

CHAPTER 4-5

TRESPASS and CRIMINAL MISCHIEF

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The instructions in this chapter cover all of the "trespass" type crimes set forth in §§18-4-501 through -516, C.R.S.

4-5:01 FIRST DEGREE CRIMINAL TRESPASS - DWELLING

The elements of the crime of First Degree Criminal Trespass are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

3. knowingly

4. unlawfully entered or remained in a dwelling of another.

5. [without the affirmative defense in instruction number _____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of Criminal Trespass in the First Degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of Criminal Trespass in the First Degree.

NOTES ON USE

When this instruction is used the definitions of "knowingly", "dwelling" and "unlawfully entered or remained" must be given.

SOURCE & AUTHORITY

§18-4-502, C.R.S.

COLJI-Crim. No. 17:02 (1983).

CLASSIFICATION OF OFFENSE

F5

4-5:02 FIRST DEGREE CRIMINAL TRESPASS - MOTOR VEHICLE

The elements of the crime of First Degree Criminal Trespass are:

1. the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. entered any motor vehicle,

4. with intent to commit the crime of _____ therein.
(Insert specific crime(s))

5. [without the affirmative defense in instruction number _____ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of Criminal Trespass in the First Degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of Criminal Trespass in the First Degree.

NOTES ON USE

When this instruction is used the definitions of "knowingly", "with intent" and "motor vehicle" must be given. The jury must also be instructed on the elements of the crime(s) specified in line 5.

SOURCE & AUTHORITY

§18-4-502, C.R.S.

COLJI-Crim. No. 17:02 (1983).

People v. Anderson, 991 P.2d 319 (Colo. App. 1991).

People v. Rodriguez, 43 P.3d 641 (Colo. App. 2001).

CLASSIFICATION OF OFFENSE

F5

4-5:03 SECOND DEGREE CRIMINAL TRESPASS

The elements of the crime of Second Degree Criminal Trespass are:

1. That the defendant
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [unlawfully entered or remained in a motor vehicle of another.]

- or -

[and unlawfully entered or remained on the common areas of a [hotel][condominium][apartment building.]

- or -

[and unlawfully entered or remained in or on premises which were enclosed in a manner designed to exclude intruders or were fenced.]

- or -

[and unlawfully entered in or on premises which have been classified by the county assessor as agricultural land pursuant to §39-1-102(1.6), C.R.S.]

5. [and, the defendant entered the agricultural land with the intent to commit the felony of _____ thereon.]

[5. or 6. without the affirmative defense in instruction number _____ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of Criminal Trespass in the Second Degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the

defendant not guilty of Criminal Trespass in the Second Degree.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used the applicable definitions of "knowingly", "with intent", "motor vehicle" and "unlawfully entered or remained" must be given. The elements of the felony must be given where applicable.

SOURCE & AUTHORITY

§18-4-503(1)(c), C.R.S.

COLJI-Crim. No. 17:03 (1983).

CLASSIFICATION OF OFFENSE

F4, if premises agricultural and intent to commit a felony

M2, if premises are agricultural

M3, otherwise

4-5:04 THIRD DEGREE CRIMINAL TRESPASS

The elements of the crime of third degree criminal trespass are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. unlawfully entered or remained in or upon any premises.
4. [and the premises have been classified by the county assessor in the county where the land is situated as agricultural pursuant to § 39-1-102(1.6), C.R.S.]

5. [and, the defendant entered the agricultural land with the intent to commit a felony _____ thereon.]

Name the felony

[4, 5. or 6. without the affirmative defense in instruction number ____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal trespass in the third degree.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal trespass in the third degree.

NOTES ON USE

When this instruction is used, the applicable definitions of "intent", "knowingly", "premises" and "unlawfully entered or remained" must be given. The elements of the felony must be given, where applicable.

SOURCE & AUTHORITY

§18-4-504, C.R.S.

§18-4-504.5, C.R.S.

COLJI-Crim. No. 17:04 (1983).

CLASSIFICATION OF OFFENSE

F5, where agricultural land and intent to commit felony

M3, where agricultural land

4-5:05 CRIMINAL MISCHIEF

The elements of the crime of Criminal Mischief are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged.
3. knowingly,
4. damaged the real or personal property of one or more other persons including property owned by the defendant in which another person has a possessory or proprietary interest in the course of a single criminal episode, and
5. the aggregate damages to real or personal property were [less than five [one] hundred dollars] [five [one] hundred dollars or more but less than [five hundred] one thousand dollars] [[five hundred] one thousand dollars or more but less than [fifteen] twenty thousand dollars] [[fifteen] twenty thousand dollars or more].
6. [without the affirmative defense in instruction number _____ .]

After considering all of the evidence, if you decide the prosecution has proved each of the elements beyond a reasonable doubt, you should find the defendant guilty of Criminal Mischief.

After considering all of the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of Criminal Mischief.

NOTES ON USE

The values changed for offenses committed on or after July 1, 2007. The bracket value amounts reflect the status of

the law before July 1,2007. When this instruction is used the definitions of "knowingly" and "property of another" must be given. When there is disputed evidence as to value, a Special Verdict form or lesser included offense instruction must be given.

SOURCE & AUTHORITY

§18-4-501 C.R.S.

COLJI-Crim. No. 17:01 (1983).

CLASSIFICATION OF OFFENSE

F3, if value is \$20,000 or more

F4, if value is \$1,000 to \$20,000

M1, if value is \$500 to \$1,000

M2, if value less than \$500

F3, if value is \$15,000 or more

F4, if value is \$500 to \$15,000

M2, if value is \$100 to \$500

M3, if value less than \$100

4-5:06 INTERROGATORY FORM-CRIMINAL MISCHIEF

If you find the defendant not guilty of Criminal Mischief, you should disregard this instruction and you should sign the not guilty form and do not answer the following question. If, however, you find the defendant guilty of Criminal Mischief, you should sign the guilty verdict form, and then answer the following question:

What is the aggregate value of the damage caused in a single criminal episode by the defendant to the real or personal property?

[] Less than \$500 [\$100].

[] \$500 [\$100] or more, but less than \$1,000 [\$500}.

[] \$1,000 [\$500] or more, but less than \$20,000 [\$15,000].

[] \$20,000 [\$15,000] or more.

It is the prosecution's burden to prove value of the beyond a reasonable doubt.

After considering all the evidence, if you find the prosecution has proven the amount of the value beyond a reasonable doubt, you should indicate the amount on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not find the prosecution has proven beyond a reasonable doubt the value, you should indicate under one hundred dollars on the verdict form that has been provided.

NOTES ON USE

The values changed for offenses committed on or after July 1, 2007. The amounts in brackets reflect the status of the law before July 1,2007. This interrogatory should be used only when there is sufficient evidence to support a finding beyond a reasonable doubt that the element or sentence-enhancing factor was present in this case.

4-5:06.5 SPECIAL VERDICT FORM

DISTRICT COURT, [CITY AND] COUNTY OF _____ , STATE OF COLORADO

Case No. * Div.

JURY VERDICT, Count *
Including Special Verdict for Value

PEOPLE OF THE STATE OF COLORADO,
Plaintiffs,

v.

*
Defendant.

[fn *]I. We, the jury, find the Defendant, *, NOT GUILTY of Count No. *.

FOREPERSON

[fn *]II. We, the jury find the Defendant, *, GUILTY of Count No. *, and find that the value of the property damaged was:

[fn **] [] Less than \$500 [\$100].

[fn **] [] \$500 [\$100] or more, but less than \$1,000 [\$500].

[fn **] [] \$1,000 [\$500] or more, but less than \$20,000 [\$15,000].

[fn **] [] \$20,000 [\$15,000] or more.

FOREPERSON

[fn*]The foreperson may sign only one of the above (I.

or II.). If the verdict is NOT GUILTY, then I. above should be signed. If the verdict is GUILTY then II. above should be signed.

[fn**]If you find the defendant guilty, you must also complete this section by placing, in ink, an "X" in the appropriate box indicating your decision. ONLY ONE SQUARE may be filled in with the remainder to remain unmarked.

4-5:07 CRIMINAL TAMPERING-FIRST DEGREE

The elements of the crime of first degree criminal tampering are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to cause interruption or impairment of a service rendered to the public [by a utility] [by an institution providing health or safety protection],
4. tampered with property of [a utility] [an institution].
5. [without the affirmative defense in instruction number .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal tampering in the first degree.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal tampering in the first degree.

NOTES ON USE

The exceptions to first degree criminal tampering are provided in §§ 18-4-506.3 and -506.5, C.R.S. The definition of "with intent" must be given with this instruction. Delete the inapplicable bracketed materials.

SOURCE & AUTHORITY

§18-4-505, C.R.S.

COLJI-Crim. No. 17:05 (1983).

CLASSIFICATION OF OFFENSE

M1

4-5:08 CRIMINAL TAMPERING-SECOND DEGREE

The elements of the crime of second degree criminal tampering are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [tampered with property of another,
4. with the intent to cause injury, inconvenience, or annoyance to that person.]

-or-

3. [knowingly.
4. made unauthorized connections with property of a utility.]
5. [without the affirmative defense in instruction number .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal tampering in the second degree.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal tampering in the second degree.

NOTES ON USE

The exceptions to second degree criminal tampering are provided in §§18-4-506.3 and -506.5, C.R.S. Delete the inapplicable bracketed material. Where applicable, the

definitions of "knowingly" and "with intent" must be given with this instruction.

SOURCE & AUTHORITY

§18-4-506, C.R.S.

COLJI-Crim. No. 17:06 (1983).

CLASSIFICATION OF OFFENSE

M2

4-5:09 TAMPERING WITH A UTILITY METER

The elements of the crime of tampering with a utility meter are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [knowingly connected any [pipe] [tube] [stopcock] [wire] [cord] [socket] [motor] or other instrument or contrivance with any [main] [service pipe] or other medium supplying or conducting [gas] [water] [electricity] to any building,
4. without the knowledge and consent of the person supplying such [gas] [water] [electricity],] and

-or-

3. [in any manner knowingly [altered] [obstructed] [interfered] with the action of any meter provided for measuring or registering the quantity of [gas] [water] [electricity] passing through said meter,
4. without the knowledge and consent of the person owning said meter,] and
5. the defendant was not any licensed electrical or plumbing contractor who performed usual and ordinary

services, in accordance with recognized customs and standards.

6. [without the affirmative defense in instruction number .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with a utility meter.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with a utility meter.

NOTES ON USE

Delete the inapplicable bracketed material. The definition of "knowingly" must be given with this instruction.

SOURCE & AUTHORITY

§18-4-506.5, C.R.S.

COLJI-Crim. No. 17:07 (1983).

CLASSIFICATION OF OFFENSE

M2

4-5:10 DEFACING OR DESTRUCTION OF WRITTEN INSTRUMENTS

The elements of the crime of defacing or destruction of written instruments are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

3. with intent to defraud,

4. [defaced] [destroyed] any written instrument evidencing a vested or contingent property right.

5. [without the affirmative defense in instruction number .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of defacing or destruction of written instruments.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of defacing or destruction of written instruments.

NOTES ON USE

Delete the inapplicable bracketed materials. The definitions of "with intent" and "written instrument" need to be given with this instruction.

SOURCE & AUTHORITY

§18-4-507, C.R.S.

COLJI-Crim. No. 17:08 (1983).

CLASSIFICATION OF OFFENSE

M1

4-5:11 DEFACING, DESTROYING OR REMOVING LANDMARKS, MONUMENTS OR ACCESSORIES

The elements of the crime of defacing, destroying or removing landmarks, monuments or accessories are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged, and

3. [knowingly,

4. [cut] [fell] [altered] [removed] any certain boundary tree,

5. knowing such was a [boundary tree] [monument] or other allowed landmark,

6. to the damage of any person.]

-or-

3. [intentionally,

4. [defaced] [removed] [pulled down] [injured] [destroyed] any [location stake] [side post] [corner post] [landmark] [monument] or any other legal land boundary monument in this State designated or intended to designate the [location] [boundary] [name] of any [mining claim] [lode] [vein of mineral] or [name of the discoverer] [date of discovery] thereof.]

-or-

3. [not having had a land surveyor, prior to removal, establish two witness corners or reference marks for the monument and file a monument record accordingly,

4. [knowingly removed] or [knowingly caused to be removed],

5. any [public land survey monument] or [restoration of a public land survey monument].]

-or-

3. [not having had a land surveyor, prior to removal, establish two witness corners or reference marks for the monument and file a monument record accordingly,

4. [knowingly removed] [knowingly caused to be removed]

5. any bearing tree or other accessory,

6. knowing it was a bearing tree or other accessory.]

[5., 6. or 7. without the affirmative defense in instruction number .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of defacing, destroying or removing landmarks, monuments or accessories.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of defacing, destroying or removing landmarks, monuments or accessories.

NOTES ON USE

Delete inapplicable bracketed material. The definition of "public land survey monument" or "bearing tree" should be given if the offense involves damage to such. These offenses apply even if the defendant has title to the land on which the monument or accessory is located. Where applicable, the definitions of "knowingly" and "intentionally" should be given with this instruction.

SOURCE & AUTHORITY

§18-4-508, C.R.S.

CLASSIFICATION OF OFFENSE

M2

4-5:12 DEFACING PROPERTY

The elements of the crime of defacing property are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. [knowingly [destroyed] [defaced] [removed]
[damaged] any historical monument.]

-or-

3. [knowingly [defaced] [caused, aided in, or
permitted the defacing of] any public or private property,
by any means of defacement including but not limited to
painting, drawing, writing or otherwise marring the surface
of the property by the use of paint, spray paint, ink or
any other substance or object,

4. without the consent of the owner of such property.]

[defaced any cave whether public or private
property by knowingly [breaking or damaging any lock,
fastening, door or structure designed to enclose or protect
such cave][defacing, damaging or breaking from any part of
such cave any cave resource][removing from such cave any
cave resource]

5. without consent of the owner]

[4., 5. or 6. without the affirmative defense in
instruction number .]

After considering all the evidence, if you decide the
prosecution has proven each of the elements beyond a
reasonable doubt, you should find the defendant guilty of
defacing property.

After considering all the evidence, if you decide the
prosecution has failed to prove each of the elements
beyond a reasonable doubt, you should find the defendant
not guilty of defacing property.

NOTES ON USE

Delete inapplicable bracketed material. The
definition of "knowingly" should be given with this
instruction.

SOURCE & AUTHORITY

§18-4-509, C.R.S.

CLASSIFICATION OF OFFENSE

M1, for second and subsequent offense

M2

4-5:13 ABANDONMENT OF A MOTOR VEHICLE

The elements of the crime of abandonment of a motor vehicle are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly abandoned any motor vehicle,
4. [upon a [street] [highway] [right-of-way] [any other public property].]

-or-

4. [upon any private property,
 5. without the express consent of the [owner] [person in lawful charge of that private property].]
- [5. or 6. without the affirmative defense in instruction number _____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abandonment of a motor vehicle.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of abandonment of a motor vehicle.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definition of "abandon"

must be given. There are three possible special rules concerning proof of intent which may be given with this instruction.

SOURCE & AUTHORITY

§18-4-512, C.R.S.

CLASSIFICATION OF OFFENSE

M3

4-5:14 CRIMINAL OPERATION OF A DEVICE IN A MOTION PICTURE THEATER

The elements of the crime of criminal operation of a device in a motion picture theater are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. while within a motion picture theater,
4. knowingly operated an audiovisual recording function of a device for the purpose of recording a motion picture, while the motion picture was being exhibited,
5. without the consent of the owner,
6. [without the affirmative defense in instruction number _____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal operation of a device in a motion picture theater.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not

guilty criminal operation of a device in a motion picture theater.

NOTES ON USE

The definitions of "knowingly", "audiovisual recording function" and "motion picture theater" must be given with this instruction.

"Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or hereinafter developed. "Motion picture theater" means a movie theater, screening room or other venue when used primarily for the exhibition of motion pictures.

SOURCE & AUTHORITY

§ 18-4-516, C.R.S.

CLASSIFICATION OF OFFENSE

M1

DEFINITIONS

4-5(1) CAVE

"CAVE" means any naturally occurring void, cavity, recess, lava tube, or system of interconnected passages that occurs beneath the surface of the earth or within a cliff or ledge, including any cave resource therein, but not including any mine, tunnel, aqueduct, or other artificial excavation, and that is large enough to permit an individual to enter, regardless of whether the entrance is naturally formed or has been artificially created or enlarged. "Cave" includes any natural pit, sinkhole, or other feature that is an extension of the entrance.

4-5(2) CAVE RESOURCE

"CAVE RESOURCE" includes any material or substance occurring naturally in caves, such as animal life, plant life, paleontological deposits, sediments, minerals, speleogens, and speleothems.

4-5(3) SPELEOGEN

"SPELEOGEN" means relief features on the walls, ceiling, or floor of any cave that are part of the surrounding rock, including, but not limited to, anastomoses, scallops, meander niches, petromorphs, and rock pendants in solution caves and similar features unique to volcanic caves.

4-5(4) SPELEOTHEM

"SPELEOTHEM" means any natural mineral formation or deposit occurring in a cave, including, but not limited to, any stalactite, stalagmite, helictite, cave flower, flowstone, concretion, drapery, rimstone, or formation of clay or mud.