

Ala. Code 1975, § 13A-7-6(a)(3)

**Burglary Second Degree
(Deadly Weapon or Dangerous Instrument)**

The defendant is charged with burglary in the second degree.

A person commits the crime of burglary in the second degree if he/she knowingly enters or remains unlawfully in a building with intent to commit theft or a felony therein, and, if in effecting entry or while in the building or in immediate flight therefrom, the person or another participant in the crime in effecting entry, is armed with a deadly weapon or dangerous instrument or, while in the building or in immediate flight from the building, uses or threatens the immediate use of a deadly weapon or dangerous instrument against another person.

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

- (1) The defendant entered or remained unlawfully in a building, the property of **[insert name]**, with intent to commit a theft or a felony therein, **[insert crime]**;
- (2) In effecting entry or while in the building or in immediate flight therefrom, the defendant or another participant in the crime in effecting entry, was armed with a deadly weapon or dangerous instrument or, while in the building or in immediate flight from the building, used or threatened the immediate use of a deadly weapon or dangerous instrument against another person; **(AND)**
- (3) The defendant did so knowingly.

A person *enters or remains unlawfully* in or upon premises when he/she is not licensed, invited or privileged to do so. A person who, regardless of his/her intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he/she defies a lawful order not to enter or remain, personally communicated to him/her by the owner of such premises or other authorized person. [13A-7-1(3)]

Premises includes any building and any real property. [13A-7-1(5)]

A *building* is any structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and includes any vehicle, aircraft or watercraft used for the lodging of persons or carrying on business therein. [13A-7-1(1)]

[Read as appropriate]: A *building* includes any railroad box car or other rail equipment or trailer or tractor trailer or combination thereof. [13A-7-1(1)]

[Read as appropriate]: Where a *building* consists of two or more units separately occupied or secure, each shall be deemed both a separate building and a part of the main building. [13A-7-1(1)]

[Read as appropriate]: A *license or privilege to enter or remain* in a building which is partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. [13A-7-1(3)]

[Read as appropriate]: A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him/her by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner. [13A-7-1(3)]

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, a rifle, or shotgun; or a switchblade knife, gravity knife, stiletto, sword, or dagger; or any billy, blackjack, bludgeon or metal knuckles [13A-1-2(7)]

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)]

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]: A *vehicle* is any "propelled vehicle," including any propelled device by which any person or property is transported on land, water, or in the air, and includes motor vehicles, motorcycles, motorboats, and aircraft, and any vessel, whether propelled by machinery or not. [13A-1-2(15)]

[Read as appropriate]: The use of or threatened use of a deadly weapon or dangerous instrument does not include the mere acquisition of a deadly weapon or dangerous instrument during the burglary. [13A-7-5(a)(3)]

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)]

[Insert instruction for crime alleged.]

An intruder acts *knowingly* if he/she is aware of the fact that he/she has no license or privilege to enter or remain. [13A-2-2(2)]

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

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

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

[Approved 04-15-16.]