

3.3(d) POSSESSION OF A [FIREARM] [DESTRUCTIVE DEVICE] [AND DISCHARGE] [CAUSING [GREAT BODILY HARM] [DEATH]]

§ 775.087(2), Fla. Stat.

Give if applicable.

If you find that (defendant) **committed** (felony identified in §775.087(2)(a)3, Fla. Stat.) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] discharged a [firearm] [destructive device], and in doing so, caused [great bodily harm to] [the death of] (victim), you should find the defendant guilty of (felony) with discharge of a [firearm] [destructive device] causing [great bodily harm] [death].**

Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

“Great bodily harm” means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give if applicable.

If you find that (defendant) **committed** (felony identified in § 775.087(2)(a)2, Fla. Stat.) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] discharged a [firearm] [destructive device], you should find the defendant guilty of (felony) with discharge of a [firearm] [destructive device].**

If you find that (defendant) **committed** (felony listed in § 775.087(2)(a)1, Fla. Stat.) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] actually possessed [a firearm] [a destructive device], you should find the defendant guilty of (felony) with actual possession of a [firearm] [destructive device].**

§ 790.001, Fla. Stat.

A “firearm” is legally 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.]

§ 790.001, Fla. Stat., contains the definitions of “antique firearm” and “destructive device.”

Give a or b or both as applicable. § 775.087(4), Fla. Stat.

To “actually possess” a firearm means that the defendant

a. carried a firearm on [his] [her] person.

or

- b. had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.**

Comment

This instruction was adopted in 1992 [603 So. 2d 1175] and amended in 2008 [995 So. 2d 489], and 2019.