

**CRIMINAL MISCHIEF –DAMAGE TO TANGIBLE PROPERTY BY
RECKLESS OR NEGLIGENT USE OF FIRE, EXPLOSIVES, ETC.
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 damages the tangible property of another person recklessly or negligently in the employment of fire, explosives or other dangerous means.

In order 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 damaged tangible property;
2. That the damaged property belonged to another person;
3. That defendant acted recklessly or negligently when he/she damaged the property; and
4. That the damage to the property was caused by defendant's use of fire, explosives or other dangerous means.

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

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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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 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 recklessly or negligently when he/she damaged the 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 the 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.⁴ 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 cause damage to another person's tangible property.

A person acts negligently when he/she should be aware of a substantial and unjustifiable risk. The risk must be of such a nature and degree that defendant's failure to perceive it, considering the nature and purpose of his/her conduct and the circumstances known to him/her, involves a gross deviation from the standard of care that a reasonable person would observe in the same situation.⁵ In other words, for you to find that defendant acted negligently, you must be satisfied beyond a

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(3)

⁵ See N.J.S.A. 2C:2-2b(4)

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reasonable doubt that defendant should have been aware of a substantial and unjustifiable risk that his/her conduct would cause damage to another person's tangible property.

You should understand that recklessness and negligence 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 recklessly or negligently when he/she did a particular thing. It is within your power to find that proof of recklessness or negligence 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.

The fourth element that the State must prove beyond a reasonable doubt is that the damage to the property was caused by defendant's use of fire, explosives or other dangerous means.⁶

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. Pecuniary loss means a financial or monetary loss suffered by the owner of the damaged property.⁷ The extent of the pecuniary loss caused by defendant

⁶ See N.J.S.A. 2C:17-2a for the other dangerous means encompassed by the statute.

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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 more than \$500, or
- (2) amounts to \$500 or less.⁹

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.

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).

⁹ Note that the grading provisions of the statute confine criminal mischief committed "recklessly" or "negligently" to fourth degree or disorderly persons offenses, depending upon the amount of pecuniary loss incurred. See N.J.S.A. 2C:17-3b.