

219.10 OBTAINING PROPERTY BY FALSE PRETENSES. FELONY.<sup>1</sup>

*NOTE WELL: For offenses occurring on or after December 1, 1997, if the value of the property obtained is \$100,000 or more, use N.C.P.I.—Crim. 219.10A.*

The defendant has been charged with obtaining property by false pretenses. For you to find the defendant guilty of this offense, the State must prove five things beyond a reasonable doubt:

First, that the defendant made a representation<sup>2</sup> to another.

Second, that this representation was false.

Third, that this representation was calculated and intended to deceive.<sup>3</sup>

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

And Fifth, that the defendant thereby [obtained] [attempted to obtain] property from the alleged victim.<sup>4</sup>

*NOTE WELL: In appropriate cases, instruct the jury as follows: "The State is not required to establish that all of the acts constituting the crime occurred in this State or within a single city, county, or local jurisdiction of this State, and it is no defense that not all of the acts constituting the crime occurred in this State or within a single city, county, or local jurisdiction of this State." N.C.G.S.14-100 (b1).*

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 alleged victim was in fact deceived by it, and that the defendant thereby [obtained] [attempted to obtain] property from the alleged 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. This instruction has been modified to conform with elements of the offense as set out in *S. v. Cronin*, 299 N.C. 229, 242 (1980).

The presentation of a worthless check in exchange for property, standing alone, is sufficient to uphold conviction for obtaining property under false pretenses. *S. v. Rogers*, 346 N.C. 262 (1997).

2. See *State v. Eakes*, 853 S.E.2d 871, 2021-NCCOA-26 (2021) (unpublished decision) (concluding that there was no reversible error where the trial court instructed on a “representation” generally, rather than the specific representation as alleged in the indictment).

3. 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.”

4. 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.