

Ala. Code 1975, § 13A-8-140
Theft by Fraudulent Leasing or Rental of Property

The defendant is charged with theft by fraudulent leasing or rental property.

A person commits the crime of theft by fraudulent leasing or rental property theft is committed if he/she, herein called “lessee”, signs a written lease or rental contract with a person licensed to rent or lease tangible personal property herein called “lessor”, and obtains or exerts control over tangible personal property by reason of such rental contract, with the intent, knowledge or expectation that he/ she will not perform the terms, covenants and agreements of the lessee provided in such rental contract.

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

- (1) The defendant (Lessee) signed a written lease or rental contract with a person licensed to rent or lease tangible personal property, (Lessor);
- (2) The Defendant obtained or exerted control over tangible personal property by reason of such rental contract; **(AND)**
- (3) The Defendant did so with the intent, knowledge or expectation that he/ she would not perform the terms, covenants and agreements of the lessee provided in such rental contract.

A *person* is a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government, or a governmental instrumentality. [13A-1-2(11)]

Leasing or rental is a transaction where under the person who owns or controls the possession of tangible personal property permits another person to have the possession or use thereof for a consideration and for the duration of a definite or indefinite period of time without transfer of the title to such property. The detention by the user thereof of freight cars, oxygen and acetylene tanks, and similar property, in respect of which detention a demurrage or per diem charge is made against the user of such property, shall not be deemed to constitute a transaction where under property is leased or rented to another. [40-12-220(5)]

Tangible personal property is personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the

senses. The term “tangible personal property” shall not include stocks, bonds, notes, insurance or other contracts, or securities. [40-12-220(8)]

[Read as appropriate]: It is prima facie evidence that a lessee fraudulently leased or rented property, and intended, knew or expected that he/ she would not perform the terms and obligations of the lessee under a rental contract if:

(1) The name or address of the lessee appearing on the written agreement shall, at the time it is signed, be false or fictitious, and if the lessee fails to return the leased property to the lessor within seven days after lessor makes written demand for its return, notwithstanding that the term under the rental contract has not expired; **(OR)**

(2) The rental contract provides for the return of the leased property to a particular place, at a particular time, and the lessee shall fail to return the leased property to the place and within the time specified in the said rental contract, and the lessor thereafter makes written demand for the return of the leased property to the place specified in the rental contract within 48 hours from the time the written demand is delivered to the lessee, and the lessee fails to return said property to the lessor within the said 48 hour period; **(OR)**

(3) A lessee obtains or exerts control over personal property by executing a rental contract which provides for the return of said property to a particular place, or at a particular time, and thereafter abandons said property, secretes, converts, sells or attempts to sell the same or any part thereof.
[13A-8-141]

As to this evidence, you may consider this if it has been proven to you beyond a reasonable doubt. It is up to you to determine what weight to give it.

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)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of theft by fraudulent leasing or rental property, then you shall find the defendant guilty of theft by fraudulent leasing or rental property.

If you find from the evidence that the State has failed to prove beyond a reasonable doubt any one or more of the elements of theft by fraudulent leasing or rental property, then you shall find the defendant not guilty of theft by fraudulent leasing or rental property.

If you find the defendant guilty of theft by fraudulent leasing or rental property, then it shall be your duty to determine if the subject matter of the lease or rental agreement had a value in excess of \$500 beyond a reasonable doubt. You shall enter your verdict on a special verdict form which I will provide you. If you do not find the defendant guilty of transferring recorded sounds without consent, then you need not proceed further.

[Approved October 18, 2019].