

217.30 ROBBERY WITH A DANGEROUS WEAPON-OTHER THAN A FIREARM¹
COVERING COMMON LAW ROBBERY AS A LESSER INCLUDED OFFENSE.
FELONY.

The defendant has been charged with robbery with a dangerous weapon, which is taking and carrying away the personal property of another from his person or in his presence without his consent by endangering or threatening a person's life with a dangerous weapon, the taker knowing that he was not entitled to take the property and intending to deprive another of its use permanently.

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

First, that the defendant took property from the person of another or in his presence.²

Second, that the defendant carried away the property.³

Third, that the person did not voluntarily consent to the taking and carrying away of the property.

Fourth, that the defendant knew he was not entitled to take the property.

Fifth, that at the time of the taking the defendant intended to deprive that person of its use permanently.⁴

Sixth, that the defendant had a dangerous weapon⁵ in his possession at the time he obtained the property (or that it reasonably appeared to the victim that a dangerous weapon was being used, in which case you may infer that the said instrument was what the defendant's conduct represented it to be).⁶

A dangerous weapon is a weapon which is likely to cause death or serious bodily injury.

And Seventh, that the defendant obtained the property by endangering or threatening the life of [that person] [another person] with the dangerous weapon.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant had in his possession a dangerous weapon and took and carried away property from the person or in the presence of a person without his voluntary consent by endangering or threatening [his] [another person's]

life with the use or threatened use of a dangerous weapon, the defendant knowing that he was not entitled to take the property and intending to deprive that person of its use permanently, it would be your duty to return a verdict of guilty of robbery with a dangerous weapon. If you do not find the defendant guilty of robbery with a dangerous weapon you must determine whether the defendant is guilty of common law robbery.

Common law robbery is the taking and carrying away of the personal property of another from his person or in his presence without his consent by violence or by putting him in fear, and with the intent to deprive him of its use permanently, the taker knowing that he was not entitled to take it.

For you to find the defendant guilty of common law robbery, the State must prove six things beyond a reasonable doubt:

First, that the defendant took property from the person of another or in his presence.

Second, that the defendant carried away the property.

Third, that the other person did not voluntarily consent to the taking and carrying away of the property.

Fourth, that at the time, the defendant intended to deprive him of its use permanently.

Fifth, that the defendant knew he was not entitled to take the property.

And Sixth, that the taking was by violence or by putting the person 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 a person without his voluntary consent, by violence or by putting that person in fear, the defendant knowing that he was not entitled to take it and intending at that time to deprive the person of its use permanently, it would be your duty to return a verdict of guilty of common law robbery. 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.⁷

1 This instruction is to be used when the robbery was completed. If there may have been only an attempt, which is also punishable under G.S. 14-87, N.C.P.I.–Crim. 217.25 should be used (modified for dangerous weapon). If there is conflicting evidence on this point, both instructions may be given.

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: “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 *S. v. Carswell*, 296 N.C. 101 (1978).

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

4 In the event there is some dispute as to permanent deprivation the jury should be told that intent to deprive temporarily will not suffice. See *S. v. Smith*, 268 N.C. 167 (1996).

5 In the event there is some dispute as to the nature of the weapon the jury should be told in determining whether the weapon was a dangerous weapon, you should consider

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the nature of the weapon, the manner in which it was used, and the size and strength of the defendant as compared to the victim.

6 See *State v. Williams*, 335 N.C. 518 (1994), regarding a mandatory presumption of dangerous or deadly weapon in certain factual situations.

7 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." In *S. v. White*, 322 N.C. 506, 369 S.E.2d 813 (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. N.C. Gen. Stat. § 14-87(a1) provides that attempted armed robbery with dangerous weapon is a lesser-included offense of armed robbery. Accordingly, instructions on these and other lesser-included offenses should be given when raised by the evidence.