

CRIMINAL MISCHIEF IN THE THIRD DEGREE
(Damage Motor Vehicle of Another and
have Prior Criminal Mischief Convictions)
Penal Law § 145.05(1)
(Committed on or after November 1, 2003)

The (*specify*) count is Criminal Mischief in the Third Degree.

Under our law, a person is guilty of Criminal Mischief in the Third Degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she damages the motor vehicle of another person, by breaking into such vehicle when it is locked with the intent of stealing property

[and within the previous ten-year period, has been convicted three or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of criminal mischief in the fourth degree, criminal mischief in the third degree, criminal mischief in the second degree, or criminal mischief in the first degree].¹

¹The bracketed element must be charged in a special information, and after commencement of trial the defendant must be arraigned on that special information. If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But if the defendant denies the element or remains mute, the court must add it to the definition of the offense and the list of elements (see CPL 200.60; See *People v Cooper*, 78 NY2d 476, 481-482 [1991]). If appropriate, the court should also add the definition of “criminal transaction” set forth in CPL 40.10(2): “‘Criminal transaction’ means conduct which establishes at least one offense, and which is comprised of two or more or a group of acts either (a) so closely related and connected in point of time and circumstance of commission as to constitute a single criminal incident, or (b) so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture.”

The following terms used in that definition have a special meaning:

PROPERTY OF ANOTHER includes all property in which another person has an ownership interest, whether or not a person who damages the property, or any other person, may also have an interest in the property.²

INTENT means conscious objective or purpose. Thus, a person intends to damage property of another person when his or her conscious objective or purpose is to damage property of another person.³

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case beyond a reasonable doubt, each of the following four elements:

1. That on or about (date), in the County of (County), the defendant damaged the motor vehicle of another person;
2. That the defendant did so with intent to damage property of another person;
3. That the defendant had no right to damage the vehicle nor any reasonable ground to believe that he or she had that right; and
4. That the defendant did so by breaking into the vehicle when it was locked with the intent of stealing property.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

² Penal Law § 145.13. The modifying word “such” contained in the statute has been replaced here with “the” for clarity.

³ See Penal Law § 15.05(1).

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.