

RULE 3.640 | EFFECT OF GRANTING NEW TRIAL

When a new trial is granted, the new trial shall proceed in all respects as if no former trial had occurred except that when an offense is divided into degrees or the charge includes a lesser offense, and the defendant has been found guilty of a lesser degree or lesser included offense, the defendant cannot thereafter be prosecuted for a higher degree of the same offense or for a higher offense than that of which the defendant was convicted.

Committee Notes

1968 Adoption. Based on section 920.09, Florida Statutes. The second paragraph of the existing statute allows the testimony of an absent witness, given at a former trial, to be used only if the witness is absent from the state or dead. This has been enlarged to include absent witnesses who are physically incapacitated to attend court or who have become mentally incapacitated to testify since the former trial.

1972 Committee Note. Same as prior rule.

