

ROBBERY IN THE FIRST DEGREE
(N.J.S.A. 2C:15-1)

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

(Read Indictment)

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

A person is guilty of robbery if, in the course of committing a theft, he:

(Select appropriate)

- (a) knowingly¹ inflicts bodily injury or uses force² upon another;

or
- (b) threatens another with or purposely puts him/her in fear of immediate bodily injury;

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

In order for you to find the defendant guilty of robbery, 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 a theft³,
- 2. that while in the course of committing that theft the defendant

(Choose from the following three)

- a. knowingly inflicted bodily injury or used force upon another.⁴
- b. threatened another with or purposely put him/her in fear of immediate

¹ In State v. Sewell, 127 N.J. 133 (1992) the Supreme Court held that the State must prove "knowledge" as the requisite mental state for the injury/force element of robbery.

² Note: If the crime occurred before February 6, 1981, the jury should not be instructed on the use of force element. See L. 1981, c. 22, § 1 adding "use of force" to (a)(1).

³ As a result of the statutory consolidation of all theft crimes, the Supreme Court has recognized that, depending upon the circumstances, a trial judge may need to charge the jury with a lesser related theft crime that would not necessarily be a lesser included offense to robbery because of additional elements that may be required to prove the lesser offense. State v. Smith, 136 N.J. 245, 250-51 (1994); see also State v. Talley, 94 N.J. 385, 393 (1983); State v. Thomas, 187 N.J. 119, 129-36 (2006), (Explaining the distinction between lesser-included offenses, which may be requested by any party, or which the court has an independent duty to charge, and factually-related offenses, such as here, which may only be charged at the request of the defendant).

⁴ State v. Mirault, 92 N.J. 492, 498-99 (1983), holds that "another" can include a responding police

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bodily injury.

c. committed or threatened immediately to commit the crime of _____.⁵

As I have said, the State must prove, beyond a reasonable doubt, that the defendant was in the course of committing a theft. In this connection, you are advised that an act is considered to be "in the course of committing a theft" if it occurs in an attempt⁶ to commit the theft, during the commission of the theft itself, or in immediate flight after the attempt or commission.⁷

Theft is defined as the unlawful taking, or exercise of unlawful control over property of another with purpose to deprive him/her thereof.⁸

I have used the phrase "with purpose." You may hear me use that phrase or the word "purposely" again. 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. "With purpose", "designed", "with design", or equivalent terms, have the same meaning. Purpose is a state of mind that cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that the State produce witnesses to testify that a defendant said that he/she purposely did something. His/her purpose may be gathered from his/her acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances reflected in the testimony [and adduced at trial].

In addition to proving beyond a reasonable doubt that the defendant was in the course of committing a theft, the State must also prove, beyond a reasonable doubt, that while in the course

officer or someone else other than the victim of the theft.

⁵ The statute refers to crimes of the first or second degree. The proofs must indicate a specific crime and the jury must be charged the elements of that offense.

⁶ If attempt is involved, define attempt. See N.J.S.A. 2C:5-1a.

⁷ This N.J.S.A. 2C:15-1 statutory definition of "in the course of committing a theft" has been interpreted literally. See State v. Mirault, 92 N.J. at 500-01. However, the Supreme Court in State v. Whitaker, 200 N.J. 444 (2009), stressed that a defendant can be held liable as an accomplice to robbery only if he/she possessed the purpose to promote or facilitate the theft committed by the principal. A defendant cannot be convicted of robbery as an accomplice based solely on conduct occurring after the principal's commission of the theft. Id. at 461-64 (overruling State v. Williams, 232 N.J. Super. 432, 436-37 (App. Div.), certif. denied, 118 N.J. 208 (1989); State v. Baker, 303 N.J. Super. 411, 416 (App. Div.), certif. denied, 151 N.J. 470 (1997)).

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of committing that theft

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

1. The defendant knowingly inflicted bodily injury or used force⁹ upon another.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature or that such circumstances exist or if he/she is aware of a high probability of their existence. A person acts knowingly with respect to the result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result.

Knowledge is a condition of the mind that cannot be seen and that can be determined only by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of the defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances. The phrase "bodily injury" means physical pain, illness, or any impairment of physical condition. "Force" means an amount of physical power or strength used against the victim and not simply against the victim's property. The force need not entail pain or bodily harm and need not leave any mark. Nevertheless, the force must be greater than that necessary merely to snatch the object from the victim's grasp or the victim's person, and the force must be directed against the victim, not merely the victim's property.¹⁰

**(CHARGE THE FOLLOWING IF THERE IS AN ISSUE REGARDING THE
TIMING OF THE USE OF FORCE)**

To find the defendant guilty of robbery, the intent to commit theft must precede or be coterminous with the use of force. In other words, the defendant must have formed the intent to commit a theft before or during his/her use of force. If you find the defendant formed the intent to commit a theft after his/her use of force, then he/she cannot be found guilty of robbery.¹¹

⁸ See N.J.S.A. 2C:20-3 and charge elements of theft appropriate to your case.

⁹ For theft from the person where the amount of force does not elevate the charge to robbery, see Model Charge for N.J.S.A. 2C:20-3a (Theft of Movable Property).

¹⁰ State v. Sein, 124 N.J. 209, 217-18 (1991).

¹¹ State v. Lopez, 187 N.J. 91, 101 (2006).

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**[IF MULTIPLE VICTIMS ARE ALLEGED AND THE FACTS WARRANT, CHARGE
THE FOLLOWING:**

To find the defendant guilty of robbery, you must be unanimous that the defendant used force against (**NAME OF VICTIM NUMBER ONE**) or (**NAME OF VICTIM NUMBER TWO**). In other words, if you find that the defendant used force, but do not unanimously agree that he/she used force against (**NAME OF VICTIM**), then the State has failed to prove the existence of force beyond a reasonable doubt.^{12]}

or

2. The defendant threatened another with or purposely put him/her in fear of immediate bodily injury. The phrase "bodily injury" means physical pain, illness or any impairment of physical condition. Although no bodily injury need have resulted, the prosecution must prove that the defendant either threatened the victim with or purposely put him/her in fear of such bodily injury;

or

3. The defendant committed or threatened immediately to commit (here specify the first or second degree crime alleged by the State and define to the extent necessary) while in the course of committing the theft.

[Charge when a real weapon is used or believed to be used]

In this case, it is alleged that the defendant was armed with (used or threatened the immediate use of) a deadly weapon while in the course of committing the robbery. In order for you to determine the answer to this question, you must understand the meaning of the term "deadly weapon."¹³ A "deadly weapon" is any firearm or other weapon, device, instrument, material or substance (whether animate or inanimate) which in the manner it is used or intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury.

(If the element that raises the robbery to first degree is that the actor was armed with, or used or threatened the immediate use of a deadly weapon, charge as follows)

A section of our statute provides¹⁴ that robbery is a crime of the second degree, except

¹² 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.

¹³ See N.J.S.A. 2C:11-1(c) - Note that this definition was amended by L. 1981 c. 384, sec. 1 eff. January 4, 1982.

¹⁴ N.J.S.A. 2C:15-1b.

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that it is a crime of the first degree if the actor:

Is armed with, or uses or threatens the immediate use of a deadly weapon.

[CHARGE WHEN A REAL WEAPON IS ALLEGED TO BE USED]

In this case, the State must prove beyond a reasonable doubt that the defendant was armed with (used or threatened the immediate use of) a deadly weapon while in the course of committing the robbery. "Armed with a deadly weapon" means that defendant possessed and had immediate access to a deadly weapon. A "deadly weapon" is any firearm or other weapon, device, instrument, material or substance (whether animate or inanimate) which in the manner it is used or intended to be used, is known to be capable of producing death or serious bodily injury.¹⁵ "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.¹⁶ Bodily injury is defined as physical pain, illness, or any impairment of the physical condition.¹⁷

[Charge where the alleged deadly weapon is a firearm]

Here, the State alleges that defendant was armed with a (type of firearm). A firearm means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle.¹⁸

In order for a person to be armed with [a firearm], the State must first prove beyond a reasonable doubt that he/she was in possession of it. The word "possess" means a knowing, intentional control of a designated thing, accompanied by a knowledge of its character. I have already defined the term "knowingly" for you.

Thus, the person must know or be aware that he/she possesses the item (in this case), and he/she must know what it is that he/she possesses or controls (that it is _____).

[WHERE APPLICABLE CHARGE: This possession cannot merely be a passing control that is fleeting or uncertain in its nature. In other words, to "possess" within the meaning of the law, the defendant must knowingly procure or receive the item possessed or be aware of his/her control thereof for a sufficient period of time to have been able to relinquish his/her control if he/she chose to do so.]

¹⁵ See N.J.S.A. 2C:11-1(c).

¹⁶ See N.J.S.A. 2C:11-1b.

¹⁷ N.J.S.A. 2C:11-1a.

¹⁸ If necessary, use the other definitions in N.J.S.A. 2C:39-1f.

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When we speak of possession, we mean a conscious, knowing possession. The law recognizes two kinds of possession: they are actual possession and constructive possession.

A person is in actual possession of a particular article or thing when he/she knows what it is: that is, he/she has knowledge of its character and knowingly has it on his/her person at a given time. A person who, with knowledge of its character, knowingly has direct physical control over a thing, at a given time, is in actual possession of it.

Constructive possession means possession in which the person does not physically have the property, but though not physically on one's person, he/she is aware of the presence of the property and is able to and has the intention to exercise control over it.

A person who, although not in actual possession, has knowledge of its character, knowingly has both the power and the intention at a given time to exercise control over a thing, either directly or through another person or persons, is then in constructive possession of it.

[WHERE APPLICABLE CHARGE: The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint; that is, if they knowingly share control over the article.]

In order for defendant to be guilty of being armed with [a firearm], the State must prove beyond a reasonable doubt not only possession but also immediate access to that deadly weapon. The State must prove beyond a reasonable doubt that the [firearm] was easily accessible and readily available for use during the robbery.

[Charge where the alleged deadly weapon is not a firearm]

Here, the State alleges that the defendant was armed with a (name of weapon). In order for a person to be armed with a deadly weapon, the State must first prove beyond a reasonable doubt that he/she was in possession of it. The word "possess" means a knowing, intentional control of a designated thing, accompanied by a knowledge of its character. I have already defined the term "knowingly" for you.

Thus, the person must know or be aware that he/she possesses the item (in this case), and he/she must know what it is that he/she possesses or controls (that it is _____).

[WHERE APPLICABLE CHARGE: This possession cannot merely be a passing control that is fleeting or uncertain in its nature. In other words, to "possess" within the meaning

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of the law, the defendant must knowingly procure or receive the item possessed or be aware of his/her control thereof for a sufficient period of time to have been able to relinquish his/her control if he/she chose to do so.]

When we speak of possession, we mean a conscious, knowing possession. The law recognizes two kinds of possession: they are actual possession and constructive possession.

A person is in actual possession of a particular article or thing when he/she knows what it is: that is, he/she has knowledge of its character and knowingly has it on his/her person at a given time. A person who, with knowledge of its character, knowingly has direct physical control over a thing, at a given time, is in actual possession of it.

Constructive possession means possession in which the person does not physically have the property, but though not physically on one's person, he/she is aware of the presence of the property and is able to and has the intention to exercise control over it.

A person who, although not in actual possession, has knowledge of its character, knowingly has both the power and the intention at a given time to exercise control over a thing, either directly or through another person or persons, is then in constructive possession of it.

[WHERE APPLICABLE CHARGE: The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint; that is, if they knowingly share control over the article.]

In order for defendant to be guilty of being armed with a deadly weapon, the State must prove beyond a reasonable doubt not only possession but also immediate access to that deadly weapon. The State must prove beyond a reasonable doubt that the weapon was easily accessible and readily available for use during the robbery.

Finally, in order for you to find that defendant was "armed with a deadly weapon," the State must prove beyond a reasonable doubt not only that he/she possessed and had immediate access to the potential weapon, but also had the purpose to use it in a way that is capable of producing death or serious bodily injury.¹⁹ I have already defined "purpose" and "serious bodily injury" for you.

[Or]

¹⁹ State v. Rolon, 199 N.J. 575, 584-85 (2009).

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[CHARGE WITH THE ALLEGATION IS DEFENDANT THREATENED THE USE OF A WEAPON WITHOUT ACTUALLY POSSESSING OR DISPLAYING A REAL WEAPON BUT ENGAGED IN CONDUCT OR GESTURES WHICH SIMULATED A WEAPON AND WHICH WOULD LEAD A REASONABLE PERSON TO BELIEVE DEFENDANT POSSESSED A DEADLY WEAPON²⁰]

In this case, it is further alleged that defendant did not actually possess a deadly weapon but instead purposely threatened the immediate use of such a weapon and purposely engaged in conduct or gestures which simulated possession of a deadly weapon and which would lead a reasonable person to believe defendant possessed such a weapon.

First, I must explain to you what a deadly weapon is. A "deadly weapon" is any firearm or other weapon, device, instrument, material or substance (whether animate or inanimate) which in the manner it is used or intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.²¹ Bodily injury is defined as physical pain, illness, or any impairment of the physical condition.²²

To simulate means to assume the outward qualities or appearance of, often with the intent to deceive.²³ It is a feigned, pretended act, usually to mislead or deceive.²⁴

The State does not have to prove that defendant actually possessed a real, deadly weapon. Rather, the State must prove beyond a reasonable doubt that defendant purposely led _____ (the victim) to reasonably believe by words and conduct or gestures that defendant possessed such a deadly weapon. The State must prove beyond a reasonable doubt that defendant not only purposely threatened the immediate use of a deadly weapon, but it must also prove beyond a reasonable doubt that defendant purposely engaged in conduct or gestures which would lead a reasonable person to believe defendant possessed a deadly weapon.²⁵

²⁰ State v. Chapland, 187 N.J. 275 (2006). See also State v. Nero, 195 N.J. 397, 412 (2008) (noting that a purposeful mens rea is required for simulated weapon robbery).

²¹ See N.J.S.A. 2C:11-1b.

²² N.J.S.A. 2C:11-1a.

²³ Webster's Ninth New Collegiate Dictionary (1984).

²⁴ Black's Law Dictionary (7th Ed. 1999).

²⁵ In State v. Chapland, 187 N.J. 275 (2006), the Supreme Court clarified that a victim need not see

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Thus, this element may be proven by evidence of an unequivocal or unambiguous simulation (of a weapon)(of a concealed weapon), or by an equivocal or ambiguous gesture coupled with threatening words that completes the victim's impression of a deadly weapon.²⁶ In other words, an unequivocal or unambiguous simulation means the defendant's (acts) or (gestures) are a clear, unmistakable, and purposeful effort to simulate a (weapon)(a concealed weapon). In that circumstance, no further words are needed to prove the element. However, a gesture is equivocal or ambiguous if it is unclear or inconclusive in and of itself. If the gesture is unclear or subject to interpretation, then proof of threatening words are also needed.

In this case, the State alleges defendant: _____ [describe the words and conduct or gestures alleged]. [**Charge if appropriate:** Additionally, defendant alleges the following: _____ (state defense position, if any alleged)]. You must determine whether the State has proven beyond a reasonable doubt that the combination of words and conduct or words and gestures created a reasonable belief in the victim that defendant possessed a deadly weapon capable of causing death or serious bodily injury.

[CHARGE IN ALL CASES ALLEGING USE OR THREATENED USE OF A REAL OR SIMULATED WEAPON]

To summarize, if you find that the State has not proven beyond a reasonable doubt any one of the elements of the crime of robbery as I have defined that crime to you, then you must find the defendant not guilty.

If you find that the State has proven beyond a reasonable doubt that the defendant committed the crime of robbery as I have defined that crime to you but if you find that the State has not proven beyond a reasonable doubt that the defendant was armed with, or used or purposely threatened the immediate use of a deadly weapon (or purposely engaged in conduct or gestures which would lead a reasonable person to believe that defendant possessed a deadly weapon) at the time of the commission of the robbery, then you must find the defendant guilty of robbery in the second degree.

If you find that the State has proven beyond a reasonable doubt that the defendant committed the crime of robbery and was armed with a deadly weapon or used or threatened the

the tangible item that is supposed to be the simulated weapon, emphasizing that the jury should be instructed that it must focus on the combined effect of the defendant's words and/or conduct in determining whether the State has met its burden of proof on this element. Id. at 277.

²⁶ Chapland, 187 N.J. at 292.

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immediate use of a deadly weapon (or purposely engaged in conduct or gestures which would lead a reasonable person to believe that defendant possessed a deadly weapon) at the time of the commission of the robbery, then you must find the defendant guilty of robbery in the first degree.

(If the element that raises the robbery to first degree is that the actor attempted to kill the victim or purposely inflict or attempted to inflict serious bodily injury upon the victim, charge as follows)

A section of our statute provides²⁷ that robbery is a crime of the second degree, except that it is a crime of the first degree if the actor:

a. purposely attempted to kill anyone,

or

b. purposely inflicted or attempted to inflict serious bodily injury.

In this case it is alleged that:

(Select appropriate)

1. The defendant attempted to kill _____ while in the course of committing the theft.
2. The defendant purposely inflicted or attempted to inflict serious bodily injury upon _____ while in the course of committing the theft. In order for you to determine the answer to this question you must understand that the meaning of the term "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.²⁸

In order for you to determine the answer to this question, you must understand the meaning of the word "attempt" within this context. A person is guilty of an attempt to kill (inflict serious bodily harm) if he/she purposely commits an act which constitutes a substantial step toward the commission of a killing (the infliction of serious bodily harm).²⁹

If you find that the State has not proven beyond a reasonable doubt any one of the elements of the crime of robbery as I have defined that crime to you, then you must find the defendant not guilty.

If you find that the State has proven beyond a reasonable doubt that the defendant

²⁷ N.J.S.A. 2C:15-1b.

²⁸ See N.J.S.A. 2C:11-1b.

²⁹ For alternative definitions of attempt, see N.J.S.A. 2C:5-1.

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committed the crime of robbery as I have defined that crime to you, but if you find that the State has failed to prove beyond a reasonable doubt as to whether:

(Charge appropriate)

- a. defendant purposely attempted to kill _____.
- b. defendant purposely inflicted or attempted to inflict serious bodily injury upon

at the time of the commission of the robbery, then you must find the defendant guilty of robbery in the second degree.

If you find that the State has proven beyond a reasonable doubt that the defendant while in the course of committing a theft:

(Charge appropriate)

- a. purposely attempted to kill
- or**
- b. purposely inflicted or attempted to inflict serious bodily injury upon

then you must find the defendant guilty of robbery in the first degree.