

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.**

A robbery consists of the following:

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].**

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. § 812.13(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 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.

[If a defendant abandoned the property that had been taken before he or she used force or threatened to use force, then the taking of the property 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 Robbery.]

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 actual control of a victim so that it cannot be taken without the use of force, violence, or intimidation directed against a victim.

Jacobs v. State, 41 So. 3d 1004 (Fla. 1st DCA 2010); DuBose v. State, 210 So. 3d 641 (Fla. 2017).

“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. [The enclosure need not be continuous and may have an ungated opening for entering and exiting.]

Higher degrees of Home-Invasion Robbery. Give if applicable.

If you find the defendant guilty of the crime of Home-Invasion Robbery, 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. § 812.135(2)(a), Fla. Stat.

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.

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.)*].

With a deadly weapon. § 812.135(2)(a), 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 other weapon. § 812.135(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 Home-Invasion Robbery, you should find [him] [her] guilty of Home-Invasion Robbery with a weapon.

A “weapon” is any object, other than a firearm, that will likely cause 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 bodily harm may be a “weapon” if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause bodily harm.

With no firearm or weapon. § 812.135(2)(c), Fla. Stat.

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.

Lesser Included Offenses

*HOME INVASION ROBBERY — 812.135			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Burglary of a dwelling		810.02(3)	13.1
Robbery		812.13(2)(c)	15.1
Burglary of a Structure		810.02	13.1
Petit theft – second degree		812.014(3)(a)	14.1
Assault		784.011	8.1
	Grand theft—first degree	812.014(2)(a)	14.1
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045	8.4
	Grand theft—second degree	812.014(2)(b)	14.1
	Aggravated assault	784.021	8.2
	Felony battery	784.041	8.5
	Grand theft—third degree	812.014(2)(c)	14.1
	Grand theft—third degree	812.014(2)(d)	14.1
	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
	Trespass	810.08	13.3

Comments

If applicable, see Instruction 5.1 for “attempt.”

*The felony degree of a Home-Invasion 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.

The Home-Invasion Robbery statute does not contain an explanation of “in the course of committing the home-invasion robbery.” It is unclear whether the courts would look to the robbery and carjacking statutes so that “in the course of committing” would include an attempt to commit Home-Invasion Robbery or in flight after the attempt or commission.

For the crime of Home-Invasion Robbery, 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 theft 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], and on May 22, 2020.