

Ala. Code 1975, § 13A-8-11(b)
UNLAWFUL BREAKING & ENTERING

The defendant is charged with unlawful breaking and entering a vehicle.

A person commits the crime of unlawful breaking and entering a vehicle if, without the consent of the owner, he/she breaks into and enters a vehicle or any part of a vehicle with the intent to commit any felony or theft.

To convict, the State must prove beyond a reasonable doubt each of the following elements of unlawful breaking and entering a vehicle:

- (1) The defendant broke into and entered a vehicle or any part of a vehicle, **[Insert vehicle description];**
- (2) The defendant did so without the consent of the owner, **[Insert owner's name]; (AND)**
- (3) The defendant did so with the intent to commit any felony or theft.

Enter means to intrude: (1) any part of the body or (2) any physical object connected with the body. [13A-8-11(b)]

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 with *intent* to deprive another of his/her property when he/she acts with the purpose of causing that result. [13A-2-2(1)]

[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 unlawful breaking and entering a vehicle, then you shall find the defendant guilty of unlawful breaking and entering a vehicle.

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

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

Use Notes

This offense requires an actual breaking and therefore is not a lesser included offense of burglary. The degree of force or violence is not important; it may be very slight. The lifting of a door latch, picking a lock, opening with a key, removing glass - all constitute breaking. [See Walker v. State, 63 Ala. 49 (Ala. 1879)].

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.