

210.60 CHILD ABDUCTION. FELONY.

The defendant has been charged with child abduction.

For you to find the defendant guilty of this offense the State must prove three things beyond a reasonable doubt.

First, that the victim was a minor child who was at least four years younger than the defendant. A minor child is one who has not reached the age of 18 years.¹

Second, that the minor child was in the custody, placement, or care of a person, agency, or institution lawfully entitled to the child's custody.

And Third, that the defendant, without legal justification or defense, [abducted the minor child from] [induced the minor child to leave] the person, agency or institution lawfully entitled to the child's custody. [To abduct means to take and carry a child away from one place to another place by force, violence, threat, intimidation, or fraud.²] [To induce means to persuade or entice without using force, violence, threat, intimidation, or fraud. (If the defendant persuaded or enticed the minor child to leave the person, agency or institution lawfully entitled to the minor child's custody, the minor child's consent or agreement to go is no defense. If, however, the minor child on his own decided to leave the person, agency or institution lawfully entitled to the minor child's custody and the defendant did nothing to persuade or entice the child to do so, there would be no inducement and the defendant would be not guilty.)³]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the victim was a minor child who was at least four years younger than the defendant and that the defendant, without legal justification or defense, [abducted the minor child from] [induced the

minor child to leave] the person, agency, or institution lawfully entitled to the minor child's custody, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

NOTE WELL: If the defendant contends that the defendant made a mistake of identity, incorporate the following additional instruction and mandate.⁴

(The defendant contends that the defendant made a mistake of identity; that is, that the defendant took the child mistaking the child for (*name other child*). If the defendant in good faith and with due care took the victim by mistake, the defendant's act is excused and the defendant would not be guilty. In determining whether the defendant made a mistake of identity in good faith and with due care, you should consider all of the facts and circumstances existing at the time as you find them from the evidence.)

NOTE WELL: If the defendant contends that he had or thought he had the consent of some person to take the child, incorporate the following additional instruction and mandate.

(The defendant contends that (*name person*) gave consent to the defendant to take the minor child. If the defendant had the consent of (*name person*), or reasonably believed that such consent had been given, the defendant's act is excused, and the defendant would not be guilty. In determining whether the defendant had the consent of (*name person*) or reasonably believed that such consent had been given, you should consider all of the facts and circumstances existing at the time.)

1. See N.C. Gen. Stat. § 48A-2.

2. See *S. v. George*, 93 N.C. 567 (1885); *S. v. Chisenhall*, 106 N.C. 676 (1890).

3. *S. v. Chisenhall*, 106 N.C. 676, (1890); *S. v. Burnett*, 142 N.C. 577, (1906).

4. A mistake of identity would negate the defendant's criminal intent and constitute a legal excuse if (1) he would be guilty of no crime had the victim been whom he believed him to be, and (2) the mistake of identity was made in good faith and with due care. *S. v. Walker*, 35 N.C. App. 182 (1978).