

Ala. Code 1975, § 13A-7-22

Criminal Mischief II
(Damage to Property Exceeds \$500.00 but not \$2,500.00)

The defendant is charged with criminal mischief in the second degree.

A person commits the crime of criminal mischief in the second degree if, with intent to damage property, and having no right to do so or any reasonable ground to believe that he/she has such a right, he/she inflicts damage to the property in an amount which exceeds \$500.00 but does not exceed \$2,500.00.

To convict, the State must prove beyond a reasonable doubt the following:

- (1) The property **(describe)** was actually damaged;
- (2) The defendant intentionally damaged the property;
- (3) The defendant did not have a right to do so or have any reasonable ground to believe he/she had such a right; and
- (4) The damages to the property were in an amount which exceeded \$500 [**but did not exceed \$2500.00**].

A person acts *intentionally* with respect to a result or to conduct when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2]

[Read applicable part]:

“Property” is any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents, although the rights represented hereby have no physical location), contract right, chose-in-action, interest in a claim to wealth, credit, or any other article or thing of value of any kind. Commodities of a public utility nature, such as gas, electricity, steam, and water, constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property. [13A-8-1(10)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of criminal mischief in the second degree, then you shall find the defendant guilty of criminal mischief in the second degree.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of criminal mischief in the second degree, then you cannot find the defendant guilty of criminal mischief in the second degree.

Use Notes

If the indictment charges criminal mischief in the second degree, the court should **not** instruct that the damage “did not exceed \$2500.00.” A grand jury may elect to indict on the lesser charge. That action would not prevent a conviction upon proof of the higher charge. See *Golston v. State*, 57 Ala. App. 623, 330 So. 2d 446 (Ala. Crim. App. 1975).

On the other hand, if the indictment charges criminal mischief in the first degree, and this instruction is given as a lesser-included offense, the court should instruct that the damage “did not exceed \$2500.00.”

[Adopted 09-19-14.]