

**Electronically Filed
Supreme Court
SCMF-11-0000315
03-MAY-2018
07:59 AM**

SCMF-11-0000315

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Publication and Distribution
of the
Hawai'i Pattern Jury Instructions - Criminal

ORDER APPROVING PUBLICATION AND DISTRIBUTION
OF HAWAI'I PATTERN JURY INSTRUCTIONS - CRIMINAL

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Upon consideration of the request of the Standing Committee on Pattern Criminal Jury Instructions to publish and distribute the revision of Criminal Instructions 10.05A, 10.05C, 10.07, 10.07A, 10.09, and 10.09A, of the Hawai'i Pattern Jury Instructions - Criminal,

IT IS HEREBY ORDERED that the request is granted and the attached Instructions are approved for publication and distribution.

IT IS FURTHER ORDERED that this approval for publication and distribution is not and shall not be considered by this court or any other court to be an approval or judgment as

to the validity or correctness of the substance of any instruction.

DATED: Honolulu, Hawai'i, May 3, 2018.

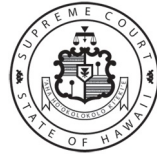
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



**10.05A CRIMINAL PROPERTY DAMAGE IN THE FIRST DEGREE --
DAMAGE EXCEEDS \$20,000:
H.R.S. § 708-820(1)(b)
(Applicable to offenses occurring on or after June 9, 2006)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Criminal Property Damage in the First Degree.

A person commits the offense of Criminal Property Damage in the First Degree if by means other than fire he/she intentionally or knowingly damages the property of another, without the other's consent, in an amount exceeding \$20,000.

There are five material elements of the offense of Criminal Property Damage in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These five elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant damaged the property of another; and
2. That the Defendant did so by means other than fire; and
3. That the Defendant did so without the other's consent; and
4. That the damage to the property exceeded \$20,000; and
5. That the Defendant acted intentionally or knowingly as to each of the foregoing elements.

Notes

H.R.S. §§ 708-820(1)(B), 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00--“property”

10.00--“property of another”

For prima facie inference and defense regarding Defendant's state of mind as to the value of the property, see instruction 10.00A(2) which embodies the statutory language of HRS § 708-801 (valuation of property). However, “HRS § 708-801, by its clear terms, applies only when ‘the value of property or services is determinative of the class or grade of an offense.’ . . . HRS § 708-822 does not, on its face, require a determination of the value of property; HRS § 708-822 refers to the amount of damage done by the offender not the value of the property damaged.” *State v. Pardee*, 86 Hawai'i 165, 168, 948 P.2d 586, 589 (App. 1997) (emphasis added). The Intermediate Court also found that even if HRS § 708-801 was applicable to criminal property damage offenses, the value of the damaged items had been sufficiently proved.

**10.05C CRIMINAL PROPERTY DAMAGE IN THE FIRST DEGREE --
DAMAGE EXCEEDS \$20,000:
H.R.S. § 708-820(1)(b)
(Applicable to offenses occurring on or after June 17, 1996, up to and including
June 8, 2006)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Criminal Property Damage in the First Degree.

A person commits the offense of Criminal Property Damage in the First Degree if he/she intentionally or knowingly* damages the property of another, without the other's consent, in an amount exceeding \$20,000.

There are four material elements of the offense of Criminal Property Damage in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant damaged the property of another; and
2. That the Defendant did so without the other's consent; and
3. That the damage to the property exceeded \$20,000; and
4. That the Defendant acted intentionally or knowingly* as to each of the foregoing elements.

Notes

* The *mens rea* element of "knowingly," and HRS § 702-206(2) and Instruction No. 603, setting forth the definition of "knowingly," are only applicable to offenses alleged to have been committed on or after April 16, 2003.

H.R.S. §§ 708-820(1)(B), 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00--“property”

10.00--“property of another”

For prima facie inference and defense regarding Defendant's state of mind as to the value of the property, see instruction 10.00A(2) which embodies the statutory language of HRS § 708-801 (valuation of property). However, “HRS § 708-801, by its clear terms, applies only when ‘the value of property or services is determinative of the class or grade of an offense.’ . . . HRS § 708-822 does not, on its face, require a determination of the value of property; HRS § 708-822 refers to the amount of damage done by the offender not the value of the property damaged.” *State v. Pardee*, 86 Hawai'i 165, 168, 948 P.2d 586, 589 (App. 1997) (emphasis added). The Intermediate Court also found that even if HRS § 708-801 was applicable to criminal property damage offenses, the value of the damaged items had been sufficiently proved.

**10.07 CRIMINAL PROPERTY DAMAGE IN THE SECOND DEGREE:
H.R.S. § 708-821(1)(b)
(Applicable to offenses occurring on or after June 9, 2006)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Criminal Property Damage in the Second Degree.

A person commits the offense of Criminal Property Damage in the Second Degree if by means other than fire he/she intentionally or knowingly damages the property of another, without the other's consent, in an amount exceeding \$1,500.

There are five material elements of the offense of Criminal Property Damage in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These five elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant damaged the property of another; and
2. That the Defendant did so by means other than fire; and
3. That the Defendant did so without the other's consent; and
4. That the damage to the property exceeded \$1,500; and
5. That the Defendant acted intentionally or knowingly as to each of the foregoing elements.

Notes

H.R.S. §§ 708-821(1)(b), 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00--"owner"

10.00--“property of another”

For prima facie inference and defense regarding Defendant's state of mind as to the value of the property, see instruction 10.00A(2) which embodies the statutory language of HRS § 708-801 (valuation of property). However, “HRS § 708-801, by its clear terms, applies only when ‘the value of property or services is determinative of the class or grade of an offense.’ . . . HRS § 708-822 does not, on its face, require a determination of the value of property; HRS § 708-822 refers to the amount of damage done by the offender not the value of the property damaged.” *State v. Pardee*, 86 Hawai'i 165, 168, 948 P.2d 586, 589 (App. 1997) (emphasis added). The Intermediate Court also found that even if HRS § 708-801 was applicable to criminal property damage offenses, the value of the damaged items had been sufficiently proved.

**10.07A CRIMINAL PROPERTY DAMAGE IN THE SECOND DEGREE:
H.R.S. § 708-821(1)(b)
(Applicable to offenses that occurred on or before June 8, 2006)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Criminal Property Damage in the Second Degree.

A person commits the offense of Criminal Property Damage in the Second Degree if he/she intentionally or knowingly* damages the property of another, without the other's consent, in an amount exceeding [\$1,500**] [\$500].

There are four material elements of the offense of Criminal Property Damage in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant damaged the property of another; and
2. That the Defendant did so without the other's consent; and
3. That the damage to the property exceeded [\$1,500**] [\$500]; and
4. That the Defendant acted intentionally or knowingly* as to each of the foregoing elements.

Notes

* The *mens rea* element of "knowingly," and HRS § 702-206(2) and Instruction No. 603, setting forth the definition of "knowingly," are only applicable to offenses alleged to have been committed on or after April 16, 2003.

H.R.S. §§ 708-821(1)(b), 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00--“owner”

10.00--“property of another”

For prima facie inference and defense regarding Defendant's state of mind as to the value of the property, see instruction 10.00A(2) which embodies the statutory language of HRS § 708-801 (valuation of property). However, “HRS § 708-801, by its clear terms, applies only when ‘the value of property or services is determinative of the class or grade of an offense.’ . . . HRS § 708-822 does not, on its face, require a determination of the value of property; HRS § 708-822 refers to the *amount of damage* done by the offender not the value of the property damaged.” *State v. Pardee*, 86 Hawai`i 165, 168, 948 P.2d 586, 589 (App. 1997) (emphasis added). The Intermediate Court also found that even if HRS § 708-801 was applicable to criminal property damage offenses, the value of the damaged items had been sufficiently proved.

**The \$1,500 amount is applicable to offenses that occur on or after June 17, 1996.

**10.09 CRIMINAL PROPERTY DAMAGE IN THE THIRD DEGREE:
HRS § 708-822(1)(b)
(Applicable to offenses occurring on or after June 9, 2006)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Criminal Property Damage in the Third Degree.

A person commits the offense of Criminal Property Damage in the Third Degree if by means other than fire he/she intentionally or knowingly* damages the property of another, without the other's consent, in an amount exceeding \$500.

There are five material elements of the offense of Criminal Property Damage in the Third Degree, each of which the prosecution must prove beyond a reasonable doubt.

These five elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant damaged the property of another; and
2. That the Defendant did so by means other than fire; and
3. That the Defendant did so without the other's consent; and
4. That the damage to the property exceeded \$500; and
5. That the Defendant acted intentionally or knowingly* as to each of the foregoing elements.

Notes

* The *mens rea* element of "knowingly," and HRS § 702-206(2) and Instruction No. 603, setting forth the definition of knowingly, are only applicable to offenses alleged to have been committed on or after June 22, 2006.

HRS §§ 708-822(1)(b), 702-206(1), (2).

For definition of states of mind, see instruction:

6.02 - "intentionally"

6.03 - "knowingly"

For definition of terms defined by HRS Chapter 708, see instructions:

10.00 - “property”

10.00 - “property of another”

For prima facie inference and defense regarding Defendant's state of mind as to the value of the property, see instruction 10.00A(2) which embodies the statutory language of HRS § 708-801 (valuation of property). However, “HRS § 708-801, by its clear terms, applies only when ‘the value of property or services is determinative of the class or grade of an offense.’ . . . HRS § 708-822 does not, on its face, require a determination of the value of property; HRS § 708-822 refers to the amount of damage done by the offender not the value of the property damaged.” *State v. Pardee*, 86 Hawai'i 165, 168, 948 P.2d 586, 589 (App. 1997) (emphasis added). The Intermediate Court also found that even if HRS § 708-801 was applicable to criminal property damage offenses, the value of the damaged items had been sufficiently proved.

**10.09A CRIMINAL PROPERTY DAMAGE IN THE THIRD DEGREE:
HRS § 708-822(1)(b)
(Applicable to offenses that occurred on or before June 8, 2006)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Criminal Property Damage in the Third Degree.

A person commits the offense of Criminal Property Damage in the Third Degree if he/she intentionally damages the property of another, without the other's consent, in an amount exceeding [\$500*] [\$100].

There are four material elements of the offense of Criminal Property Damage in the Third Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant damaged the property of another; and
2. That the Defendant did so without the other's consent; and
3. That the damage to the property exceeded [\$500*] [\$100]; and
4. That the Defendant acted intentionally as to each of the foregoing elements.

Notes

HRS §§ 708-822(1)(b), 702-206(1).

For definition of states of mind, see instruction:

6.02 - "intentionally"

For definition of terms defined by HRS Chapter 708, see instructions:

10.00 - "property"

10.00 - "property of another"

For prima facie inference and defense regarding Defendant's state of mind as to

the value of the property, see instruction 10.00A(2) which embodies the statutory language of HRS § 708-801 (valuation of property). However, “HRS § 708-801, by its clear terms, applies only when ‘the value of property or services is determinative of the class or grade of an offense.’ . . . HRS § 708-822 does not, on its face, require a determination of the value of property; HRS § 708-822 refers to the amount of damage done by the offender not the value of the property damaged.” *State v. Pardee*, 86 Hawai‘i 165, 168, 948 P.2d 586, 589 (App. 1997) (emphasis added). The Intermediate Court also found that even if HRS § 708-801 was applicable to criminal property damage offenses, the value of the damaged items had been sufficiently proved.

*The \$500 amount is applicable to offenses that occur on or after June 17, 1996.