worn by (victim) for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of [himself] [herself] [or] [another].**
- 2. (Defendant's) use of the imaging device was for the purpose of viewing [the body of] [or] [the undergarments worn by] (victim).**
- 3. (Defendant's) use of the imaging device was without the knowledge and consent of (victim).**
- 4. (Defendant) sold an image of (victim) created in this manner to another person for consideration.**
- 5. (Defendant) knew or had reason to believe that the image of (victim) sold had been created in this manner.**

*Definitions.*

**“Broadcast” means electronically transmitting a visual image with the intent that it be viewed by another person.**

**“Imaging device” means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.**

**Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

**Comment**

This instruction is based on section 810.145(2)(c), Florida Statutes (2004).

It is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room. If the defendant is convicted of the current charge, the historical fact of a previous conviction shall be determined beyond a reasonable doubt by the jury in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2008.

**11.13(g) COMMERCIAL VIDEO VOYEURISM**  
**(Image created in violation of section 810.145(2)(a) or (b))**  
**§ 810.145(4)(b), Fla. Stat.**

**To prove the crime of Commercial Video Voyeurism, the State must prove the following five elements beyond a reasonable doubt:**

*Give 1a or 1b as applicable.*

- 1. (Defendant)**
  - a. intentionally [used] [or] [installed] an imaging device to secretly [view] [broadcast] [or] [record] (victim) for [his] [her] own [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [or] [for the purpose of degrading or abusing (victim)].**
  - b. intentionally permitted [the use] [or] [installation] of an imaging device to secretly [view] [broadcast] [or] [record] (victim) for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [of another on behalf of another].**
- 2. (Victim) was thereby [viewed] [broadcast] [or] [recorded] at a time when the (victim) was [dressing] [undressing] [or] [privately exposing [his] [her] body].**
- 3. At the place and time when (victim) was [viewed] [broadcast] [or] [recorded] [he] [she] had a reasonable expectation of privacy.**
- 4. The [viewing] [broadcast] [or] [recording] of (victim) was without the knowledge and consent of (victim).**
- 5. (Defendant) [disseminated] [distributed] [or] [transferred] an image of (victim) created in this manner to another person for that person to sell to others.**

*Definitions.*

**“Broadcast” means electronically transmitting a visual image with the intent that it be viewed by another person.**

**“Imaging device” means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.**

**“Place and time when a person has a reasonable expectation of privacy” means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that their undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.**

**“Privately exposing the body” means exposing a sexual organ.**

#### **Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

#### **Comment**

It is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room. If the defendant is convicted of the current charge, the historical fact of a previous conviction shall be determined beyond a reasonable doubt by the jury in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2008.

**14.7 FALSE VERIFICATION OF OWNERSHIP OR FALSE IDENTIFICATION TO A PAWNBROKER**  
**§ 539.001(8)(b)8, Fla. Stat.**

**To prove the crime of False Verification of Ownership or False Identification to a Pawnbroker, the State must prove the following three elements beyond a reasonable doubt:**

1. **(Defendant) sold or pledged [goods] [(property alleged)] to a pawnbroker.**
2. **At the time, (defendant) knowingly gave [false verification of ownership of the [goods] [(property alleged)]] [false or altered identification] to the pawnbroker.**
3. **(Defendant) received money from the pawnbroker for the [goods] [(property alleged)] sold or pledged.**

*Enhanced penalty. Give if applicable.*

**If you find (defendant) guilty of false verification of ownership or false identification to a pawnbroker, you must then determine whether the State has proven beyond a reasonable doubt that the value of the money received was \$300 or more.**

*Definition.*

*§ 539.001(2)(i), Fla. Stat.*

**“Pawnbroker” means any person who is engaged in the business of making pawns; who makes a public display containing the term “pawn,” “pawnbroker,” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.**

**Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

**Comment**

This instruction was adopted in 2008.

## 15.1 ROBBERY

§ 812.13, Fla. Stat.

To prove the crime of Robbery, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **took the** (money or property described in charge) **from the person or custody of** (person alleged).
2. **Force, violence, assault, or putting in fear was used in the course of the taking.**
3. **The property taken was of some value.**
4. **The taking was with the intent to permanently or temporarily [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].**

### *Definition.*

**“In the course of the taking” means that the act occurred prior to, contemporaneous with, or subsequent to the taking of the property and that the act and the taking of the property constitute continuous series of acts or events.**

### *Title to property.*

**In order for a taking of property to be robbery, it is not necessary that the person robbed be the actual owner of the property. It is sufficient if the victim has the custody of the property at the time of the offense.**

### *Force. Give if applicable.*

**The taking must be by the use of force or violence or by assault so as to overcome the resistance of the victim, or by putting the victim in fear so that the victim does not resist. The law does not require that the victim of robbery resist to any particular extent or that the victim offer any actual physical resistance if the circumstances are such that the victim is placed in fear of death or great bodily harm if he or she does resist. But unless prevented by fear, there must be some resistance to make the taking one done by force or violence.**

*Victim unconscious. Give if applicable.*

**It is also robbery if a person, with intent to take the property from a victim, administers any substance to another so that the victim becomes unconscious and then takes the property from the person or custody of the victim.**

*Taking.*

**In order for a taking by force, violence, or putting in fear to be robbery, it is not necessary that the taking be from the person of the victim. It is sufficient if the property taken is under the actual control of the victim so that it cannot be taken without the use of force, violence, or intimidation directed against the victim.**

*Enhanced penalty. Give if applicable.*

**~~The punishment provided by law for~~ If you find the defendant guilty of the crime of robbery, then you must further determine beyond a reasonable doubt is greater if “in the course of committing the robbery” the defendant carried some kind of weapon. An act is “in the course of committing the robbery” if it occurs in an attempt to commit robbery or in flight after the attempt or commission. ~~Therefore, if you find the defendant guilty of robbery, you must then consider whether the State has further proved those aggravating circumstances and reflect this in your verdict.~~**

*With a firearm.*

**If you find that the defendant carried a firearm in the course of committing the robbery, you should find [him] [her] guilty of robbery with a firearm.**

*With a deadly weapon.*

**If you find that the defendant carried a (deadly weapon described in charge) in the course of committing the robbery and that the (deadly weapon described in charge) was a deadly weapon, you should find [him] [her] guilty of robbery with a deadly weapon.**

*With other weapon.*

**If you find that the defendant carried a weapon that was not a [firearm] [deadly weapon] in the course of committing the robbery, you should find [him] [her] guilty of robbery with a weapon.**

*With no firearm or weapon.*



**If you find that the defendant carried no firearm or weapon in the course of committing the robbery, but did commit the robbery, you should find [him] [her] guilty only of robbery.**

*Definitions.*

**A “firearm” is ~~legally~~ defined as** (adapt from § 790.001(6), Fla. Stat., as required by allegations).

**A weapon is a “deadly weapon” if it is used or threatened to be used in a way likely to produce death or great bodily harm.**

**A “weapon” is ~~legally~~ defined to mean any object that could be used to cause death or inflict serious bodily harm.**

*Also define “attempt” (see 5.1).*

### Lesser Included Offenses

<b>ROBBERY WITH A FIREARM OR DEADLY WEAPON — 812.13(2)(a)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Robbery with a weapon		812.13(2)(b)	<u>15.1</u>
Robbery		812.13(2)(c)	15.1
Petit theft - second degree		812.014(3)(a)	<u>14.1</u>
	Attempt	777.04(1)	5.1
	<u>Robbery by sudden snatching with a firearm or deadly weapon</u>	<u>812.131(2)(a)</u>	<u>15.4</u>
	<u>Robbery by sudden snatching</u>	<u>812.131(2)(b)</u>	<u>15.4</u>
	Grand theft — first degree	812.014(2)(a)	<u>14.1</u>
	Grand theft — second degree	812.014(2)(b)	<u>14.1</u>
	Grand theft — third degree	812.014(2)(c)	<u>14.1</u>
	Petit theft — first degree	812.014(2)(e)	<u>14.1</u>
	Battery	784.03	8.3
	Aggravated battery	784.045	8.4
	Assault	784.011	8.1
	Aggravated assault	784.021	8.2
	Display of firearm	790.07	10.3 or .4
	Resisting a merchant	812.015(6)	14.4

<b>ROBBERY WITH A WEAPON — 812.13(2)(b)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Robbery		812.13(2)(c)	15.1
Petit theft – <u>second degree</u>		812.014(3)(a)	<u>14.1</u>
	Attempt	777.04(1)	5.1
	<u>Robbery by sudden snatching with a firearm or deadly weapon</u>	<u>812.131(2)(a)</u>	<u>15.4</u>
	<u>Robbery by sudden snatching</u>	<u>812.131(2)(b)</u>	<u>15.4</u>
	Grand theft — first degree	812.014(2)(a)	<u>14.1</u>
	Grand theft — second degree	812.014(2)(b)	<u>14.1</u>
	Grand theft — third degree	812.014(2)(c)	<u>14.1</u>
	Petit theft – <u>first degree</u>	812.014(2)(e)	<u>14.1</u>
	Battery	784.03	8.3
	Aggravated battery	784.045	8.4
	Assault	784.011	8.1
	Display of weapon	790.07(1)	10.3
	Resisting a merchant	812.015(6)	14.4

<b>ROBBERY — 812.13(2)(c)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Petit theft — <u>second degree</u>		812.014(3)(a)	<u>14.1</u>
	Attempt	777.04(1)	5.1
	<u>Robbery By Sudden Snatching</u>	812.131(2)(b)	<u>15.4</u>
	Grand theft — first degree	812.014(2)(a)	<u>14.1</u>
	Grand theft — second degree	812.014(2)(b)	<u>14.1</u>
	Grand theft — third degree	812.014(2)(c)	<u>14.1</u>
	Petit theft — <u>first degree</u>	812.014(2)(e)	<u>14.1</u>
	Battery	784.03	8.3
	Assault	784.011	8.1
	Aggravated assault	784.021	8.2
	Resisting a merchant	812.015(6)	14.4

**Comment**

This instruction was adopted in 1981 and amended in 1985 [477 So.2d 985], 1989, [543 So.2d 1205] and 1995, [665 So.2d 212], and 2008.

**15.2 CARJACKING**  
§ 812.133, Fla. Stat.

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

1. (Defendant) took the motor vehicle from the person or custody of (victim).
2. Force, violence, assault, or putting in fear was used in the course of the taking.
3. The taking was with the intent to temporarily or permanently [deprive (victim) of [his] [her] right to the motor vehicle or any benefit from it] [appropriate the motor vehicle of (victim) to [his] [her] own use or to the use of any person not entitled to it].

*Definition.*

“In the course of the taking” means that the act occurred before, during, or after the taking of the motor vehicle and that the act and the taking of the motor vehicle constitute a continuous series of acts or events.

*Title to motor vehicle ~~property~~.*

In order for a taking of the motor vehicle ~~property~~ to be carjacking, it is not necessary that the victim be the actual owner of the ~~property~~ motor vehicle. It is sufficient if the victim has the custody of the ~~property~~ motor vehicle at the time of the offense.

*Force. Give if applicable.*

The taking must be by the use of force or violence or by assault so as to overcome the resistance of the victim, or by putting the victim in fear so that the victim does not resist. The law does not require that the victim of carjacking resist to any particular extent or that the victim offer any actual physical resistance if the circumstances are such that the victim is placed in fear of death or great bodily harm if he or she does resist. But unless prevented by fear, there must be some resistance to make the taking one done by force or violence.

*Victim unconscious. Give if applicable.*

It is also carjacking if a person, with intent to take the ~~property~~ motor vehicle from a victim, administers any substance to the victim so that [he] [she] becomes unconscious and then takes the ~~property~~ motor vehicle from the person or custody of the victim.

*Enhanced penalty. Give if applicable.*

~~The punishment provided by law for~~ If you find the defendant guilty of the crime of carjacking, then you must further determine beyond a reasonable doubt is greater if “in the course of committing the carjacking” the defendant carried some kind of weapon. An act is “in the course of committing the carjacking” if it occurs in an attempt to commit carjacking or in flight after the attempt or commission. ~~Therefore, if you find the defendant guilty of carjacking, you must then consider whether the State has further proved those aggravating circumstances and reflect this in your verdict.~~

*With a firearm or deadly weapon.*

If you find that the defendant carried a firearm or other deadly weapon in the course of committing the carjacking, you should find [him] [her] guilty of carjacking with a firearm or deadly weapon.

*With no firearm or weapon.*

If you find that the defendant carried no firearm or weapon in the course of committing the carjacking, but did commit the carjacking, you should find [him] [her] guilty only of carjacking.

*The only enhancement under the statute is for carrying a firearm or other deadly weapon, not for carrying a nondeadly weapon as in the robbery statute.*

*Definitions.*

A “**firearm**” is ~~legally defined~~ as (adapt from § 790.001(6), Fla. Stat., as required by allegations).

A weapon is a “**deadly weapon**” if it is used or threatened to be used in a way likely to produce death or great bodily harm.

### Lesser Included Offenses

<b>CARJACKING — 812.133</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Robbery		812.13(2)(c)	15.1
Grand theft- <u>motor vehicle</u>		812.014(2)(c)6	14.1
Petit theft		812.014(3)(a)	14.1
	Attempt	777.04(1)	5.1
	Grand theft — first degree	812.014(2)(a)	14.1
	Grand theft — second degree	812.014(2)(b)	14.1
	Grand theft — third degree	812.014(2)(c)	14.1
	Petit theft — first degree	812.014(2)(e)	14.1
	Petit theft — second degree	812.014(3)(a)	14.1
	Battery	784.03	8.3
	Assault	784.011	8.1
	Aggravated assault	784.021	8.2

### Comment

This instruction was adopted in 1997 [697 So.2d 84] and amended in 2008.

## 15.3 HOME-INVASION ROBBERY

§ 812.135, Fla. Stat.

To prove the crime of Home-Invasion Robbery, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) entered the dwelling of (victim).
2. At the time (defendant) entered the dwelling, [he] [she] intended to commit robbery.
3. While inside the dwelling, (defendant) did commit robbery.

*Now define robbery by reading 15.1, ~~omitting the section regarding enhanced penalties.~~*

*Definition.*

**“Dwelling” means a building [or conveyance] of any kind, including any attached porch, whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it.**

*Enhanced penalty. Give if applicable.*

**If you find the defendant guilty of the crime of home-invasion robbery, then you must further determine beyond a reasonable doubt if “in the course of committing the home-invasion robbery” the defendant carried some kind of weapon.**

*With a firearm.*

**If you find that the defendant carried a firearm in the course of committing the home-invasion robbery, you should find [him] [her] guilty of home-invasion robbery with a firearm.**

*With a deadly weapon.*

**If you find that the defendant carried a (deadly weapon described in charge) in the course of committing the home-invasion robbery and that the (deadly weapon described in charge) was a deadly weapon, you should find [him] [her] guilty of home-invasion robbery with a deadly weapon.**



*With other weapon.*

**If you find that the defendant carried a weapon that was not a [firearm] [deadly weapon] in the course of committing the home-invasion robbery, you should find [him] [her] guilty of home-invasion robbery with a weapon.**

*With no firearm or weapon.*

**If you find that the defendant carried no firearm or weapon in the course of committing the home-invasion robbery, but did commit the home-invasion robbery, you should find [him] [her] guilty only of home-invasion robbery.**

*Definitions.*

**A “firearm” is defined as (adapt from § 790.001(6), Fla. Stat., as required by allegations).**

**A weapon is a “deadly weapon” if it is used or threatened to be used in a way likely to produce death or great bodily harm.**

**A “weapon” is defined to mean any object that could be used to cause death or inflict serious bodily harm.**

*Also define “attempt” (see 5.1).*

**Lesser Included Offenses**

<b>HOME INVASION ROBBERY — 812.135</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Robbery with a weapon		812.13(2)(b)	
Robbery		812.13(2)(c)	15.1
Burglary		810.02(4)	13.1
	Aggravated battery	784.045	8.4
	Battery	784.03	8.3
	Aggravated assault	784.021	8.2
	Assault	784.011	8.1
	Attempt	777.04(1)	5.1
	Burglary	810.02(3)	13.1
	Trespass	810.08	13.3
Petit theft		812.014(3)(a)	<u>14.1</u>
	Petit theft	812.014(2)(e)	<u>14.1</u>

<b>BURGLARY WITH ASSAULT OR BATTERY OR WHILE ARMED 810.02(2)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Burglary		810.02(4)	13.1
	Aggravated battery	784.045	8.4
	Battery	784.03	8.3
	Aggravated assault	784.021	8.2
	Assault	784.011	8.1
	Attempt	777.04(1)	5.1
	Burglary	810.02(3)	13.1
	Trespass	810.08	13.3

<b>BURGLARY OF DWELLING; BURGLARY OF STRUCTURE OR CONVEYANCE WITH HUMAN BEING INSIDE — 810.02(3)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Burglary		810.02(4)	13.1
	Attempt	777.04(1)	5.1
	Burglary	810.02(3)	13.1
	Trespass	810.08(2)(a)	13.3
	Trespass	810.08(2)(b)	13.3

<b>BURGLARY — 810.02(4)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
None			
	Attempt	777.04(1)	5.1
	Trespass	810.08(2)(a)	13.3

<b>ROBBERY WITH A FIREARM OR DEADLY WEAPON— 812.13(2)(a)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Robbery with a weapon		812.13(2)(b)	
Robbery		812.13(2)(c)	15.1
Petit theft—second degree		812.014(3)(a)	
	Attempt	777.04(1)	5.1
	Grand theft—first degree	812.014(2)(a)	
	Grand theft—second degree	812.014(2)(b)	
	Grand theft—third degree	812.014(2)(c)	
	Petit theft—first degree	812.014(2)(e)	
	Battery	784.03	8.3
	Aggravated battery	784.045	8.4
	Assault	784.011	8.1
	Aggravated assault	784.021	8.2
	Display of firearm	790.07	10.3 or .4
	Resisting a merchant	812.015(6)	14.4

<b>ROBBERY WITH A WEAPON — 812.13(2)(b)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Robbery		812.13(2)(e)	15.1
Petit theft		812.014(3)(a)	
	Attempt	777.04(1)	5.1
	Grand theft — first degree	812.014(2)(a)	
	Grand theft — second degree	812.014(2)(b)	
	Grand theft — third degree	812.014(2)(c)	
	Petit theft	812.014(2)(e)	
	Battery	784.03	8.3
	Aggravated battery	784.045	8.4
	Assault	784.011	8.1
	Display of weapon	790.07(1)	10.3
	Resisting a merchant	812.015(6)	14.4

<b>ROBBERY — 812.13(2)(c)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Petit theft		812.014(3)(a)	
	Attempt	777.04(1)	5.1
	Grand theft — first degree	812.014(2)(a)	
	Grand theft — second degree	812.014(2)(b)	
	Grand theft — third degree	812.014(2)(c)	
	Petit theft	812.014(2)(e)	
	Battery	784.03	8.3
	Assault	784.011	8.1
	Aggravated assault	784.021	8.2
	Resisting a merchant	812.015(6)	14.4

### **Comment**

This instruction was adopted in 1997 [697 So.2d 84] and amended in 2008.