

14.11 [POSSESSION OF] [USE OF] [OR] [ATTEMPT TO USE] AN ANTISHOPLIFTING OR INVENTORY CONTROL DEVICE COUNTERMEASURE

§ 812.015(7), Fla. Stat.

To prove the crime of [Possession of] [Use of] [or] [Attempt to Use an] an Antishoplifting or Inventory Control Device Countermeasure, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) [possessed] [used] [or] [attempted to use] an antishoplifting or inventory control device countermeasure.
2. At the time, [he] [she] was within any premises used for the retail purchase or sale of any merchandise.

Definitions.

§ 812.015(1)(i), Fla. Stat.

“Antishoplifting or inventory control device countermeasure” means any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device.

§ 812.015(1)(h), Fla. Stat.

“Antishoplifting or inventory control device” means a mechanism or other device designed and operated for the purpose of detecting the removal from a mercantile establishment or similar enclosure, or from a protected area within such an enclosure, of specially marked or tagged, merchandise. The term includes any electronic or digital imaging or any video recording or other film used for security purposes and the cash register tape or other record made of the register receipt.

§ 812.015(1)(a), Fla. Stat.

“Merchandise” means any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.

§ 812.015(1)(b), Fla. Stat.

“Merchant” means an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

Possession. Give if applicable.

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

Control can be exercised over an antishoplifting or inventory control device countermeasure whether the antishoplifting or inventory control device countermeasure is carried on a person, near a person, or in a completely separate location, that is within any premises for the retail purchase or sale of any merchandise. Mere proximity to an antishoplifting or inventory control device countermeasure does not establish that the person intentionally exercised control over the

antishoplifting or inventory control device countermeasure in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the antishoplifting or inventory control device countermeasure or the present ability to direct its control by another.

Joint possession. Give if applicable.

Possession of an antishoplifting or inventory control device countermeasure may be sole or joint, that is, two or more persons may possess an antishoplifting or inventory control device countermeasure.

Lesser Included Offense

The Committee on Standard Jury Instructions in Criminal Cases identified no lesser included offenses.

Comment

This instruction was adopted on April 5, 2021.