

216.59C ASSAULT DURING ORGANIZED RETAIL THEFT. MISDEMEANOR.

The defendant has been charged with assault during organized retail theft.

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

First, that the defendant conspired with another person (name other person)¹ to commit theft of retail property² from (a) retail establishment(s). A conspiracy is an agreement between two or more people to do an unlawful act or to do a lawful act in an unlawful manner.³ Theft is the taking possession of, carrying away, transferring, or causing to be carried away the retail property of another with the intent to steal the retail property.

Second, that the value⁴ of the retail property exceeded \$1,000.

And Third, that the defendant committed an act of assault and battery⁵ against [an employee of the retail establishment] [an independent contractor of the retail establishment] [a law enforcement officer] in the commission of the theft.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant conspired with another person (name other person) to commit theft of retail property from (a) retail establishment(s), the value of the retail property exceeded \$1,000, and that the defendant committed an act of assault and battery against [an employee of the retail establishment] [an independent contractor of the retail establishment] [a law enforcement officer] in the commission of the theft, 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. If one or more co-conspirators are named in the indictment, state their names. The jury must find that the defendant entered into an agreement with at least one of the named persons. *State v. Minter*, 111 N.C. App. 40 (1993), *cert. denied*, 335 N.C. 241 (1993). *See also, State v. Mickey*, 207 N.C. 608 (1935).

2. According to G.S. 14-86.5(1) “retail property” is any new article, product, commodity, item or component intended to be sold in retail commerce.

3. See *State v. Shelly*, 181 N.C. App. 608 (2007) (citations omitted).

4. According to G.S. 14-86.5(4) “value” is the retail value of an item as advertised by the affected retail establishment, to include all applicable taxes.

5. For a definition of assault and battery, see N.C.P.I.—Crim. 120.20, Definition of Assault.