

216.90 UNAUTHORIZED USE OF A CONVEYANCE. FELONY.
MISDEMEANOR.

The defendant has been charged with unauthorized use of a conveyance.

For you to find the defendant guilty of this offense, the State must prove four things beyond a reasonable doubt:

First, that the defendant [took] [operated] a (*describe conveyance*).¹

Second, that this (*describe conveyance*) was the property of another.

Third, that the defendant did not have the express or implied consent of the [owner] [person in lawful possession] to [take] [operate] it.

(A person gives express consent when *he* agrees in fact to the specific act of another. A person gives implied consent, even if *he* does not intend to do so, when *he* acts in such a way as to create in the mind of another person the reasonable belief that *he* has agreed to an act of that person.)

(²The mere fact that [owner] [person in lawful possession] may have consented on a prior occasion to the defendant's [taking] [operating] (*name conveyance*) (or another conveyance) does not, of itself, establish that the [owner] [person in lawful possession] consented to the defendant's [taking] [operation] on this occasion. However, any prior consent by the [owner] [person in lawful possession] would be evidence which you may consider along with all the other evidence in this

case in determining whether any belief on the part of the defendant was reasonable.)

And Fourth, that the defendant acted willfully, knowing that *he* was not entitled to [take] [operate] the (*describe conveyance*).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully [took] [operated] a (*describe conveyance*) that was the property of another and that the [owner] [person in lawful possession] did not expressly or impliedly consent, 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.

1. Included are aircraft, motorboats, motor vehicles and other motor propelled conveyances. The doctrine of recent possession is applicable to this crime. *S. v. Frazier*, 269 N.C. 249 (1966).

2. Use this paragraph only when there is evidence of prior consent.