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219.10A OBTAINING PROPERTY BY FALSE PRETENSES (VALUE OF PROPERTY  
\$100,000 OR MORE). FELONY.

*NOTE WELL: For offenses occurring before December 1, 1997, or  
if the value is less than one hundred thousand dollars (\$100,000),  
use N.C.P.I.–Crim. 219.10.*

The defendant has been charged with obtaining property worth  
\$100,000 or more by false pretenses.

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

First, that the defendant made a representation to another.

Second, that this representation was false.

Third, that this representation was calculated and intended to deceive.<sup>1</sup>

Fourth, that the victim was in fact deceived by this representation.

Fifth, that the defendant thereby [obtained] [attempted to obtain]  
property from the victim.<sup>2</sup>

And Sixth, that the property was worth \$100,000 or more.

If you find from the evidence beyond a reasonable doubt that on or  
about the alleged date, the defendant made a representation and that this  
representation was false, that this representation was calculated and intended  
to deceive, that the victim was in fact deceived by it, that the defendant  
thereby [obtained] [attempted to obtain] property from the victim, and that  
the property was worth \$100,000 or more, it would be your duty to return a  
verdict of guilty of obtaining property worth \$100,000 or more by false  
pretenses. If you do not so find or have a reasonable doubt as to one or more  
of these things, you will not return a verdict of guilty of obtaining property  
worth \$100,000 or more by false pretenses<sup>3</sup>, but you must determine whether

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*the defendant* is guilty of obtaining property by false pretenses. Obtaining property by false pretenses differs from obtaining property worth \$100,000 or more by false pretenses in that the value of the property need not be worth \$100,000 or more.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant made a representation and that this representation was false, that this representation was calculated and intended to deceive, that the victim was in fact deceived by it, and that the defendant thereby [obtained] [attempted to obtain] property from the victim, 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 See *State v. Holanek*, 776 S.E.2d 225 (N.C. Ct. App. 2015), holding that the trial court did not commit plain error by failing to instruct the jury that under G.S. 14-100(b) “evidence of nonfulfillment of a contract obligation standing alone shall not establish the essential element of intent to defraud.”

2 Normally it will be necessary for the defendant to obtain title to the property. However, under the terms of the statute, if the defendant obtains the property in a manner which would constitute larceny or embezzlement, he is subject to conviction. In a single transaction resulting in obtaining certain items, but not others, the defendant cannot be convicted of both obtaining property by false pretenses and attempting to obtain property by false pretenses. See *State v. Buchanan*, \_\_\_ N.C. App. \_\_\_, 810 S.E.2d 366 (2017).

3 If there is to be no instruction on lesser included offense, the last phrase should be ... it would be your duty to return a verdict of not guilty.”