

**3.3(d) POSSESSION OF A [FIREARM] [DESTRUCTIVE
DEVICE] [AND DISCHARGE] [CAUSING [GREAT
BODILY HARM] [DEATH]]**

§ 775.087(2), Fla. Stat.

Give if applicable.

If you find that (defendant) **committed** (felony identified in §775.087(2)(a)3, Fla. Stat.) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] discharged a [firearm] [destructive device], and in doing so, caused [great bodily harm to] [the death of] (victim), you should find the defendant guilty of (felony) with discharge of a [firearm] [destructive device] causing [great bodily harm] [death].**

Give if applicable.

If you find that (defendant) **committed** (felony identified in § 775.087(2)(a)2, Fla. Stat.) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] discharged a [firearm] [destructive device], you should find the defendant guilty of (felony) with discharge of a [firearm] [destructive device].**

If you find that (defendant) **committed** (felony listed in § 775.087(2)(a)1, Fla. Stat.) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] actually possessed [a firearm] [a destructive device], you should find the defendant guilty of (felony) with actual possession of a [firearm] [destructive device].**

A [“firearm”] [“destructive device”] is legally defined as (adapt from § 790.001(4) or § 790.001(6) Fla. Stat.).

Give a or b or both as applicable. See § 775.087(4), Fla. Stat.

To “actually possess” a firearm means that the defendant

a. carried a firearm on [his][her] person.

or

b. had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.

Comment

This instruction was adopted in July 1992 [603 So. 2d 1175] and amended in 2008.