

Ala. Code 1975, § 13A-11-31

Criminal Eavesdropping

The defendant is charged with criminal eavesdropping.

A person commits the crime of criminal eavesdropping if he/she intentionally uses any device to eavesdrop, whether or not he/she is present at the time.

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

- (1) The defendant used a device to eavesdrop, [**describe device**], whether or not he/she was present at the time; **(AND)**
- (2) The defendant did so intentionally.

Eavesdrop is to overhear, record, amplify or transmit any part of the private communication of others without the consent of at least one of the persons engaged in the communication, except as otherwise provided by law. [13A-11-30(1)]

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

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

If you find that the State has failed to prove any one or more of the elements of criminal eavesdropping, then you cannot find the defendant guilty of criminal eavesdropping.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

A person does not commit a crime under this article if:

- (1) He/She was a peace officer engaged in the lawful performance of his/her duties;
- (2) He/She was an officer, employee or agent of a communication common carrier who, while acting in the normal course of his/her employment, and while engaged in any activity which was a necessary incident to the

rendition of his/her service or to the protection of the rights or property of the carrier of such communication, intercepted, disclosed or used a communication transmitted through the facilities of that carrier; **(OR)**

- (3) He/She relies in good faith on a lawful court order or legislative authorization. [13A-11-36(a)]

The burden of injecting the issue is on the defendant, but this does not shift the burden of proof. [13A-11-36(b)]

[Approved 06-17-16.]