

## **22.10 POSSESSING A LOTTERY TICKET**

§ 849.09(1)(h), Fla. Stat.

**To prove the crime of Possessing a Lottery Ticket, the State must prove beyond a reasonable doubt that:**

**(Defendant) had in [his] [her] possession a lottery ticket or a coupon, share, or token evidencing some interest in a live lottery yet to be played or in a lottery that has already been played.**

*Definitions.*

*Lottery.*

*Little River Theatre Corp. v. State, 185 So. 855 (Fla. 1939).*

**A “lottery” has three elements: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.**

**A “bet” is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.**

**A “thing ventured” is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.**

**A “prize by lot or chance” is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant’s skill, such as by drawing numbers, entries, cards, or by rolling dice.**

*Lottery ticket, coupon, or share.*

**A “lottery ticket, coupon, or share” is any paper, token, or thing that represents the right of the possessor to receive all or any part of a prize awarded or to be awarded in the operation of a lottery. It is not necessary that the rights of the holder be written or printed in plain language. It is sufficient if the ticket, coupon, share, or token by any manner known to those familiar with a particular lottery being played indicates or represents the rights of its owner or possessor.**

*Possession.*

**To prove (defendant) possessed a [lottery ticket] [coupon, share, or token], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [lottery ticket] [coupon, share, or token]; and b) intentionally exercised control over that [lottery ticket] [coupon, share, or token].**

*Give if applicable.*

**Control can be exercised over a [lottery ticket] [coupon, share, or token] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a [lottery ticket] [coupon, share, or token] does not establish that the person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the [lottery ticket] [coupon, share, or token] or the present ability to direct its control by another.**

*Joint possession. Give if applicable.*

**Possession of a [lottery ticket] [coupon, share, or token] may be sole or joint, that is, two or more persons may possess a [lottery ticket] [coupon, share, or token].**

### **Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

### **Comments**

*See Blackburn v. Ippolito*, 156 So. 2d 550, 553 (Fla. 2d DCA 1963) (“[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.”) citing to *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938) (“The consideration required to support a simple contract need not be money or anything having a monetary value, but any consist of either a benefit to the promisor or a detriment to the promisee.”) and *Little River Theatre Corp. v. State*, 185 So. 855 (Fla. 1939) (holding that increased attendance and receipts at a theater offering a “bank night” drawing satisfied the element of consideration, even though persons could participate in the drawing without purchasing a ticket).

A special instruction will be needed if an exception, such as §§ 849.09(1), 849.092, 849.0931, or 849.0935, Fla. Stats., might apply.

This instruction was adopted in 1981 and amended in 2015 [176 So. 3d 938], 2018 [259 So. 3d 765], and 2019.