

3.3(f) AGGRAVATION OF A CRIME BY SELECTING A VICTIM BASED ON PREJUDICE

§ 775.085, Fla. Stat. and § 775.0863, Fla. Stat.

If you find that (defendant) **committed** (crime charged or a lesser included crime) **and you also find beyond a reasonable doubt that** (defendant)

- 1. perceived, knew, or had reasonable ground to perceive or know** (victim's) [race] [color] [ancestry] [ethnicity] [religion] [sexual orientation] [national origin] [homeless status] [mental or physical disability] [advanced age], and
- 2. intentionally selected** (victim) **because of that perception or knowledge,**

then you should find (defendant) **guilty of** (crime charged or lesser included crime) **aggravated by the intentional selection of** (victim) **based on prejudice.**

If you find that (defendant) **committed** (crime charged or a lesser included crime) **beyond a reasonable doubt, but you are not convinced beyond a reasonable doubt that** [he] [she] **did so by intentionally selecting** (victim) **based on prejudice, then you should find** [him] [her] **guilty of only** (crime charged or a lesser included crime).

Definitions. Give if applicable.

§ 775.0863(1)(b), Fla. Stat.

“Mental or physical disability” means a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

§ 775.085(1)(b)1, Fla. Stat.

“Advanced age” means that the person is older than 65 years of age.

§ 775.085(1)(b)2, Fla. Stat.

“Homeless status” means the person lacks a fixed, regular, and adequate nighttime residence; or has a primary nighttime residence that is either (1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations or (2) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Comments

Proof that the defendant intentionally selected the victim is required by *State v. Stalder*, 630 So. 2d 1072 (Fla. 1994).

This instruction was adopted in 1997 [697 So.2d 84] and amended in 2000 [765 So. 2d 692], 2007 [965 So. 2d 811], 2011 [73 So. 3d 136], and 2016.