

217.25 ATTEMPTED ROBBERY WITH A FIREARM.¹ FELONY.

The defendant has been charged with attempted robbery with a firearm, which is attempting to rob another by endangering or threatening *him* with a firearm.

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

First, that the defendant intended to rob a person, that is to take and carry away personal property from that person or in *his* presence without *his* consent, knowing that *he*, the defendant, was not entitled to take it, intending to deprive that person of its use permanently.²

Second, that the defendant had a firearm in *his* possession.

Third, that defendant [used] [threatened to use] the firearm in such a way as to endanger or threaten the life of [that person] [another person].

And Fourth, that the defendant's [use] [threatened use] of the firearm was calculated and designed to bring about the robbery [but which fell short of the completed offense] [and which in the ordinary and likely course of things the defendant would have completed the robbery had the defendant not been stopped or prevented from completing the defendant's apparent course of action]. (Mere preparation or mere planning is not enough to constitute such an act, but the act need not be the last act required to complete the crime.)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intended to rob a person and that in furtherance of this intent, the defendant possessed a firearm which *he* [used] [threatened to use] in such a manner as to endanger or threaten the life of [that person] [another person] and that the defendant's [use] [threatened

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use] of the firearm was calculated and designed to bring about the robbery [but which fell short of the completed offense] [and which in the ordinary and likely course of things the defendant would have completed the robbery had the defendant not been stopped or prevented from completing the defendant's apparent course of action], 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.³

1. If defendant is charged with attempted robbery with a dangerous weapon other than a firearm, integrate the sixth element of N.C.P.I.—Crim. 217.30 into this charge.

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

3. If there is to be an instruction on lesser included offenses, the last phrase should be, " . . . you will not return a verdict of guilty of attempted robbery with a firearm." Note that common law robbery is not a lesser included offense but attempted common law robbery would be a lesser included offense. *S. v. Hare*, 243 N.C. 262 (1955). In *S. v. White*, 322 N.C. 506 (1988), the North Carolina Supreme Court, *overruling S. v. Hurst*, 320 N.C. 589 (1987) held that larceny and common law robbery are lesser-included offense of armed robbery. Accordingly, instructions on attempted common law robbery or attempted larceny should be given when raised by the evidence.