

**Ala. Code 1975, § 13A-8-42**

**Robbery in the Second Degree**

The defendant is charged with robbery in the second degree.

A person commits the crime of robbery in the second degree if, in the course of committing a theft:

- (1) he/she uses force against the person of the owner of the property or any person present with intent to overcome that person's physical resistance or physical power of resistance, and in doing so he/she is aided by another person actually present; or
- (2) he/she threatens the imminent use of force against the person of the owner of the property or any person present with intent to compel acquiescence to the taking of or escaping with the property, and in doing so he/she is aided by another person actually present.

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

- (1) The Defendant committed or attempted to commit the theft of **[describe property]**;
- (2) (a) In the course of committing or attempting to commit the theft, or in immediate flight after the attempt or commission, the defendant used force against the person of the owner of the property or another person present, **[insert name of person]**, with intent to overcome his/her physical resistance or physical power of resistance; **(OR)**  
  
(b) In the course of committing or attempting to commit the theft, or in immediate flight after the attempt or commission, the defendant threatened the imminent use of force against the person of the owner of the property or another person present, **[name of person]**, with intent to compel acquiescence to the taking of or escaping with the property; **(AND)**
- (3) The defendant was aided by another person actually present, **[insert name of person]**.

A person commits the crime of *theft of property* if he/she knowingly obtains or exerts unauthorized control over the property of another, with intent to deprive the owner of his/her property. [13A-8-2(a)(1)]

*Obtains or exerts unauthorized control over property* includes but is not necessarily limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of, property. [13A-8-1(7)]

*Obtains* means to bring about a transfer or purported transfer of a legally recognized interest in the property, whether to the obtainer or another, or to secure performance of labor or service. [13A-8-1(6)]

*Property* is any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed, contract right, interest in a claim to wealth, credit, or any other article or thing of value of any kind. [See 13A-8-1(10)]

To *deprive* means to withhold property or cause it to be withheld from a person permanently or for such period or under such circumstances that all or a portion of its use or benefit would be lost to him/her; to dispose of the property so as to make it unlikely that the owner would recover it; to retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; to sell, give, pledge or otherwise transfer any interest in the property; or to subject the property to the claim of a person other than the owner. [13A-8-1(2)]

*Owner* is a person, other than the defendant, who has possession of or any other interest in the property involved, even though that interest or possession is unlawful, and without whose consent the defendant has no authority to exert control over the property. [13A-8-1(8)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

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)]

*In the course of committing a theft* embraces acts which occur in an attempt to commit or the commission of theft, or in immediate flight after the attempt or commission. [13A-8-40(b)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of robbery in the second degree, then you shall find the defendant guilty of robbery 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 robbery in the second degree, then you cannot find the defendant guilty of robbery in the second degree.

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

**Use Notes**

Theft by deception is not a lesser included offense to this charge. Deception is not a taking by force.

It is no defense to a charge of robbery in any degree that the taking was under a claim of right. [13A-8-44]

[Approved 3-23-15.]