

10.5 IMPROPER EXHIBITION OF A [WEAPON] [FIREARM]

§ 790.10, Fla. Stat.

To prove the crime of Improper Exhibition of a [Weapon] [Firearm], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) had or carried [a weapon] [a firearm] [a dirk] [a sword] [a sword cane] [an electric weapon or device].
2. (Defendant) exhibited the [weapon] [firearm] [dirk] [sword] [sword cane] [electric weapon or device] in a [rude] [careless] [angry] [or] [threatening] manner.
3. [He] [She] did so in the presence of one or more persons.

Defense.

If you find that the defendant exhibited the [weapon] [firearm] [dirk] [sword] [sword cane] [electric weapon or device] in necessary self-defense, you must find [him] [her] not guilty. *Read appropriate self-defense instruction.*

Give as applicable.

Definitions.

§ 790.001(13), Fla. Stat., and *Porter v. State*, 798 So. 2d 855 (Fla. 5th DCA 2001).

A “weapon” is any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a closed common pocketknife, plastic knife, or blunt-bladed table knife.

Give if applicable. Porter v. State, 798 So. 2d 855 (Fla. 5th DCA 2001).

However, an open pocketknife could constitute a weapon.

R.R. v. State, 826 So. 2d 465 (Fla. 5th DCA 2002); *Cook v. Crosby*, 914 So. 2d 490 (Fla. 1st DCA 2005).

A “deadly weapon” is any instrument which will likely cause death or great bodily harm when used in the ordinary and usual manner contemplated by its design and construction. An object can be a deadly weapon if its sole modern use is to cause great bodily harm. An object not designed for use as a weapon may nonetheless be a deadly weapon if its use, intended use, or threatened use by the defendant was in a manner likely to inflict death or great bodily harm.

“Electric weapon or device” means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

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 a crime. An antique firearm is (insert definition in 790.001(1), Fla. Stat.)] [A destructive device is (insert definition in § 790.001(4), Fla. Stat.).]

Lesser Included Offenses

IMPROPER EXHIBITION OF A WEAPON OR FIREARM — 790.10			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1

Comments

*A claim that a firearm is an antique firearm is an affirmative defense. *State v. Thompson*, 390 So. 2d 715 (Fla. 1980). It is undecided whether a defendant must prove by a preponderance of the evidence the firearm was an antique firearm or whether the state must prove the firearm was not an antique firearm.

This instruction was adopted in 1981 and amended in 2013 [131 So. 3d 720] and 2016.