

FLORIDA LAW, DEFINITION OF CRIMINAL TRESPASS

The crime of trespass is defined under Sections 810.08 and 810.09 of the Florida Statutes. There are two types of criminal trespass under Florida law: (1) Trespass in Structure or Conveyance, and (2) Trespass on Property Other Than Structure or Conveyance.

(1) Trespass in Structure or Conveyance- a Trespass in Structure or Conveyance occurs when a person, without being authorized, willfully enters or remains in any structure (such as a building or dwelling) or conveyance. The offense can also apply to situations where a person, who was once authorized or licensed to enter the structure or conveyance, is warned by the owner or lessee of the premises (or an agent of the owner or lessee), to depart, and then the person refuses to do so. See Section 810.08, Florida Statutes.

To prove the crime of Trespass in Structure or Conveyance, the prosecution must establish the following elements beyond a reasonable doubt:

1. the defendant willfully entered or remained in the structure/conveyance or having been authorized to enter, willfully refused to depart after being warned by the owner, lessee, or agent of the owner/lessee;
2. The structure or conveyance was in the lawful possession of the person alleging the trespass;
3. The entering in or remaining in the structure or conveyance by the defendant was without the permission, express or implied, of the person alleging the trespass (or his or her agent).

(2) Trespass on Property Other Than a Structure or Conveyance- this type of trespass occurs where a person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance. The elements that must be proven at trial for this offense are as follows:

1. The defendant willfully entered upon or remained in the property alleged;
2. The property was owned by or in the lawful possession of the person/entity claiming the trespass;
3. Notice not to enter upon or remain in that property had been given by either actual communication or by posting, cultivation, or fencing on the property, and
4. The defendant's entering upon or remaining in the property was without the permission, express or implied, of the person or entity claiming the trespass or any other person authorized to give that permission. See Section 810.09, Florida Statutes.

The phrase “posted land” is legally defined as land upon which signs are placed not more than 500 feet apart along and at each corner of the property’s boundaries. The signs must prominently display (in letters not less than 2 inches high) the words “No Trespassing” and must, in smaller letters, state the owner, lessee, or occupant of the land. However, if the property is less than five acres in area, and a dwelling house is located on it, the property will automatically be treated as “posted land” even though no signs have been erected.

TYPE OF INTENT REQUIRED

A trespass must be conducted willfully, that is, the entry or remaining must be knowingly and purposely done, with general intent. *Rozier v. State*, 402 So. 2d 539 (Fla. 5th DCA 1981), decision approved, 436 So. 2d 73 (Fla. 1983). Thus, a conviction for trespass does not require that a defendant actually intend to trespass or commit a crime. It is sufficient that he or she willfully entered or remained on the property without the permission of a person authorized to deny or withdraw such permission.

IMPLIED INVITATION TO REMAIN

Authority to enter upon or remain in property may be given by express words, or may be implied from the circumstances. It is lawful to enter or remain in the property of another if, under all the circumstances, a reasonable person would believe that he or she had the permission of the owner or occupant. See Fla. Std. Jury Instr. (Crim.) 13.3 (Trespass- In Structure or Conveyance).

ACTUAL COMMUNICATION TO LEAVE

When an invitation has been extended to enter an open business, actual communication is necessary to put a person on notice that he is no longer welcome on the property and may be arrested for trespass. *K.M.B. v. State*, 69 So. 3d 311, 314 (Fla. 4th DCA 2011); *Smith v. State*, 778 So.2d 329, 331 (Fla. 2d DCA 2000) (citing *Corn v. State*, 332 So.2d 4, 8 (Fla.1976)).

In this regard, a police officer does not have the legal authority to conduct an investigatory stop or arrest for trespass unless the owner or his or her agent first warned the potential trespasser that he or she is no longer permitted to be present. *Gestewitz v. State*, 34 So. 3d 832, 834-35 (Fla. 4th DCA 2010); *S.N.J. v. State*, 17 So.3d 1258, 1259 (Fla. 2d DCA 2009) (stating that Florida’s criminal trespass statute “requires that notice be given before a person can be guilty of trespassing on property,” and that individuals “c[an] be legally detained for trespassing only if they were first warned to leave the property”); *Rodriguez v. State*, 29 So. 3d 310, 312 (Fla. 2d DCA 2009).

In the absence of evidence of proof of notice to the defendant by either the posting of the property or by actual communication, a police officer does not have probable cause to suspect a defendant of the crime of trespass. *Fabian v. State*, 710 So. 2d 114, 116 (Fla. 2d DCA 1998).

DESIGNEE OF PROPERTY OWNER

Where a person other than the actual owner or occupant gives an order to depart the property, the State must show beyond a reasonable doubt that the person giving the order to leave was an actual designee authorized to give such orders. *See* § 810.08(1); *B.C. v. State*, 70 So. 3d 666 (Fla. 1st DCA 2011).

PENALTIES FOR TRESPASS

A Trespass in Structure or Conveyance is typically charged as a second degree misdemeanor, punishable by up to sixty days in jail. However, if a person is present in the structure where the trespass occurs, then trespass is considered a first degree misdemeanor, punishable by up to one year in jail. If the offender is armed with a firearm or other dangerous weapon, then the trespass can be charged as a third degree felony with a five year maximum prison term.

A Trespass on Property Other Than a Structure or Conveyance is a first degree misdemeanor, punishable by up to one year in jail. However, if the offender carries a firearm or other dangerous weapon, the violation can be charged as a third degree felony with a maximum term of imprisonment of up to 5 years.

FLORIDA LAW, DEFINITION OF BURGLARY

In Florida, burglary occurs where a person enters or remains in a dwelling, a structure, or a conveyance with the intent to commit a criminal offense therein. Burglary is a felony offense and carries severe penalties that will typically include prison and probation.

The definition of burglary of a dwelling, structure, or conveyance is contained in [Section 810.02, Florida Statutes](#). Under the law, a burglary can occur where:

1. The defendant enters a dwelling, structure, or conveyance owned by or in possession of another person and, at the time of entering, the defendant had the intent to commit an offense in the dwelling, structure, or conveyance; or

2. The defendant lawfully enters a dwelling, structure, or conveyance (with permission or consent) and remains inside (a) surreptitiously and with the intent to commit an offense therein; or (b) after permission to remain inside had been withdrawn and with the intent to commit an offense therein; or (c) With the intent to commit or attempt to commit a forcible felony inside.

3. MEANING OF STRUCTURE AND CONVEYANCE

The term “structure” means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.” The term conveyance is defined as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car. See Section 810.011(1)-(3).

MEANING OF DWELLING

The term ‘dwelling’ is defined as a “building of any kind, whether such building is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it.” See Section 810.011(2), Florida Statutes.

FULL ENTRY NOT REQUIRED

A defendant’s entry into a building, structure, or conveyance need not involve his or her entire body. The crime of complete if the defendant, with the intent to commit a crime, extends any part of his or her body into the building or vehicle. See Fla. Std. Jury Instr (Crim) 13.1.

INFERENCE OF CRIMINAL INTENT

Where suspect enters or attempts to enter a dwelling, conveyance, or structure stealthily, a jury is entitled to infer that the suspect’s action were undertaken with criminal intent. See Fla. Std. Jury Instr (Crim) 13.1.

FLORIDA LAW, DEFINITION OF PETIT THEFT

In Florida, Petit Theft is the taking or using of property valued at under \$300 with the intent to deprive the owner of a right or benefit in the property. Petit theft is a misdemeanor offense with penalties that may include jail, probation, community service, and restitution.

The definition of misdemeanor petit theft can encompass any scenario where person steals or endeavors to steal property from a person or business when the value of the property is less than \$300. The theft does not have to occur in a store. To prove the crime of Petit Theft at trial, the prosecution must establish the following two elements beyond a reasonable doubt:

1. The defendant knowingly and unlawfully obtained or used (or endeavored to obtain or use) the property of the alleged victim;
2. The defendant did so with the intent, either permanently or temporarily, to: (a) deprive the victim of [his] [her] right to the property or any benefit from it, or (b) appropriate the victim's property to the defendant's own use or to the use of any person not entitled to it.

Florida's petit theft statute requires a finding of specific criminal intent by a defendant to deprive a victim of his rights to property, or to 'appropriate' the property of the victim to the defendant's own use. *State v. C.G.*, 572 So. 2d 1380, 1381 (Fla. 1991).

Thus, the State must show not only that an intentional taking took place and that the taking had the effect of depriving the owner of his rights or placing the property into use by the defendant, but also that the defendant carried out his or her actions specifically intending to steal (i.e. to deprive an owner of property either permanently or temporarily). *T.L.M. v. State*, 755 So. 2d 749 (Fla. 4th DCA 2000).

ATTEMPTING OR ENDEAVORING TO STEAL

Under Section 812.014(1), Florida Statutes, a person commits theft if he or she knowingly obtains or uses, or *endeavors* to obtain or use, the property of another with the appropriate criminal intent.

In interpreting this definition, Florida appellate courts have held that the crime of attempted theft does not exist because, by including the words, "endeavors to obtain or use," the legislature evinced intent to define "theft" as including the mere attempt to commit theft. Thus, a completed theft crime is fully proven when an attempt, along with the requisite intent, is established. There is no requirement that a defendant passes all points of sale or actually leave the store or place of business.

TEMPORARY TAKING OF PROPERTY

In prosecutions for Petit Theft, the length of time property is taken or used by a defendant is relevant to the inquiry regarding the defendant's intent. A momentary taking, for mere seconds, does not constitute the specific intent necessary to sustain a

conviction for theft. (throwing a fire extinguisher after holding for mere seconds was insufficient evidence to establish intent to steal).

The taking or possession of an item for longer than mere seconds, however, will generally be sufficient to create a question of fact for the jury and permit the State to survive a judgment of acquittal. (upholding theft conviction where an inmate took a fire extinguisher for mere minutes in order to commit a battery).

PROOF USED AT TRIAL

For the charge of theft or retail theft, the prosecution will use a variety of tools to prove its case. They may rely on the testimony of loss prevention officers, video surveillance, written statements of the accused, admissions of the accused, testimony of other customers who witnessed the incident, receipts and other business records, testimony of co-defendants, and introduction of the items taken or photographs of the items taken.

FLORIDA LAW, DEFINITION OF GRAND THEFT

Under Florida law, Grand Theft is any intentional and unlawful taking of property valued at \$300.00 or more. Grand theft is a felony offense, with penalties that may include prison, probation, fines, restitution, and a permanent criminal record.

The crime of Grand Theft is defined in Section 812.014, Florida Statutes. Under the law, Grand Theft occurs where:

1. The defendant knowingly and unlawfully obtained or used or endeavored to obtain or use the property of another,
2. The defendant did so with the intent to temporarily or permanently (a) deprive the victim of his or her right to the property or any benefit from the property, or (b) appropriate the property of the victim to his or her own use or to the use of any person not entitled to it; and
3. The property was valued at \$300 or more.

REQUIRED INTENT TO STEAL

Grand Theft is a “specific intent” crime, which means that the defendant must not only take property belonging to another person, but must also have done so with the aim of

stealing (i.e. depriving the victim of his or her rights to property). *State v. C.G.*, 572 So. 2d 1380, 1381 (Fla. 1991).

To sustain a conviction, there must be some substantial competent evidence from which the jury may reasonably infer the felonious intent. *Mosher v. State*, 750 So.2d 120 (Fla. 3d DCA 2000); *State v. West*, 262 So.2d 457, 458 (Fla. 4th DCA 1972).

FLORIDA LAW, DEFINITION OF SHOPLIFTIN

THEFT, ROBBERY, AND RELATED CRIMES

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(1) As used in this section:

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

(b) “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.

(c) “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.

(d) “Retail theft” means the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

(m) “Trespass” means the violation as described in s. 810.08.

(3)(a) A law enforcement officer, a merchant, who has probable cause to believe that a retail theft, or trespass, has been committed by a person and, in the case of retail, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time. In the

event the merchant, merchant's employee takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody.

(c) The taking into custody and detention by a law enforcement officer, merchant, merchant's employee, if done in compliance with all the requirements of this subsection, shall not render such law enforcement officer, merchant, merchant's employee criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(5)(a) A merchant, merchant's employee, who takes a person into custody, as provided in subsection (3), or who causes an arrest, as provided in subsection (4), of a person for retail theft, or trespass shall not be criminally or civilly liable for false arrest or false imprisonment when the merchant, merchant's employee has probable cause to believe that the person committed retail theft, farm theft, transit fare evasion, or trespass.

(b) If a merchant or merchant's employee takes a person into custody as provided in this section, or acts as a witness with respect to any person taken into custody as provided in this section, the merchant or merchant's employee may provide his or her business address rather than home address to any investigating law enforcement officer.

(6) An individual who, while committing or after committing theft of property, or trespass, resists the reasonable effort of a law enforcement officer, merchant, merchant's employee to recover the property, which the law enforcement officer, merchant, merchant's employee had probable cause to believe the individual had concealed or removed from its place of display or elsewhere commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, unless the individual did not know, or did not have reason to know, that the person seeking to recover the property was a law enforcement officer, merchant, merchant's employee. For purposes of this section the charge of theft and the charge of resisting may be tried concurrently.

(8) If a person commits retail theft, it is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at \$300 or more, and the person:

(a) Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(b) Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(c) Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense;
or

(d) Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

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