

**3.3(a) AGGRAVATION OF (NAME OF FELONY) BY [CARRYING]
[DISPLAYING] [USING] [THREATENING TO USE] [ATTEMPTING TO USE] A
[FIREARM] [WEAPON]
§ 775.087(1), Fla. Stat.**

If you find that (defendant) **committed** (name of felony) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] personally [carried] [displayed] [used] [threatened to use] [attempted to use] a [firearm] [weapon], you should find [him] [her] guilty of** (felony) **with a [firearm] [weapon].**

Definitions. Give as applicable.

§ 790.001, Fla. Stat.

A “firearm” is defined as 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; or any machine gun. [The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.]

A “weapon” is defined as: 1) any object readily capable of inflicting bodily harm if used in the ordinary manner contemplated by its design and construction; or 2) any other object that was [used] [or] [threatened to be used] [or] [attempted to be used] [or] [intended to be used] to inflict bodily harm.

If you find that (defendant) **committed** (name of felony), **but you are not convinced beyond a reasonable doubt that [he] [she] personally [carried] [displayed] [used] [threatened to use] [attempted to use] a [firearm] [weapon], then you should find [him] [her] guilty only of** (name of felony).

Comments

It is recommended the verdict form contain a special finding to reflect the jury’s determination as to whether the State proved the defendant personally carried, displayed, used, threatened to use, or attempted to use a firearm or a weapon. A special finding format for the reclassification in § 775.087(1), Fla. Stat., can be found in instruction 3.12, example 6.

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

This instruction should not be given in conjunction with the instructions pertaining to any felony in which the use of a weapon or firearm is an essential element. For example, Robbery with a Firearm, Robbery with a Deadly Weapon, and Robbery with a Weapon cannot be reclassified with the firearm or weapon portion of § 775.087(1), Fla. Stat. Similarly, Aggravated Battery (via use of a deadly weapon) cannot be reclassified with the firearm or weapon portion of § 775.087(1), Fla. Stat. However, Aggravated Battery (via intentionally or knowingly causing great bodily

harm, permanent disability, or permanent disfigurement) can be reclassified with the firearm or weapon portion of § 775.087(1), Fla. Stat.

The requirement that the defendant personally carried, etc., the firearm or weapon comports with the holding in *State v. Rodriguez*, 602 So. 2d 1270 (Fla. 1992), that a defendant's offense may not be reclassified for a codefendant's possession of a firearm during a felony.

This instruction was adopted in 1981 and amended in 2011 [73 So. 3d 136] and 2019.