

CARJACKING
(N.J.S.A. 2C:15-2)

The defendant is charged in Count _____ with the crime of carjacking. The indictment in pertinent part reads as follows:

(Read Indictment)

The pertinent part of the statute on which this indictment is based reads as follows:

A person is guilty of carjacking if, in the course of committing an unlawful taking of a motor vehicle, or in an attempt to commit an unlawful taking of a motor vehicle, he:

(Select Appropriate)

- (a) inflicts bodily injury or uses force upon an occupant or person in possession or control of a motor vehicle;

OR

- (b) threatens an occupant or person in control of a motor vehicle with, or purposely or knowingly puts an occupant or person in control of the motor vehicle in fear of, immediate bodily injury;

OR

- (c) commits or threatens immediately to commit any crime of the first or second degree;

OR

- (d) operates or causes said vehicle to be operated with the person who was in possession or control or was an occupant of the motor vehicle at the time of the taking remaining in the vehicle.

In order for you to find the defendant guilty of carjacking, the State is required to prove each of the following elements beyond a reasonable doubt:

1. that the defendant was in the course of committing an unlawful taking of a motor

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vehicle;

AND

2. that while in the course of committing an unlawful taking of a motor vehicle the defendant

(Choose from the following)

- a. knowingly inflicted bodily injury or used force upon an occupant or person in possession or control of a motor vehicle

OR

- b. knowingly threatened an occupant or person in control with, or purposely or knowingly¹ put an occupant or person in control of the motor vehicle in fear of, immediate bodily injury

OR

- c. committed or knowingly threatened immediately to commit the crime of _____, which is a crime of the (first or second) degree

OR

- d. knowingly operated or caused said vehicle to be operated with the person who was in possession or control or was an occupant of the motor vehicle at the time of the taking remaining in the vehicle.

As I have said, the State must prove, beyond a reasonable doubt, that the defendant was in the course of committing an unlawful taking of a motor vehicle. In this connection, you are advised that an act is considered to be “in the course of committing an unlawful taking of a motor vehicle” if it occurs during an attempt to commit the unlawful taking, during the commission of the unlawful taking, or during an immediate flight after the attempt or commission.

¹ The State must prove only the lowest culpability state as specified to prove this element. State v. Murphy 185 N.J. Super 72, 76 (Law Div. 1982).

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An unlawful taking of a motor vehicle is defined as the taking, operation or exercise of control over the motor vehicle, without consent of the owner or other person authorized to give consent, with the purpose of either permanently depriving the owner of the motor vehicle or temporarily withholding the motor vehicle from the owner or other person in control of the motor vehicle.²

The term “motor vehicle” includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks, and does not include motorized bicycles.³

I have used the word “purposely.” I shall now explain what that means. A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts “purposely” with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist.

I have also used the word “knowingly.” A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if the person is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if the person is aware that it is practically certain that the conduct will cause such a result.

Remember that when we speak of knowingly and purposely we are speaking of conditions of the mind that cannot be seen. It is not necessary for the State to prove the existence

² State v. Garretson, 313 N.J. Super. 348, 359-361 (App. Div. 1998); State v. Zadoyan, 290 N.J. Super. 280, 287 (App. Div. 1996).

³ State v. Zadoyan, *supra*, 290 N.J. Super. at 287; N.J.S.A. 2C:1-14n; N.J.S.A. 39:1-1.

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of such mental states by direct evidence such as a statement by the defendant that he/she had particular knowledge or a particular purpose. Knowledge and purpose as separate propositions of proof do not commonly exist. They must ordinarily be discovered as other mental states are from circumstantial evidence; that is, by reference to the defendant's conduct, words or acts and all the surrounding circumstances.

In addition to proving beyond a reasonable doubt that the defendant was in the course of committing an unlawful taking of a motor vehicle as I have defined “in the course of,” the State must also prove, beyond a reasonable doubt, that while in the course of committing that unlawful taking of the motor vehicle:

(Charge the alternatives that follow, depending on the nature of the case.)

1. The defendant knowingly inflicted bodily injury or used force upon an occupant or person in possession or control of the motor vehicle. The phrase “bodily injury” means physical pain, illness, or any impairment of physical condition. “Force” means any amount of physical power or strength used against the victim to take control of the motor vehicle.⁴ The force need not entail pain or bodily harm and need not leave any mark. Nevertheless, the force must be directed against the victim, not merely the victim’s vehicle.⁵

OR

2. The defendant knowingly threatened an occupant or person in possession or control of a motor vehicle with, or purposely or knowingly put that person in fear of, immediate bodily injury. The phrase “bodily injury” means physical pain, illness or any impairment of

⁴ State v. Williams, 289 N.J. Super. 611, 617 (App. Div. 1996).

⁵ If there are multiple occupants of the carjacked vehicle and if the facts warrant, the jury may need to be instructed that it must be unanimous that force was used against a particular occupant. See State v. Gentry, 183 N.J. 30 (2005). The court should use a special verdict form with an interrogatory to determine if the jury found force against any particular victim.

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physical condition. Although no bodily injury need have resulted, the prosecution must prove beyond a reasonable doubt that the defendant either threatened the victim with or purposely or knowingly put him/her in fear of such bodily injury.

OR

3. The defendant committed or knowingly threatened immediately to commit _____, a crime of the first or second degree. **(here specify the first or second degree crime alleged by the State and define to the extent necessary, and where appropriate, differentiate between first and second degree crimes and any lesser offenses for which there is a rational basis in the evidence)** while in the course of committing the unlawful taking of a motor vehicle.

OR

4. The defendant knowingly operated or caused said vehicle to be operated with the person who was in possession or control or was an occupant of the motor vehicle at the time of the taking remaining in the vehicle.

Defendant's threat or use of force must be directed against either an "occupant" or a "person in possession or control" of a motor vehicle. However, the person need not actually be inside the motor vehicle when force is employed or threatened. A person may be either an "occupant" or "in possession or control" of a motor vehicle even when he/she temporarily steps out of the motor vehicle.⁶

If you find that the State has not proven beyond a reasonable doubt that the defendant committed the crime of carjacking as I have defined that crime to you, then you must find the

⁶ State v. Williams, 289 N.J. Super. 611, 616-617 (App. Div. 1996).

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defendant not guilty.

If you find that the State has proven beyond a reasonable doubt that the defendant committed the crime of carjacking, then you must find the defendant guilty.