

8.14 AGGRAVATED BATTERY ON PERSON 65 YEARS OF AGE OR OLDER

784.08(2)(a), Fla. Stat.

To prove the crime of Aggravated Battery on a Person 65 Years of Age or Older, the State must prove the following three elements beyond a reasonable doubt. The first element is a definition of Battery.

Give 1a or 1b or both as applicable.

1. (Defendant)

a. actually and intentionally touched or struck (victim) against [his] [her] will.

b. intentionally caused bodily harm to (victim).

Give 2a or 2b or both as applicable.

2. (Defendant) in committing the Battery

a. intentionally or knowingly caused

[great bodily harm to (victim)].

[permanent disability to (victim)].

[permanent disfigurement to (victim)].

b. used a deadly weapon.

3. (Victim) was at the time 65 years of age or older.

§ 784.08(2), Fla. Stat.

It is not necessary for the State to prove that (defendant) knew or had reason to know the age of (victim).

Give if 2b alleged.

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.

Lesser Included Offenses

AGGRAVATED BATTERY ON PERSON 65 YEARS OF AGE OR OLDER – 784.08(2)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
Aggravated battery		784.045	8.4
Felony battery*		784.041	8.5
Battery on person 65 years of age or older		784.08(2)(c)	8.16
Battery		784.03	8.3
	Attempt	777.04(1)	5.1
	Improper exhibition of dangerous weapons or firearms	790.10	10.5
	Discharging firearms in public	790.15	10.6

Comments

*The lesser included offense of Felony Battery is applicable only if element 2a is charged and proved.

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, 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 Battery cases 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.

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 1997 [697 So.2d 84] and amended in 2007 [962 So. 2d 310], and on April 3, 2020.