

28.8(c) AGGRAVATED FLEEING OR ELUDING
(Leaving a Crash Involving Damage to a Vehicle or Property then Causing Serious Bodily Injury or Death)

§ 316.1935(4)(b) and § 316.061, Fla. Stat.

To prove the crime of Aggravated Fleeing or Eluding, the State must prove the following seven elements beyond a reasonable doubt:

- 1. (Defendant) was the driver of a vehicle involved in a crash.**
- 2. The crash resulted only in damage to a vehicle or other property.**
- 3. The [vehicle] [other property] was [driven] [attended] by [a person] [(name of person)].**
- 4. (Defendant) failed to stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given “identifying information” to the [driver or occupant of the damaged vehicle] [person attending the damaged vehicle or property] [and to any police officer at the scene of the crash or who is investigating the crash.]**
- 5. A duly authorized law enforcement officer ordered (defendant) to stop.**
- 6. (Defendant), knowing [he] [she] had been ordered to stop by a law enforcement officer, [willfully refused or failed to stop [his] [her] vehicle in compliance with the order to stop] [and after having stopped in knowing compliance with the order to stop, willfully fled in a vehicle in an attempt to elude the law enforcement officer].**
- 7. As a result of (defendant) fleeing or eluding, [he] [she] caused [serious bodily injury to] [the death of] (name of victim).**

If the State proves beyond a reasonable doubt that the defendant failed to give any part of the “identifying information,” the State satisfies this element of the offense.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); *State v. Elder*, 975 So.2d 481 (Fla. 2d DCA 2007).

For the defendant to be “involved in a crash,” a vehicle, though not necessarily the defendant’s vehicle, must collide with another vehicle, person, or object.

Give if applicable. State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

“Involved” means to draw in as a participant, to implicate, to relate closely, to connect, to have an effect on, to concern directly, or to affect.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means intentionally, knowingly, and purposely.

§ 316.062(1), Fla. Stat.

“Identifying information” means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant’s license or permit to drive.

§ 316.003, Fla. Stat. *Some of these terms have their own statutory definitions, which should be given if necessary.*

“Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Lesser Included Offenses

AGGRAVATED FLEEING OR ELUDING (LEAVING A CRASH INVOLVING DAMAGE TO A VEHICLE OR PROPERTY THEN CAUSING SERIOUS BODILY INJURY OR DEATH) — 316.1935(4)(b) AND 316.061

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Aggravated Fleeing		316.1935(4)(a)	28.8(e)
Fleeing to Elude LEO		316.1935(1)	28.6
Leaving the Scene of a Crash Involving Damage to Vehicle or Property*		316.061	28.4(a)
	Fleeing to Elude LEO	316.1935(3)(b)	28.8(a)
	Fleeing to Elude LEO	316.1935(3)(a)	28.8
	Fleeing to Elude LEO	316.1935(2)	28.7
Reckless Driving (if there was evidence that the fleeing was in a motor vehicle)		316.192(1)(b)	28.5
	Disobedience to Police or Fire Department Officials**	316.072(3)	28.18

Comments

* § 316.1935(4), Fla. Stat., states that a person may be charged with both Aggravated Fleeing or Eluding and Leaving the Scene of a Crash Involving Damage to Attended Property. Therefore, if Leaving the Scene is charged as a separate count, then Leaving the Scene should not be given as a lesser-included offense of Aggravated Fleeing or Eluding.

As of November 2023, there was no case law directly addressing the issue of whether the State must prove the defendant knew, or should have known, of either the

crash or the property damage to violate this statute. *Compare State v. Dorsett*, 158 So. 3d 557 (Fla. 2015), and *Mancuso v. State*, 652 So. 2d 370 (Fla. 1995), dealing with § 316.027, Fla. Stat., which, unlike § 316.061, Fla. Stat., contains an explicit willfulness requirement.

**The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State*, 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

This instruction was adopted in 2008 [976 So. 2d 1081] and amended in 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], on October 2, 2020, and on December 15, 2023.