

**Ala. Code 1975, § 13A-8-41(a)(1)**

**Robbery in the First Degree**  
**(Armed)**

The defendant is charged with robbery in the first degree.

A person commits the crime of robbery in the first 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 armed with a deadly weapon or dangerous instrument; 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 armed with a deadly weapon or dangerous instrument.

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, **[insert name of person]**, with intent to compel acquiescence to the taking of or escaping with the property; **(AND)**
- (3) The defendant was armed with a deadly weapon or dangerous instrument, **[insert name of object]**.

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)]

**[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. The term includes a vehicle. [13A-1-2(5)]

**[Read as appropriate]:** Possession then and there of an article used or fashioned in a manner to lead a person who is present reasonably to believe it to be a deadly weapon or dangerous instrument, or any verbal or other representation by the defendant that he/she is then and there so armed, is prima facie evidence that he/she was so armed. Such evidence is rebuttable. [13A-8-41(b)]

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

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

#### Use Notes

Generally robbery second degree is not a lesser included offense of robbery first degree. However, robbery second can become a lesser included if the robber is aided by another actually present and at least one of them is armed with a deadly weapon or dangerous instrument or causes serious physical injury to another. Moreover, the robbery first degree indictment must include the element that the defendant was aided by another, either in the original or in a properly amended indictment. See *Wright v. State*, 902 So.2d 720, 729-733 (Ala. Crim. App. 2004) (citations omitted).

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.]