

FRAUDULENT ACCOSTING
(Accosting With Intent to Defraud)
Penal Law § 165.30(1)
(Committed on or after Sept. 1, 1971)

The (*specify*) count is Fraudulent Accosting.

Under our law, a person is guilty of Fraudulent Accosting when that person accosts another person in a public place with intent to defraud such person of money or property by means of a trick, swindle or confidence game.

The following term used in that definition has a special meaning:

INTENT means conscious objective or purpose.¹ Thus, a person acts with intent to defraud another person of money or property by means of a trick, swindle or confidence game, when his or her conscious objective or purpose is to defraud such person of money or property by means of a trick, swindle or confidence game.

Under our law, a person who accosts another in a public place and [either] at that time and place [*or* at some subsequent time] [*or* at some other place] makes statements to such other person [*or* engages in conduct with respect to such other person] of a kind commonly made [*or* performed] in the perpetration of a known type of confidence game, is presumed to intend to defraud such other person of money or property.² This means that, if the People have proven beyond a reasonable doubt that the defendant accosted another person in a public place and, [either] at that time [*or* at some subsequent time] [*or* at some other place], made statements to such other person [*or* engaged in conduct with respect to such other person] of a kind commonly

¹ See Penal Law § 15.05(1).

² See Penal Law § 165.30(2).

made [or performed] in the perpetration of a known type of confidence game, you may, but you are not required to, infer from those facts that the defendant intended to defraud such other person of money or property. Whether or not to draw that inference is for you to decide and will depend entirely on your evaluation of the evidence.³

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), accosted (name of victim) in a public place; and
2. That the defendant did so with the intent to defraud (name of victim) of money or property by means of a trick, swindle or confidence game.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

⁶See Penal Law § 165.55(1). In 2019, the last sentence was added to conform to the instruction for presumptions in other sections.