

ROBBERY IN THE SECOND DEGREE
(Aided by Another)
Penal Law §160.10(1)
(Committed on or after Sept. 1, 1967)

[NOTE: Before instructing a jury on any specific robbery charge, read once the introductory Robbery charge found at the beginning of this chapter.]

The (specify) count is Robbery in the Second Degree.

Under our law, a person is guilty of Robbery in the Second Degree when that person forcibly steals property and when that person is aided by another person actually present.

A person is “actually present” when such person is in a position to render immediate assistance to a person participating in the robbery and is ready, willing, and able to do so.¹

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;²

¹ See *People v Dennis*, 75 NY2d 821 (1989); *People v Hedgeman*, 70 NY2d 533, 543 (1987). The person who is actually present and aids a defendant in the commission of “robbery in the second degree” may do so without sharing the culpable mental state of the crime and may accordingly not be an accessory of the defendant in the commission of the crime. *People v. Sanchez*, 13 N.Y.3d 554 (2009). In that instance, charging that the defendant acted in concert with an individual actually present and aiding will increase the prosecution’s burden of proof. See *People v Bishop*, 117 A.D.3d 430, 430 (1st Dept 2014) (“Because gang assault does not require that the “aiders” share the mens rea of the principal, but only that they render aid . . . the court erred in instructing the jury that its acting in concert charge applied to the gang assault counts. However, the error was plainly harmless because the errant instruction increased the People’s burden of proof rather than lessening it, and the evidence satisfied this additional burden.”); *People v Smith*, 187 A.D.3d 941 [2d Dept 2020] [“the effect of the error (in charging acting in concert) was to impose a higher burden on the People, requiring them to show not just that the second person who approached the car . . . knowingly aided the defendant . . . but shared the defendant’s intent to forcibly rob the complainant. Thus, the error did not prejudice the defendant”]. Notably, *Sanchez* did not “define the exact intent needed, if any, of the persons aiding the defendant.” *Sanchez* at 566. *But see Smith* indicating that the People need prove that the other individual(s) “knowingly” aided the defendant.

² The elements assume that at least one defendant who is on trial was personally, or by acting in concert with another, an actual participant in the robbery and was aided by another person or persons “actually present.” In the unusual case that a defendant on trial is allegedly liable by acting in concert with a participant(s) in the robbery but he or she was not “actually present,” [e.g. a lookout, distant from the robbery], then substitute the following elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), forcibly stole property from (specify) ; and

2. That the defendant was aided in doing so by another person actually present.

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

If you find that 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.
