

29.21 AGGRAVATED ABUSE OF [AN ELDERLY PERSON] [A DISABLED ADULT]

§ 825.102(2), Fla. Stat.

To prove the crime of Aggravated Abuse of [An Elderly Person] [Disabled Adult], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)

Give 1a–1e as applicable.

- a. committed Aggravated Battery upon (victim).
- b. willfully tortured (victim).
- c. maliciously punished (victim).
- d. willfully and unlawfully caged (victim).
- e. knowingly or willfully abused (victim) and in so doing caused great bodily harm, permanent disability, or permanent disfigurement.

2. At the time, (victim) was [an elderly person] [a disabled adult].

Definitions. Give as applicable.

§ 825.101(3), Fla. Stat.

“Disabled adult” means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

§ 825.101(4), Fla. Stat.

“Elderly person” means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.

Give if element 1a is charged.

§ 784.045, Fla. Stat.

In order to prove that an Aggravated Battery was committed, the State must prove the following two elements. The first element is a definition of Battery.

1. (Defendant) actually and intentionally [touched or struck (victim) against the will of (victim)] [or] [caused bodily harm to (victim)].
2. In so doing, (defendant) [intentionally or knowingly caused [great bodily harm] [permanent disability] [permanent disfigurement]] [or] [used a deadly weapon].

Give if applicable.

A “deadly weapon” is any object that will likely cause death or great bodily harm if used or

threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a “deadly weapon” if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

Give if applicable.

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

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A Battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. [For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was “touched” through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.]

Give if element 1b, 1d, or 1e is charged.

“Willfully” means intentionally and purposely.

Give if element 1c is charged.

“Maliciously” means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable person would not have engaged in the damaging acts toward (victim) for any valid reason and that the primary purpose of the acts was to cause (victim) unjustifiable pain or injury.

Give if element 1e is charged.

“Abused” means the [intentional infliction of physical or psychological injury upon [an elderly person] [a disabled adult]] [commission of an intentional act that could reasonably be expected to result in physical or psychological injury to [an elderly person] [a disabled adult]] [active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to [an elderly person] [a disabled adult]].

Lesser Included Offenses

AGGRAVATED ABUSE OF [AN ELDERLY PERSON] [A DISABLED ADULT] — 825.102(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Aggravated Battery if 825.102(2)(a), Fla. Stat., is charged		784.045	8.4
Abuse of An Elderly Person or Disabled Adult		825.102(1)	29.20
Felony Battery if 825.102(2)(a), Fla. Stat., is charged		784.041(1)	8.5
Battery if 825.102(2)(a), Fla. Stat., is charged		784.03	8.3
	Attempt	777.04(1)	5.1

Comments

Florida law on alternative conduct statutes is unsettled. For example, in a DUI case, it is permissible for some jurors to conclude the State proved only driving while impaired and other jurors to conclude the State proved only driving with an unlawful breath alcohol level. *Euceda v. State*, 711 So. 2d 122 (Fla. 3d DCA 1998). However, according to the Second District, in Aggravated Battery cases, it is improper for some jurors to conclude the State proved only that the defendant intentionally caused great bodily harm and other jurors to conclude the State proved only that the defendant used a deadly weapon. *Miller v. State*, 123 So. 3d 595 (Fla. 2d DCA 2013). Unless the case law changes, in Aggravated Elderly Person/Disabled Adult Abuse cases based on a theory of Aggravated Battery where the State has charged both alternatives, trial judges must give a special instruction that informs jurors they must be unanimous on each alternative theory. For other Elderly Person/Disabled Adult Abuse cases, as of September 2019, it is undetermined whether jurors must be unanimous for each alternative within element #1.

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a deadly weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an “object.”

This instruction was adopted in 2013 [131 So. 3d 692] and amended in 2016 [194 So. 3d 1007] and on April 3, 2020.