

Ala. Code 1975, § 13A-8-11(a)(3)
UNAUTHORIZED USE OF VEHICLE
**(Withholding Possession After Agreed
Time)**

The defendant is charged with unauthorized use of a vehicle.

A person commits the crime of unauthorized use of a vehicle if, having custody of a propelled vehicle pursuant to an agreement with the owner thereof whereby it is to be returned to the owner at a specific time, he/she knowingly retains or withholds possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render the retention or possession a gross deviation from the agreement.

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

- (1) The defendant had custody of a propelled vehicle, **[Insert vehicle description]**;
- (2) Possession was pursuant to an agreement with the owner thereof, **[Insert owner's name]**, whereby it was to be returned to the owner at a specific time;
- (3) The defendant retained or withheld possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render the retention or possession a gross deviation from the agreement; **(AND)**
- (4) The defendant acted knowingly.

A propelled vehicle is any propelled device in, upon, or by which any person or property is transported on land, water, or in the air, and such term includes motor vehicles, motorcycles, motorboats, aircraft and any vessel propelled by machinery, whether or not that machinery is the principal source of propulsion. [13A-8-1(10)]

An *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(9)]

[Read as appropriate] A secured party, as defined in Section 7-9A-102(a)(72), is not an owner in relation to a defendant who is a debtor, as defined in Section 7-9A-102(a)(28), in respect of property in which the secured party has a security interest, as defined in Section 7-1-201(37). [13A-8-1(9)]

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)]

[Read as appropriate] It is a defense to a prosecution for this offense that the defendant honestly believed that he/she had a claim to the property or services involved which he/she was entitled to assert in the manner which forms the basis of the charge against him/her. [13A-8-12(a)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of unauthorized use of a vehicle, then you shall find the defendant guilty of unauthorized use of a vehicle.

If you find that the State has failed to prove any one or more of the elements of the offense of unauthorized use of a vehicle, then you cannot find the defendant guilty of unauthorized use of a vehicle.

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

Use Notes

The burden of injecting the above-stated defense to this offense is on the defendant, but this does not shift the burden of proof. [13A-8-12(b)] The jury should not be instructed that the defendant carries this burden.

If a person by force or threat of force, takes, operates, usurps or exercises control over a propelled vehicle with an operator or one or more passengers aboard, the punishment is raised from a Class A misdemeanor to a

Class B felony. [13A-8-11(a)(4)] This would need to be found by the jury, necessitating a jury instruction if the evidence warranted.

[Approved 05-17-24]