

Ala. Code 1975, § 13A-6-21(a)(3)

Assault Second Degree
(Reckless - Deadly Weapon or Dangerous Instrument)

The defendant is charged with assault in the second degree.

A person commits the crime of assault in the second degree if he/she recklessly causes serious physical injury to another person by means of a deadly weapon or dangerous instrument.

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

- (1) The defendant caused serious physical injury to another person, **[Insert name of injured person]**;
- (2) The defendant caused the injury by means of a deadly weapon or dangerous instrument, **[Describe weapon or instrument]; (AND)**
- (3) The defendant acted recklessly.

[Read as appropriate]: A *person*, when referring to the victim, means a human being, including an unborn child in utero at any stage of development, regardless of viability. [13A-6-1(a)(3)]

Serious physical injury is physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ. [13A-1-2(14)]

Physical injury is impairment of physical condition or substantial pain. [13A-1-2(12)]

[Read as appropriate]: A *deadly weapon* is a firearm or anything manifestly designed, made, or adapted for the purposes of inflicting death or serious physical injury. The term includes, but is not limited to, a pistol, rifle, or shotgun; or a switch-blade knife, gravity knife, stiletto, sword, or dagger; or any billy, black-jack, bludgeon, or metal knuckles. [13A-1-2(7)]

[Read as appropriate]: A *dangerous instrument* is any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is highly capable of causing death or serious physical injury. A dangerous instrument includes a vehicle. [13A-1-2(5)]

[Read as appropriate]: A *vehicle* is any propelled device in, upon, or by which any person or property is transported on land, water, or in the air and includes motor

vehicles, motorcycles, motorboats, aircraft, and any vessel propelled by machinery, whether or not that machinery is the principal source of propulsion. [13A-1-2(15) & 13A-8-1(10)]

A person acts *recklessly* in regards to his/her conduct if:

- (1) The actor is aware that there is a substantial and unjustifiable risk that death will occur;
- (2) The risk of death is so great that the actor's failure to recognize this risk is a gross deviation from the standard of behavior to which a reasonable person would hold himself/herself in the same situation; **(AND)**
- (3) The actor consciously disregards this substantial and unjustifiable risk. [See 13A-2-2(3)]

[Read all appropriate - Intoxication]: A person who creates a risk, but is unaware that he/she has created that risk solely because of voluntary intoxication, acts recklessly with regards to that risk. *Intoxication* includes a disturbance of mental or physical capacities resulting from the introduction of any substance into the body. *Voluntary intoxication* means intoxication caused by substances that the actor knowingly introduced into his/her body, the tendency of which to cause intoxication he/she knows or ought to know, unless he/she introduces them under circumstances that would afford a defense to the charge. *Intoxication* in itself does not constitute mental disease or defect. *Intoxication* is generally not a defense. However, *involuntary intoxication* is a defense if as a result the actor lacks capacity either to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law. *Intoxication*, whether voluntary or involuntary, is admissible in evidence whenever it is relevant to negate an element of the offense charged. When recklessness establishes an element of an offense and the actor is unaware of a risk because of *voluntary intoxication*, his/her unawareness is immaterial in a prosecution for that offense. [13A-3-2]

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

If you find that the State has failed to prove any one or more of the elements of the offense of assault in the second degree, then you cannot find the defendant guilty of assault in the second degree.

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

Use Notes

For unborn child exceptions see 13A-6-1(b) through (e).

[Approved 10-14-15.]