

## **10.14 POSSESSION OF A [SHORT-BARRELED RIFLE] [SHORT-BARRELED SHOTGUN] [MACHINE GUN]**

§ 790.221, Fla. Stat.

To prove the crime of Possession of a [Short-Barreled Rifle] [Short-Barreled Shotgun] [Machine Gun], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly owned or knowingly had in [his] [her] care, custody, possession, or control a [short-barreled rifle] [short-barreled shotgun] [machine gun].**
2. **The [short-barreled rifle] [short-barreled shotgun] [machine gun] was one that was, or could readily be made, operable.**

*Definitions. Give as applicable.*

**“Care” and “custody” mean immediate charge and control exercised by a person over the named object. The terms care, custody, and control may be used interchangeably.**

*Possession.*

**To prove (defendant) “possessed” a [short-barreled rifle] [short-barreled shotgun] [machine gun], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [short-barreled rifle] [short-barreled shotgun] [machine gun] and b) intentionally exercised control over it.**

*Give if applicable.*

**Control can be exercised over a [short-barreled rifle] [short-barreled shotgun] [machine gun] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a [short-barreled rifle] [short-barreled shotgun] [machine gun] does not establish that the person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the [short-barreled rifle] [short-barreled shotgun] [machine gun] or the present ability to direct its control by another.**

*Joint possession.*

**Possession of a [short-barreled rifle] [short-barreled shotgun] [machine gun] may be sole or joint, that is, two or more persons may possess it.**

*§ 790.001, Fla. Stat. Give as applicable.*

**A “machine gun” means any firearm which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger. A “firearm” means any weapon 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.**

**A “short-barreled shotgun” means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.**

**A “short-barreled rifle” means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.**

*Antique Firearm Affirmative Defense. Give if applicable.*

*§ 790.221, Fla. Stat.; § 790.001, Fla. Stat.*

*The statute and case law are silent as to (1) which party bears the burden of persuasion of the defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on affirmative defenses by a preponderance of the evidence. The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in *Dixon v. United States*, 548 U.S. 1 (2006), for further guidance.*

**It is a defense if the [short-barreled rifle] [short-barreled shotgun] [machine gun] is an antique firearm. An “antique firearm” means any firearm manufactured in or before 1918 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1918, and also any firearm using fixed ammunition manufactured in or before 1918, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.**

*If burden of persuasion is on the defendant:*

**If you find that defendant proved** *(insert appropriate burden of persuasion)* **that the [short-barreled rifle] [short-barreled shotgun] [machine gun] is an antique firearm, you should find [him] [her] not guilty.**

*If burden of persuasion is on the State:*

**If you find that the State proved** *(insert appropriate burden of persuasion)* **that the [short-barreled rifle] [short-barreled shotgun] [machine gun] is not an antique firearm, you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.**

**Lesser Included Offense**

**POSSESSION OF A [SHORT-BARRELED RIFLE] [SHORT-BARRELED SHOTGUN]  
[MACHINE GUN] — 790.221**

| <b>CATEGORY ONE</b> | <b>CATEGORY TWO</b> | <b>FLA. STAT.</b> | <b>INS. NO.</b> |
|---------------------|---------------------|-------------------|-----------------|
| None                |                     |                   |                 |
|                     | Attempt             | 777.04(1)         | 5.1             |

**Comments**

Pursuant to § 790.221(3), Fla. Stat., firearms that are lawfully owned and possessed under provisions of federal law are excepted from the statute. A special instruction will be required in cases where the defendant claims federal law allows the ownership and possession of those firearms.

This instruction was adopted in 1981 and was amended in 1989 [540 So. 2d 1205], 2018 [253 So. 3d 1024], and on February 21, 2025.