

216.97 UNLAWFUL TAKING AND CARRYING AWAY OF ANY [HORSE] [MARE]  
[GELDING] [MULE] [DOG] WITH THE INTENT TO DEPRIVE THE OWNER OF  
THE [SPECIAL] [TEMPORARY] USE OF SUCH PROPERTY. MISDEMEANOR.

The defendant has been charged with unlawfully, secretly and against the will of the owner taking and carrying away a [horse] [mare] [gelding] [mule] [dog] with intent to deprive the owner of the [special] [temporary] use of the property.<sup>1</sup>

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

First, that the defendant took and carried away a [horse] [mare] [gelding] [mule] [dog] belonging to another person.<sup>2</sup>

Second, that the defendant did this unlawfully, secretly and against the will of the owner.

And Third, that the defendant did this with the intent to deprive the owner of the [special] [temporary] use of the animal.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away the [horse] [mare] [gelding] [mule] [dog] belonging to another person, that the defendant did this unlawfully, secretly and against the will of the owner and that the defendant intended to deprive the owner of the [special] [temporary] use of the [horse] [mare] [gelding] [mule] [dog], then 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.

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1. If wrongful appropriation of more than one of the specified animals is charged, the instruction should be changed to the plural. See G.S. 12-3(1).

2. If there is evidence of conduct which would constitute "taking" but there is also evidence that the defendant's conduct fell short of what would constitute "taking," add the following to this element: "(Describe conduct which would constitute a taking) would be a taking." See *S. v. Carswell*, 296 N.C. 101 (1978).