

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 a motor vehicle 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 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].**

Medrano v. State, 199 So. 3d 413 (Fla. 4th DCA 2016). § 320.01, Fla. Stat. Many of these terms have their own statutory definitions which should be given as applicable.

“Motor vehicle” means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power[, but the term does not include traction engines, road rollers, motorized scooters, micromobility devices, personal delivery devices, mobile carriers, special mobile equipment, vehicles that run only upon a track, electric bicycles, bicycles, swamp buggies, or mopeds].

Assault. § 784.011 Fla. Stat.

An “assault” is defined as 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. § 812.133(3)(b), Fla. Stat.

Abandonment. Give bracketed language only if applicable. *Peterson v. State*, 24 So. 3d 686 (Fla. 2d DCA 2009).

“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.

[If a defendant abandoned the motor vehicle that had been taken before he or she used force or threatened to use force, then the taking of the motor vehicle and the use of force or threatened force was not a continuous series of acts or events. In such a case, the taking does not constitute Carjacking, but may constitute Theft, and the use of force or threatened force may constitute separate crimes.]

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

If you find that the taking of the motor vehicle 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 Carjacking, but may still constitute Grand Theft Motor Vehicle.

Title to motor vehicle. Give if applicable.

In order for a taking of the motor vehicle to be Carjacking, it is not necessary that the person carjacked be the owner of the motor vehicle. It is sufficient if the person has custody of the motor vehicle 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 or by assault 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 motor vehicle 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 Carjacking 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 Carjacking if a person, with intent to take the motor vehicle from a victim, administers any substance to that victim so that [he] [she] becomes unconscious and then takes the motor vehicle 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 Carjacking, it is not necessary that the taking be from the person of a victim. It is sufficient if the motor vehicle 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.

Higher degrees of Carjacking. Give only if applicable. §§ 812.133(2)(a) and 812.133(3)(a) Fla. Stats.

If you find the defendant guilty of the crime of Carjacking, you must further determine beyond a reasonable doubt if “in the course of committing the Carjacking” the defendant carried a firearm or other deadly 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.

With a firearm or deadly weapon. § 812.133(2)(a), Fla. Stat.

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.

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, Fla. Stat.)]. [A destructive device is (insert definition in § 790.001, Fla. Stat.)].

A “deadly 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.

Give if applicable.

An object not designed to inflict death or great bodily harm may be a “deadly 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.

With no firearm or weapon. § 812.133(2)(b) Fla. Stat.

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

Lesser Included Offenses

*CARJACKING — 812.133

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Robbery		812.13(2)(c)	15.1
Grand theft – motor vehicle		812.014(2)(c)6	14.1
Assault (if assault was charged)		784.011	8.2
	Aggravated Battery	784.045	8.4
	Attempted Carjacking	777.04(1)	5.1
	Aggravated Assault	784.021	8.2
	Felony Battery	784.041	8.5
	Battery	784.03	8.3
	Resisting a Merchant	812.015(6)	14.4

Comments

*The only increased penalty under the Carjacking statute is for carrying a firearm or other deadly weapon, not for carrying a weapon as in the Robbery statute. 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 made in a separate interrogatory rather than as part of lesser-included offenses.

If applicable, see Instruction 5.1 for “attempt.”

For the crime of Carjacking, it is likely that the First, Fourth, and Fifth DCAs would hold that the judge must, upon request, instruct that the jury can convict a defendant of more than one lesser-included offense such as grand theft auto and assault. See *Spencer v. State*, 71 So. 3d 901 (Fla. 1st DCA 2011); *Stuckey v. State*, 972 So. 2d 918 (Fla. 5th DCA 2007); *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. See *Gordon v. State*, 219 So. 3d 189 (Fla. 3rd DCA 2017).

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

This instruction was adopted in 1997 [697 So.2d 84] and amended in 2008 [982 So. 2d 1160], 2013 [122 So. 3d 263], 2018 [260 So. 3d 941], on May 22, 2020, and on October 2, 2020.