

25.16 DELIVERY OF DRUG PARAPHERNALIA TO A MINOR

§ 893.147(3)(a), Fla. Stat.

To prove the crime of Delivery of Drug Paraphernalia to a Minor, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **delivered drug paraphernalia to** (person alleged).
2. (Defendant) **knew or reasonably should have known that the drug paraphernalia would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.**
3. **When the delivery was made, (defendant) was 18 years old or over and (person alleged) was under 18 years old.**

The Court instructs you that (name of substance) is a controlled substance.

Drug Paraphernalia. § 893.145, Fla. Stat.

The term “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or a substance listed in § 877.111, Florida Statutes]. The Court instructs you that (name of substance) is a substance listed in § 877.111, Florida Statutes.

1. **Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.**
2. **Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.**
3. **Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.**
4. **Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, excluding narcotic-drug-testing products that are used solely to determine whether a controlled substance**

contains fentanyl as described in s. 893.03(2)(b)9. or any other controlled substance specified in s. 893.135(1)(c)4.a. This exclusion does not apply to a narcotic-drug-testing product that can measure or determine the quantity, weight, or potency of a controlled substance.

- 5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.**
- 6. Diluents and adulterants, such as quinine hydrochloride, caffeine, dimethyl sulfone, mannitol, mannite, dextrose, and lactose used, intended for use, or designed for use in diluting controlled substances or substances such as damiana leaf, marshmallow leaf, and mullein leaf, used, intended for use, or designed for use as carrier mediums of controlled substances.**
- 7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.**
- 8. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.**
- 9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.**
- 10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.**
- 11. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.**
- 12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing controlled substances or a substance listed in § 877.111, Florida Statutes, into the human body, such as:**
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.**
 - b. Water pipes.**
 - c. Carburetion tubes and devices.**
 - d. Smoking and carburetion masks.**

- e. **Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.**
- f. **Miniature cocaine spoons, and cocaine vials.**
- g. **Chamber pipes.**
- h. **Carburetor pipes.**
- i. **Electric pipes.**
- j. **Air-driven pipes.**
- k. **Chillums.**
- l. **Bongs.**
- m. **Ice pipes or chillers.**

Relevant factors. § 893.146, Fla. Stat.

In addition to all other logically relevant factors, the following factors shall be considered in determining whether an object is drug paraphernalia:

- 1. **Statements by an owner or by anyone in control of the object concerning its use.**
- 2. **The proximity of the object, in time and space, to a direct violation of the drug laws.**
- 3. **The proximity of the object to controlled substances.**
- 4. **The existence of any residue of controlled substances on the object.**
- 5. **Evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of the drug laws. The innocence of an owner, or of anyone in control of the object, as to a direct violation of the drug laws shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.**
- 6. **Instructions, oral or written, provided with the object concerning its use.**
- 7. **Descriptive materials accompanying the object which explain or depict its use.**
- 8. **Any advertising concerning its use.**

9. **The manner in which the object is displayed for sale.**
10. **Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.**
11. **Evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.**
12. **The existence and scope of legitimate uses for the object in the community.**
13. **Expert testimony concerning its use.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and on December 15, 2023.