

Ala. Code 1975, § 13A-9-6.1

Criminal Possession of Forged Instrument III

The defendant is charged with criminal possession of a forged instrument in the third degree.

A person commits the crime of criminal possession of a forged instrument in the third degree if he/she possesses or utters any forged instrument which is or purports to be, or which is calculated to become or to represent if completed, an assignment or a check, draft, note, or other commercial instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, with knowledge that it is forged and with intent to defraud.

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

- (1) The defendant possessed or uttered a forged instrument which was or purported to be, or which was calculated to become or to represent if completed, an assignment or a check, draft, note, or other commercial instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, **[describe instrument]**;
- (2) The defendant had knowledge that the instrument was forged; **(AND)**
- (3) The defendant acted with intent to defraud.

To *possess* means to have physical possession or otherwise to exercise dominion or control over tangible property. [13A-1-2(13)]

To *utter* means to directly or indirectly offer, assert, declare or put forth a forged instrument as genuine. [13A-9-1(12)]

A *forged instrument* is a written instrument which has been falsely made, completed or altered. [13A-9-1(7)]

A *written instrument* means **[Read as appropriate]**:

- a. Any paper, document or other instrument containing written or printed matter or its equivalent; **(OR)**
- b. Any token, stamp, seal, badge, trademark or other evidence or symbol of value, right, privilege or identification;

which is capable of being used to the advantage or disadvantage of some person. [13A-9-1(1)]

[Read as appropriate]: To *falsely make* a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument, which purports to be authentic creation of its ostensible maker, but which is not either because the ostensible maker is fictitious or because, if real, he/she did not authorize the making or drawing thereof. [13A-9-1(4)]

[Read as appropriate]: To *falsely complete* a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without lawful authority, so that the completed written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him/her. [13A-9-1(5)]

[Read as appropriate]: To *falsely alter* a written instrument means to change, without lawful authority, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, addition or transportation of matter, or in any other manner, so that the instrument so changed falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him/her. [13A-9-1(6)]

A *complete written instrument* is one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof. [13A-9-1(2)]

An *incomplete written instrument* is one which contains some matter by way of content or authentication, but which requires additional matter in order to render it a complete written instrument. [13A-9-1(3)]

[Read as appropriate]: *Government* is the United States, any state or any county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition "state" includes any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. [13A-9-1(11) & 13A-8-1(6)]

Intent to defraud is a purpose to use deception, or to injure another person's interest which has value. [13A-9-1(8)]

[Read as appropriate]: *Deception* occurs when a person knowingly:

- a. Creates or confirms another's impression which is false and which the defendant does not believe to be true; or
- b. Fails to correct a false impression which the defendant previously has created or confirmed; or
- c. Fails to correct a false impression when the defendant is under duty to do so; or

- d. Prevents another from acquiring information pertinent to the disposition of the property involved; or
- e. Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property when the defendant is under a duty to do so, whether that impediment is or is not valid, or is not a matter of official record; or
- f. Promises performance which the defendant does not intend to perform or knows will not be performed. Failure to perform, standing alone, however, is not proof that the defendant did not intend to perform.

The term *deception* does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons. "Puffing" means an exaggerated commendation of wares or services. [13A-8-1(1)]

[Read as appropriate]: *Value* is the market value of the property at the time and place of the criminal act. Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities shall be evaluated as follows:

- a. The value of an instrument constituting as evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.
- b. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

When the value of property cannot be ascertained pursuant to the standards set forth above, its value shall be deemed to be an amount not exceeding five hundred dollars (\$500).

Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense; provided, that only one conviction may be had and only one sentence enforced for all thefts included in such aggregate. [13A-8-1(14)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of the offense of criminal possession of a forged instrument in the third degree, then you shall find the defendant guilty of criminal possession of a forged instrument in the third 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 possession of a forged instrument in the third degree, then you cannot find the defendant guilty of criminal possession of a forged instrument in the third degree.

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

[Approved 6-17-16.]