

**CRIMINAL MISCHIEF – TAMPERING SO AS TO ENDANGER
PERSON OR PROPERTY
N.J.S.A. 2C:17-3a(2)**

Count _____ of the indictment charges defendant with committing the offense of criminal mischief by tampering with the tangible property of another so as to endanger person or property. 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, knowingly or recklessly tampers with the property of another so as to endanger person or property. To convict defendant of this offense, you must find that the State has proved beyond a reasonable doubt each of the following four elements:

1. That defendant tampered with tangible property;
2. That the property tampered with was the property of another person;
3. That defendant acted purposely, knowingly or recklessly when he/she tampered with the property; and
4. That the person or property of another was endangered by defendant's conduct.

The first element that the State must prove beyond a reasonable doubt is that defendant tampered with tangible property. To tamper with means to interfere with another person's property with the purpose of causing harm or the risk of harm, regardless of whether the property interfered with was actually damaged.¹ Tangible property means real or personal property that is visible and corporeal, i.e., something that can be seen and touched.²

¹ See Commentary to New Jersey Penal Code, Vol. II, p. 208.

² See Registrar and Transfer Co. v. Dir. Div. of Taxation, 157 N.J. Super. 532, 549 (Ch. Div. 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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The second element that the State must prove beyond a reasonable doubt is that the property tampered with was the property of another person. Property of another person means that defendant is not the owner of the property tampered with.³ In this case, the State alleges that the property tampered with was **(description)** of **(name)**.

The third element that the State must prove beyond a reasonable doubt is that defendant acted purposely, knowingly or recklessly when he/she tampered with 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 beyond a reasonable doubt that it was his/her purpose or conscious object to tamper with 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 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

³ Where appropriate, charge that property of another also includes property partly owned by the defendant in which any other person has an interest which the 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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to make it practically certain that defendant's conduct would tamper with another person's tangible property.

A person acts recklessly when he/she consciously disregards a substantial and unjustifiable risk. A conscious disregard requires that defendant actually be aware of the risk, but that he/she ignores it anyway. The risk must be of such a nature and degree that, considering the nature and purpose of defendant's conduct and the circumstances known to him/her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the same situation.⁶ In other words, for you to find that defendant acted recklessly, you must be satisfied beyond a reasonable doubt that defendant was aware of and disregarded a substantial and unjustifiable risk that his/her conduct would tamper with another person's tangible property.

You should understand that purpose, knowledge and recklessness 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 purposely, knowingly or recklessly when he/she did a particular thing. It is within your power to find that proof of purpose, knowledge or recklessness has been furnished beyond a reasonable doubt by inferences 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.

⁶ See N.J.S.A. 2C:2-2b(3).

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The fourth element that the State must prove beyond a reasonable doubt is that the person or property of another was endangered by defendant's conduct. To endanger means to expose to harm or peril.⁷

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 (1) defendant's state of mind at the time that the offense was committed, and (2) the extent of the pecuniary loss that defendant caused. Regarding the state of mind requirement, the instruction that I supplied to you previously regarding "purposely," "knowingly" and "recklessly" applies here as well. Regarding pecuniary loss, that means the financial or monetary loss suffered by the owner of the property tampered with.⁸ The state of mind required and the extent of the pecuniary loss caused by defendant must both be proved by the State beyond a reasonable doubt.⁹ Regarding the grade of the offense, you must indicate in your verdict whether you find that:

(1) Defendant acted purposely or knowingly AND the extent of the pecuniary loss caused by defendant amounts to \$2,000 or more; or

⁷ See Random House Dictionary of the English Language (2 ed., unabridged).

⁸ 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.

⁹ 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).

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(2) Defendant acted purposely, knowingly or recklessly AND the extent of the pecuniary loss caused by defendant amounts to more than \$500 but less than \$2,000; or

(3) Defendant acted purposely, knowingly or recklessly AND the extent of the pecuniary loss caused by defendant amounts to \$500 or less.