

**ROBBERY IN THE SECOND 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 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)**:

- (1) knowingly<sup>1</sup> inflicts bodily injury or uses force<sup>2</sup> upon another;
- or**
- (2) threatens another with or purposely puts him in fear of immediate bodily injury;
- or**
- (3) 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 theft<sup>3</sup>,
- 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.<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>3</sup> 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, 129-136 (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).

<sup>4</sup> State v. Mirault, 92 N.J. 492, 498-99 (1983), holds that "another" can include a responding police officer or someone else other than the victim of the theft.

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b. threatened another with or purposely put another in fear of immediate bodily injury.

c. committed or threatened immediately to commit the crime of \_\_\_\_\_.<sup>5</sup>

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 attempt<sup>6</sup> to commit the theft, during the commission of the theft itself, or in immediate flight after the attempt or commission.<sup>7</sup>

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

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 a person's conscious object to engage in conduct of that nature or to cause such a result.

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 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 force<sup>9</sup> upon another.

A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will cause such a result. A person acts knowingly with respect to the nature of his conduct if he is aware that his conduct is of that nature.

The phrase "bodily injury" means physical pain, illness, or any impairment of physical condition;<sup>10</sup>

"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

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<sup>5</sup> The statute refers to crimes of the first or second degree. The proofs must indicate a specific crime and the jury must be charged accordingly including a definition of that offense.

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

<sup>7</sup> State v. Mirault, 92 N.J. at 500-01.

<sup>8</sup> See N.J.S.A. 2C:20-1 and charge elements of theft appropriate to your case.

<sup>9</sup> 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).

<sup>10</sup> See definition in N.J.S.A. 2C:11-1a.

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victim, not merely the victim's property.<sup>11</sup>

**(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 a 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.<sup>12</sup>

**[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 **(THE NAME OF VICTIM)**, then the State has failed to prove the existence of force beyond a reasonable doubt.<sup>13</sup>

**or**

2. the defendant threatened another with or purposely put another in fear of immediate bodily injury.

The phrase "bodily injury" means physical pain, illness or any impairment of physical condition.<sup>14</sup> (Although no bodily injury need have resulted, the prosecution must prove that the defendant either threatened the victim with or purposely put the victim 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

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<sup>11</sup> State v. Sein, 124 N.J. 209, 217-18 (1991).

<sup>12</sup> State v. Lopez, 187 N.J. 91, 101 (2006).

<sup>13</sup> 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.

<sup>14</sup> See N.J.S.A. 2C:11-1a.

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necessary) while in the course of committing the theft.

Should you find that the State has failed to prove any one of these elements of the crime of robbery beyond a reasonable doubt, you must return a verdict of not guilty of robbery. If you find the State has proved every one of the elements of the crime of robbery, then you must find the defendant guilty as charged.<sup>15</sup>

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<sup>15</sup> If the jury could find that from the evidence there was a theft or attempted theft without the additional elements involved in the robbery, or if the jury could find that the theft and attendant flight were completed before the assault took place, the jury should be charged the appropriate lesser included offense.