

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] [a] [an]** (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].**

Definitions.

Assault. § 784.011, Fla. Stat. Give if applicable.

An “assault” is an intentional and unlawful threat, either by word or act, to do violence to a victim, when it appears the person making the threat has the ability to carry out the threat, and the act creates in the mind of that victim a well-founded fear that violence is about to take place.

Fear. Give only if applicable. *Smithson v. State*, 689 So. 2d 1226 (Fla. 5th DCA 1997).

If the circumstances were such as to ordinarily induce fear in the mind of a reasonable person, then a victim may be found to have been in fear, and actual fear on the part of a victim need not be shown.

In the course of the taking. § 812.13(3)(b), Fla. Stat.

“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 a continuous series of acts or events.

Afterthought. Give only if applicable. *DeJesus v. State*, 98 So. 3d 105 (Fla. 2d DCA 2012).

If you find that the taking of property occurred as an afterthought to the use of force or violence [or the threat of force or violence] against (victim), the taking does not constitute Robbery, but may still constitute Theft.

Title to property. Give if applicable.

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

Force. Give bracketed language only if applicable. *Thomas v. State*, 36 So. 3d 853 (Fla. 3d DCA 2010).

The taking must be by the use of force or violence so as to overcome the resistance of a person, or by putting a person in fear so that he or she does not resist. [The law does not require the force, violence, assault, or putting in fear to be exerted against the victim from whom the property was taken if the force, violence, assault, or putting in fear was exerted against another in the course of the taking.] The law does not require that a victim of Robbery resist to any particular extent or that a victim offer any actual physical resistance if the circumstances are such that a 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 only if applicable.

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

Taking. Give if applicable.

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 a victim. It is sufficient if the property taken is under the custody of a victim so that it cannot be taken without the use of force, violence, or intimidation directed against a victim.

Enhanced penalty. Give only if applicable. § 812.13(3)(a), Fla. Stat.

If you find the defendant guilty of the crime of Robbery, you must further determine beyond a reasonable doubt 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.

With a firearm. § 812.13(2)(a), Fla. Stat.

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.

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 a crime. An antique firearm is *(insert definition in § 790.001(1), Fla. Stat.)*] [A destructive device is *(insert definition in § 790.001(4), Fla. Stat.)*]

With a deadly weapon. § 812.13(2)(a), Fla. Stat.

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.

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.

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.

With other weapon. § 812.13(2)(b), Fla. Stat.

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

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

With no firearm or weapon. § 812.13(2)(c), Fla. Stat.

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.

Lesser Included Offenses

*ROBBERY WITH A FIREARM OR DEADLY WEAPON — 812.13(2)(a)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Robbery with a weapon		812.13(2)(b)	15.1
Robbery		812.13(2)(c)	15.1
Petit theft – second degree		812.014(3)(a)	14.1
Assault (if assault was charged)		784.011	8.1
	Grand theft – first degree	812.014(2)(a)	14.1
	Display of firearm	790.07(4)	10.4
	Aggravated Battery	784.045	8.4
	Grand theft – second degree	812.014(2)(b)	14.1
	Robbery by sudden snatching with a firearm or deadly weapon	812.131(2)(a)	15.4
	Display of firearm	790.07(2)	10.3
	Aggravated Assault	784.021	8.2
	Felony Battery	784.041	8.5
	Robbery by Sudden Snatching	812.131(2)(b)	15.4
	Grand theft – third degree	812.014(2)(c)	14.1
	Grand theft – third degree	812.014(2)(d)	14.1
	Display of firearm	790.07(1)	10.3
	Felony Petit Theft	812.014(3)(c)	14.1
	Petit theft – first degree	812.014(2)(e)	14.1
	Petit theft – first degree	812.014(3)(b)	14.1
	Battery	784.03	8.3
	Resisting a Merchant	812.015(6)	14.4

*ROBBERY WITH A WEAPON — 812.13(2)(b)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Robbery		812.13(2)(c)	15.1
Petit theft – second degree		812.014(3)(a)	14.1
Assault (if assault was charged)		784.011	8.1
	Grand theft – first degree	812.014(2)(a)	14.1
	Display of a weapon	790.07(4)	10.4
	Attempt	777.04(1)	5.1
	Aggravated Battery	784.045	8.4
	Grand theft – second degree	812.014(2)(b)	14.1
	Robbery by sudden snatching with a firearm or deadly weapon	812.131(2)(a)	15.4
	Display of firearm	790.07(2)	10.3
	Aggravated Assault	784.021	8.2
	Felony battery	784.041	8.5
	Robbery by sudden snatching	812.131(2)(b)	15.4
	Grand theft – third degree	812.014(2)(c)	14.1
	Grand theft – third degree	812.014(2)(d)	14.1
	Display of firearm	790.07(1)	10.3
	Felony petit theft	812.014(3)(c)	14.1
	Petit theft – first degree	812.014(2)(e)	14.1
	Petit theft – first degree	812.014(3)(b)	14.1
	Battery	784.03	8.3
	Resisting a Merchant	812.015(6)	14.4

ROBBERY — 812.13(2)(c)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Petit theft – second degree		812.014(3)(a)	14.1
Assault (if assault was charged)		784.011	8.1
	Grand theft – second degree	812.014(2)(b)	14.1
	Robbery By Sudden Snatching with a firearm or deadly weapon	812.131(2)(a)	15.4
	Display of firearm	790.07(2)	10.3
	Aggravated Assault	784.021	8.2
	Felony Battery	784.041	8.5
	Robbery by sudden snatching	812.131(2)(b)	15.4
	Grand theft – third degree	812.014(2)(c)	14.1
	Grand theft – third degree	812.014(2)(d)	14.1
	Display of firearm	790.07(1)	10.3
	Felony petit theft	812.014(3)(c)	14.1
	Petit theft – first degree	812.014(2)(e)	14.1
	Petit theft – first degree	812.014(3)(b)	14.1
	Battery	784.03	8.3
	Resisting a Merchant	812.015(6)	14.4

Comments

If applicable, see Instruction 5.1 for “attempt.”

*The felony degree of a Robbery gets bumped up if a defendant carried a firearm or a deadly weapon or a weapon. In *Sanders v. State*, 944 So. 2d 203, 207 n.3 (Fla. 2006) (Pariente, J., concurring), some Florida Supreme Court justices expressed a preference to have findings for carrying a firearm or a deadly weapon or a weapon made in a separate interrogatory rather than as part of lesser-included offenses.

For the crime of Robbery, according the First and Fifth DCAs, upon request, the judge must instruct that the jury can convict a defendant of two lesser-included offenses such as 1) theft and assault or 2) theft and resisting a merchant. *Spencer v. State*, 71 So. 3d 901 (Fla. 1st DCA 2011) and *Stuckey v. State*, 972 So. 2d 918 (Fla. 5th DCA 2007). See also *Gian-Grasso v. State*, 899 So. 2d 392 (Fla. 4th DCA 2005)(holding that a defendant is entitled to have a jury consider convicting of the two separate component offenses of a compound offense). However, according to the Third DCA, the jury should be given the option of finding multiple lesser-included offenses only if there is evidence that the force, violence, assault or putting in fear was not used in the course of the taking. *Gordon v. State*, 219 So. 3d 189 (Fla. 3rd DCA 2017).

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 1989 [543 So.2d 1205], 1995 [665 So. 2d 212], 2008 [982 So. 2d 1160], 2013 [122 So. 3d 263], and 2018.