

Ala. Code 1975, § 13A-11-35

Divulging Illegally-Obtained Information

The defendant is charged with divulging illegally-obtained information.

A person commits the crime of divulging illegally-obtained information if he/she knowingly or recklessly uses or divulges information obtained through criminal eavesdropping or criminal surveillance.

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

- (1) The defendant used or divulged information obtained through criminal eavesdropping or criminal surveillance, [**describe information**]; (**AND**)
- (2) The defendant did so knowingly or recklessly.

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)]

Surveillance is the secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person observed. [13A-11-30(3)]

[Read as appropriate]: A person acts *knowingly* with respect to conduct or to a circumstance when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)] (**OR**)

A person acts *recklessly* when he/she is aware of and consciously disregards a substantial and unjustifiable risk that [**insert result**] will occur (**or exists**). [13A-2-2(3)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of divulging illegally-obtained information, then you shall find the defendant guilty of divulging illegally-obtained information.

If you find that the State has failed to prove any one or more of the elements of divulging illegally-obtained information, then you cannot find the defendant guilty of divulging illegally-obtained information.

[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.]