

217.10 COMMON LAW ROBBERY. FELONY.

The defendant has been charged with common law robbery, which is taking and carrying away personal property of another from his/her person or in his/her presence without his/her consent by violence or by putting him/her in fear, and with the intent to deprive him/her of its use permanently, the taker knowing that he/she was not entitled to take it.

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

First, that the defendant took property from the person of (*name alleged victim(s)*)<sup>1</sup> or in the presence of (*name alleged victim(s)*).<sup>2</sup>

Second, that the defendant carried away the property.<sup>3</sup>

Third, that (*name alleged victim(s)*) did not voluntarily consent to the taking and carrying away of the property.

Fourth, that at the time, the defendant intended to deprive (*name alleged victim(s)*) of its use permanently.<sup>4</sup>

Fifth, that the defendant knew the defendant was not entitled to take the property.<sup>5</sup>

And Sixth, that the taking was by violence or by putting (*name alleged victim(s)*) in fear.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away property from the person or the presence of (*name alleged victim(s)*) without (*name alleged victim's*) voluntary consent, by violence or by putting (*name alleged victim(s)*) in fear, the defendant knowing that the *defendant* was not entitled to take it and intending at that time to deprive (*name alleged victim(s)*) of its use permanently, it would be your duty to return a verdict of guilty. If you do not so find or have a

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reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.<sup>6</sup>

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<sup>1</sup>. See *State v. McLymore*, 2021-NCCOA-425, ¶ 23 (noting that “it is better practice to designate in the robbery with a firearm jury instruction the individual(s) named in the indictment as the alleged victim(s)”).

<sup>2</sup>. 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: “To constitute a taking the defendant must have the property in his possession or under his control, if only for an instant. There must be a severance of the property from the owner's possession.” See *State v. Carswell*, 296 N.C. 101 (1978).

<sup>3</sup>. If there is some dispute as to asportation, the jury should be told that the slightest movement is sufficient.

<sup>4</sup>. In the event that there is some dispute as to permanent deprivation, the jury should be told that temporary deprivation will not suffice. *But cf. State v. Smith*, 268 N.C. 167 (1966).

<sup>5</sup>. In the event that a defendant relies on claim of right, the jury should be told that if the defendant honestly believed he was entitled to take the property, he cannot be guilty of robbery.

<sup>6</sup>. If there is to be instruction on lesser included offenses, the last phrase should be: “...you will not return a verdict of guilty of common law robbery.”