

13.3 TRESPASS—IN STRUCTURE OR CONVEYANCE

§ 810.08, Fla. Stat.

To prove the crime of Trespass in a [Structure] [Conveyance], the State must prove the following three elements beyond a reasonable doubt:

Give a. for trespass and b. for trespass after warning to depart.

- a.
 - 1. (Defendant) **willfully entered or remained in a [structure] [conveyance].**
 - 2. **The [structure] [conveyance] was in the lawful possession of (person alleged).**
 - 3. (Defendant's) **entering or remaining in the [structure] [conveyance] was without authorization, license, or invitation by (person alleged) or any other person authorized to give that permission.**
- b.
 - 1. (Defendant) **had been authorized, licensed, or invited to enter or remain in a [structure] [conveyance].**
 - 2. **[The owner] [The lessee] [A person authorized by the owner or lessee] of the premises warned (defendant) to depart.**
 - 3. (Defendant) **refused to depart.**

Authority to enter or remain in a [structure] [conveyance] need not be given in express words. It may be implied from the circumstances. It is lawful to enter or remain in a [structure] [conveyance] of another if, under all the circumstances, a reasonable person would believe that [he] [she] had the permission of the owner, lawful occupant, or any other person authorized to give that permission.

§ 810.08, Fla. Stat.

“Person authorized” means an owner or lessee, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or lessee, or his or her agent, to communicate an order to depart the property in case of a threat to public safety or welfare.

Rozier v. State, 402 So. 2d 539 (Fla. 5th DCA 1981).

“Willfully” means intentionally, knowingly, and purposely.

§ 810.011, Fla. Stat.; State v. Hamilton, 660 So. 2d 1038 (Fla. 1995); Dubose v. State, 210 So. 3d 641 (Fla. 2017).

“Structure” means any building of any kind, either temporary or permanent, that has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding that structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011, Fla. Stat.

“Conveyance” means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and to enter a conveyance includes taking apart any portion of the conveyance.

While armed.

If you find the defendant guilty of trespass in a [structure] [conveyance], you must then determine whether the State proved beyond a reasonable doubt that the defendant was armed or armed [himself] [herself] with a firearm or other dangerous weapon during the trespass.

Human being in structure or conveyance.

If you find the defendant guilty of [attempted] trespass in a [structure] [conveyance], you must then determine whether the State proved beyond a reasonable doubt that there was a human being in the [structure] [conveyance] at the time of the [attempted] trespass.

§ 790.001, Fla. Stat. Give if applicable.

A “firearm” is 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; or any machine gun. [The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.] See § 790.001, Fla. Stat. for the definitions of antique firearm and destructive device.

Give if applicable.

A “dangerous weapon” is any object other than a firearm that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

State v. Rodriguez, 402 So. 2d 86 (Fla. 3d DCA 1981). Give if applicable and requested.

For an object that was designed and constructed to cause death or great bodily harm if used in its ordinary and usual manner, it is not necessary for the State to prove that the defendant was willing to use the object in furtherance of the trespass in order for an object to constitute a “dangerous weapon.”

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a “dangerous weapon” if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause death or great bodily harm.

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

Lesser Included Offenses

TRESPASS IN STRUCTURE OR CONVEYANCE — 810.08

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt (except refuse to depart)	777.04(1)	5.1

Comments

A special instruction will be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an “object.”

According to § 82.035, Fla. Stat., if a law enforcement receives an affidavit from a person who represents that he or she is entitled to possession of residential property and that someone else is a “transient occupant” in that property, and if the “transient occupant” then fails to surrender possession or occupancy of the property as directed by law enforcement, the “transient occupant” can be prosecuted for violating § 810.08, Fla. Stat. § 82.035(3)(a), Fla. Stat. does not require the state to prove the defendant was properly classified as a “transient occupant” and the defendant’s status as a permanent resident is not an affirmative defense. A special instruction will be required for trespass prosecutions based on § 82.035, Fla. Stat.

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 2012 [87 So. 3d 679], 2018 [257 So. 3d 925], on May 22, 2020, and on April 5, 2021.