

FORM OF VERDICT

_____ We the jury find the defendant, Karen Dennis, guilty of the misdemeanor of computer trespass, Va. Code § 18.2-152.4, and fix her sentence at _____.

_____ We the jury find the defendant, Karen Dennis, guilty of the felony of computer trespass, Va. Code § 18.2-152.4, and fix her sentence at _____.

_____ We the jury find the defendant, Karen Dennis, not guilty of computer trespass.

_____ We the jury find the defendant, Karen Dennis, guilty of the misdemeanor of injury to property, Va. Code § 18.2-137, and fix her sentence at _____.

_____ We the jury find the defendant, Karen Dennis, guilty of the felony of injury to property, Va. Code § 18.2-137, and fix her sentence at _____.

_____ We the jury find the defendant, Karen Dennis, not guilty of injury to property.

_____ We the jury find the defendant, Karen Dennis, guilty of the misdemeanor of damaging a public building and fix her sentence at _____.

_____ We the jury find the defendant, Karen Dennis, guilty of the felony of damaging a public building and fix her sentence at _____.

_____ We the jury find the defendant, Karen Dennis, not guilty of damaging a public building.

FOREMAN

JURY INSTRUCTIONS

§ 18.2-137. Injuring, etc., any property, monument, etc.

If any person unlawfully destroys, defaces, damages or removes without the intent to steal any property, real or personal, not his own, or breaks down, destroys, defaces, damages or removes without the intent to steal, any monument erected for the purpose of marking the site of any engagement fought during the War between the States, or for the purpose of designating the boundaries of any city, town, tract of land, or any tree marked for that purpose, he shall be guilty of (i) a Class 1 misdemeanor if the value of or damage to the property or monument is less than \$1,000 or (ii) a Class 6 felony if the value of or damage to the property or monument is \$1,000 or more. The amount of loss caused by the destruction, defacing, damage or removal of such property or monument may be established by proof of the fair market cost of repair or fair market replacement value.

Annotations

Editor's note. - The above section is § 18.2-137 as enacted by Acts 1975, c. 598. Pursuant to § 9-77.11, it has been substituted for § 18.2-137 as enacted by Acts 1975, cc. 14 and 15.

One may be convicted of destruction of private property and burglary. - One may be convicted of destruction of private property in violation of this section, in addition to being convicted of burglary in violation of § 18.2-91, as a result of causing damage to property when breaking and entering a building because each offense requires proof of a fact not required for the other. *Fitzgerald v. Commonwealth*, 11 Va. App. 625, 401 S.E.2d 208 (1991).

Prosecution for breaking and entering and destroying private property not barred by § 19.2-294. - Section 19.2-294, which bars a prosecution for a violation of one statute if a defendant has been convicted of violation of another statute for the same act, is inapplicable where the "same act" involved was the breaking of the doors of the places broken into. This act, although common to both the

convictions of breaking and entering and the convictions for destroying private property, was a violation of this section, destroying private property, but was not a violation of § 18.2-91, statutory burglary. Thus, the same act was a violation of only one of the two statutes, not both. *Fitzgerald v. Commonwealth*, 11 Va. App. 625, 401 S.E.2d 208 (1991).

Act done under bona fide claim of right. - A defendant cannot be convicted under this section where the act complained of was done under a bona fide claim of right. *Wise v. Commonwealth*, 98 Va. 837, 36 S.E. 479 (1900). Criminal responsibility attaches to lawful act done in a criminally negligent manner. - Criminal responsibility under this section attaches when property is damaged or destroyed during the commission of an unlawful act, which includes the performance of a lawful act in a criminally negligent manner. *Crowder v. Commonwealth*, 16 Va. App. 382, 429 S.E.2d 893 (1993). Applied in *Martin v. Taylor*, 857 F.2d 958 (4th Cir. 1988).

§ 18.2-138. Damaging public buildings, etc.; penalty.

Any person who willfully and maliciously (i) breaks any window or door of the Capitol, any courthouse, house of public worship, college, school house, city or town hall, or other public building or library, (ii) damages or defaces the Capitol or any other public building or any statuary in the Capitol, on the Capitol Square, or in or on any other public buildings or public grounds, or (iii) destroys any property in any of such buildings shall be guilty of a Class 6 felony if damage to the property is \$1,000 or more or a Class 1 misdemeanor if the damage is less than \$1,000.

Any person who willfully and unlawfully damages or defaces any book, newspaper, magazine, pamphlet, map, picture, manuscript, or other property located in any library, reading room, museum, or other educational institution shall be guilty of a Class 6 felony if damage to the property is \$1,000 or more or a Class 1 misdemeanor if the damage is less than \$1,000.

§ 18.2-152.4. Computer trespass; penalty.

A. A person shall be guilty of the crime of computer trespass if he uses a computer or computer network without authority and with the intent to:

1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network;
2. Cause a computer to malfunction regardless of how long the malfunction persists;
3. Alter or erase any computer data, computer programs, or computer software;
4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;
5. Cause physical injury to the property of another; or
6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

Computer trespass shall be punishable as a Class 3 misdemeanor. If there is damage to the property of another valued at \$2,500 or more caused by such person's reckless disregard for the consequences of his act in violation of this section, the offense shall be punished as a Class 1 misdemeanor. If there is damage to the property of another valued at \$2,500 or more caused by such person's malicious act in violation of this section, the offense shall be punishable as a Class 6 felony.

B. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services, or computer software.

Annotations

The 1998 amendment added the subsection A designation; in present subsection A, substituted "A person shall be guilty of the crime of computer trespass if he" for "Any person who," in subdivision 1, inserted "halt, or otherwise disable any," divided former subdivision 6 into present subdivision 6 and the paragraph following subdivision 6; in present subdivision 6, deleted "shall be guilty of the crime of computer trespass, which," in the paragraph following subdivision 6, added "Computer trespass," substituted "Class 3" for "Class 1," deleted the second sentence which

read: "If such act is done maliciously and the value of the property damaged is \$2,500 or more, the offense shall be punishable as a Class 6 felony"; added the last two sentences; and added subsection B.

Cross references. - As to punishment for Class 6 felonies, see § 18.2-10.

As to punishment for Class 1 and Class 3 misdemeanors, see § 18.2-11.

Law review. - For article on Virginia's response to computer abuses, see 19 U. Rich. L. Rev. 85 (1984).