

14.4 RETAIL THEFT
§ 812.015(8)(c), Fla. Stat.*

To prove the crime of Retail Theft, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant)

Give one or more as applicable.

- a. **took possession of or carried away [merchandise] [property] [money] [negotiable documents] from a merchant.**
 - b. **altered or removed a [label] [universal product code] [price tag] from merchandise.**
 - c. **transferred merchandise from one container to another.**
 - d. **removed a shopping cart from a merchant.**
2. (Defendant) **did so with the intent to deprive the merchant of possession, use, benefit, or full retail value of the [merchandise] [property] [money] [negotiable documents] [shopping cart].**
 3. (Defendant) **[, acting individually or in concert with one or more other persons,] did so from more than one location within a 120-day period, and the total value of the [merchandise] [property] [money] [negotiable documents] [shopping cart] when added together was \$750 or more.**

“Merchandise” means any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.

“Merchant” means an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

“Value of merchandise” means the sale price of the merchandise at the time it was stolen or otherwise removed, depriving the owner of her or his lawful right to ownership and sale of said item.

Theft of an Instrument.

In the case of a written instrument that does not have a readily ascertainable market value, such as a check, draft, or promissory note, the value is the amount due or collectible.

In the case of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege, or obligation, the value is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

Give if applicable. Firearm. § 812.015(11), Fla. Stat. Retail Theft is bumped up to first degree felony if the defendant possessed a firearm during the commission of the crime.

You must also determine whether the State prove beyond a reasonable doubt that the defendant possessed a firearm during the commission of the Retail Theft.

A “firearm” means 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;] [any machine gun]. [The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is *(insert definition in § 790.001, Fla. Stat.)*. [A destructive device is *(insert definition in § 790.001, Fla. Stat.)*.]

To prove (defendant) “possessed” a firearm, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the firearm; and b) intentionally exercised control over it.

Control can be exercised over a firearm whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a firearm 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 firearm or the present ability to direct its control by another.

Give if applicable.

Possession of a firearm may be sole or joint, that is, two or more persons may possess it.

Prior conviction. It is error to inform the jury of a prior Retail Theft conviction. If the charging document contains an allegation of Retail Theft convictions, do not read that allegation, and do not send the charging document into the jury room. If the defendant is found guilty of Retail Theft, the historical fact of previous convictions must be determined beyond a reasonable doubt in a bifurcated proceeding. State v. Harbaugh, 754 So. 2d 691 (Fla. 2000). As of November 2024, it was undetermined whether a conviction requires an adjudication of guilt for purposes of the Retail Theft statute.

Now that you have found the defendant guilty of Retail Theft, you must further determine whether the State has proven beyond a reasonable doubt that the defendant was previously convicted two or more times of Retail Theft under either § 812.015(8), Florida Statutes, or § 812.015(9), Florida Statutes.

Lesser Included Offenses

RETAIL THEFT — 812.015(8)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Grand theft		812.014(2)(c)	14.1
Petit theft — first degree		812.014(2)(e)	14.1
Petit theft — second degree		812.014(3)(a)	14.1
	Theft of a shopping cart	506.513	--
	Attempt	777.04	5.1

Comments

*§ 812.015, Fla. Stat., contains multiple ways to commit Retail Theft. This instruction covers only § 812.015(8)(c), Fla. Stat. A special instruction will be necessary if other parts of § 812.015, Fla. Stat. are charged.

Under the Retail Theft statute, the “value” of the property is the price stated on the price tag affixed to the item at the time it was stolen. *F.T. v. State*, 146 So. 3d 1270 (Fla. 3d DCA 2014). This determination of “value” may be different than “value” as defined in the theft statute.

The 120-day period in which the crime of Retail Theft can be committed became effective on October 1, 2024. Prior to October 1st, the statute contained a 30-day period.

This instruction was adopted in 1981 and amended in 2017 [231 So. 3d 384], on May 22, 2020, on April 25, 2023, and on February 21, 2025.