

**CRIMINAL MISCHIEF - PURPOSEFUL OR KNOWING
DAMAGE TO TANGIBLE PROPERTY
N.J.S.A. 2C:17-3a(1)**

Count _____ of the indictment charges defendant with committing the offense of criminal mischief. In pertinent part, the indictment alleges that:

(Read material part of Count _____ to jury)

Defendant is charged with violating a provision of our law that provides that a person is guilty of criminal mischief if he/she purposely or knowingly damages the tangible property of another person. In order to convict defendant of this offense you must find that the state has proved beyond a reasonable doubt each of the following three elements:

1. That defendant damaged tangible property;
2. That the tangible property damaged belonged to another person; and
3. That defendant acted purposely or knowingly when he/she damaged the property.

The first element that the State must prove beyond a reasonable doubt is that defendant damaged tangible property. To damage means to cause a loss, injury or deterioration that reduces the value or usefulness of something.¹ Tangible property means real or personal property that is visible and corporeal, i.e., something that can be seen and touched.²

The second element that the State must prove beyond a reasonable doubt is that the damaged property belonged to another person. Property of another person means that defendant

¹ See Random House Dictionary of the English Language (2d ed., unabridged).

² See Registrar & Transfer Co. v. Dir. Div. of Taxation, 157 N.J. Super. 532, 539 (Ch. 1978), rev'd o.g. 166 N.J. Super. 75 (App. Div. 1979), certif. den. 81 N.J. 63 (1979). Tangible property does not include intangibles such as contract rights or choses in action. Miller, 33 N.J. Practice, Criminal Law, § 13.6 at 332 (2001 ed.).

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is not the owner of the property damaged.³ In this case, the State alleges that the tangible property damaged was **(description)** of **(name)**.

The third element that the State must prove beyond a reasonable doubt is that defendant acted purposely or knowingly when he/she damaged the property. A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A defendant acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or believes or hopes that they exist.⁴ In other words, for you to find that defendant acted purposely, you must be satisfied that the State has proved beyond a reasonable doubt that it was defendant's purpose or conscious object to damage another person's tangible property.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result.⁵ Thus, for you to find that defendant acted knowingly, you must be satisfied that the State has proved beyond a reasonable doubt that defendant knew what he/she was doing and that defendant was aware that the nature of his/her conduct and the attendant circumstances were such as to make it practically certain that defendant's conduct would cause damage to another's tangible property.

³ Where appropriate, charge that property of another includes property partly owned by defendant in which any other person has an interest which defendant is not privileged to infringe. See N.J.S.A. 2C:20-1h.

⁴ See N.J.S.A. 2C:2-2b(1).

⁵ See N.J.S.A. 2C:2-2b(2).

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You should understand that purpose and knowledge are conditions of the mind. They cannot be seen. They can only be determined by inferences from conduct, words or acts. Therefore, it is not necessary for the State to produce witnesses to testify that defendant stated, for example, that he/she acted with purpose or knowledge when he/she did a particular thing. It is within your power to find that proof of purpose or knowledge has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances. The place where the acts occurred and all that was done or said by defendant preceding, connected with, and immediately succeeding the events in question are among the circumstances to be considered.

If you find that the State has not proved beyond a reasonable doubt every element of the offense, you must find defendant not guilty. But if you determine that the State has proved every element of criminal mischief beyond a reasonable doubt, you must find defendant guilty of that offense.

[GRADING]

If you find defendant guilty of criminal mischief, you must then go on to determine the extent of the pecuniary loss that defendant caused.⁶ Pecuniary loss means a financial or monetary loss suffered by the owner of the damaged property.⁷ The extent of the pecuniary loss

⁶ There is also a form of criminal mischief that is not dependent on the amount of pecuniary loss suffered by the victim. This involves criminal mischief that causes “a substantial interruption or impairment of public communication, transportation, supply of water, gas, power, or other public service” and constitutes a third degree offense. See N.J.S.A. 2C:17-3b(1). When applicable, the jury should be instructed on this aspect of the statute instead of or in addition to the pecuniary loss issue. In such an instruction, the jury must be charged that a substantial interruption or impairment, etc., must be proved beyond a reasonable doubt by the State.

⁷ In determining the extent of pecuniary loss, cost of repairs or other methods of proving damages in civil cases can be used. Cf., State v. Burks, 188 N.J. Super., 55, 60-61 (App. Div. 1983), *certif. den.*, 93 N.J. 285 (1983). For proving the value of a damaged item, the standard is fair market value at the time of the offense. See N.J.S.A. 2C:1-14m.

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caused by defendant must be proved by the State beyond a reasonable doubt.⁸ If you find defendant guilty, you must indicate in your verdict whether you find the extent of the pecuniary loss suffered by the owner:

1. amounts to \$2,000 or more,
2. amounts to more than \$500 but less than \$2,000, or
3. amounts to \$500 or less.

⁸ If the jury has a reasonable doubt regarding the amount of pecuniary loss incurred or cannot reach a unanimous verdict on that issue, a conviction for criminal mischief as a disorderly person's offense should be entered. Cf., State v. Clarke, 198 N.J. Super. 219, 226 (App. Div. 1985).