

Ala. Code 1975, § 13A-8-4.1(c)
THEFT OF PROPERTY THIRD DEGREE
(Deception - Credit Card or Debit Card)

The defendant is charged with theft of property in the third degree.

A person commits the crime of theft of property in the third degree if he/she knowingly obtains by deception control over a credit card or debit card, the property of another, with intent to deprive the owner of his/her property.

To convict, the State must prove beyond a reasonable doubt each of the following elements of theft of property in the third degree:

- (1) The defendant knowingly obtained by deception control over a credit card or a debit card, **[Insert description of property]**, the property of another, **[Insert name of owner]; (AND)**
- (2) The defendant acted with intent to deprive the owner of his/her property.

The term *obtains or exerts control over property* includes, but is not necessarily limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to or interest in, or possession of, property. [13A-8-1(8)]

[Read as appropriate] The term includes, but is not necessarily limited to, conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, larceny by conversion, embezzlement, extortion, or obtaining property by false pretenses [13A-8-1(8)]

Obtains means:

- a. In relation to property, to bring about a transfer or purported transfer of a legally recognized interest in the property, whether to the obtainer or another;
(OR)
- b. In relation to labor or service, to secure performance thereof.
[13A-8-1(7)]

Deception occurs when a person knowingly: **[Read as appropriate]**

- a. Creates or confirms another's impression which is false and which the defendant does not believe to be true;
- b. Fails to correct a false impression which the defendant previously has created or confirmed;
- c. Fails to correct a false impression when the defendant is under a duty to do so;
- d. Prevents another from acquiring information pertinent to the disposition of the property involved;
- e. Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property when the defendant is under a duty to do so, whether that impediment is or is not valid, or is not a matter of official record; **(OR)**
- f. Promises performance which the defendant does not intend to perform or knows will not be performed. Failure to perform, standing alone, however, is not proof that the defendant did not intend to perform. [13A-8-1(1)]

[Read as appropriate] The term *deception* does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons. "Puffing" means an exaggerated commendation of wares or services.[13A-8-1(1)]

Value is not an element of the crime.[13A-8-3(b)]

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)]

Deprive means: **[Read as appropriate]**

- a. To withhold property or cause it to be withheld from a person permanently or for such period or under such circumstances that all or a portion of its use or benefit would be lost to him or her;
- b. To dispose of the property so as to make it unlikely that the owner would recover it;
- c. To retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return;
- d. To sell, give, pledge, or otherwise transfer any interest in the property;

(OR)

- e. To subject the property to the claim of a person other than the owner.

[13A-8-1(2)]

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)]

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 theft of property in the third degree, then you shall find the defendant guilty of theft of property in the third degree.

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

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

Use Note

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.

[Approved 05-17-24]