

**ROBBERY
FIRST DEGREE
(B felony)
(Dangerous Instrument)
PENAL LAW 160.15(3)
(Committed on or after Sept. 1, 1967)
(Revised January 5, 2009)¹**

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

The ___ count is Robbery in the First Degree.

Under our law, a person is guilty of Robbery in the First Degree when that person forcibly steals property and when, in the course of the commission of the crime [*or of immediate flight therefrom*], that person [*or another participant in the crime*] uses or threatens the immediate use of a dangerous instrument.

DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury,² that is, serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.³ Under that definition, death or other

¹ The revision was for the purpose of updating the elements to accord with decisional law. That law requires that where the defendant “threatens” the immediate use of a dangerous instrument, the People must prove that the defendant possessed that dangerous instrument at the time of the crime. *People v Ford*, 11 NY3d 875, 878 (2008); *People v Pena*, 50 NY2d 400, 407 (1980). See also *People v Grant*, 17 NY3d 613, 617-618 (2011) decided after the revision of this charge.

² See Penal Law §10.00(13).

³ See Penal Law §10.00(10).

serious physical injury need not in fact be caused.

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), forcibly stole property from (specify); and
2. That in the course of the commission of the crime [*or* of immediate flight therefrom], the defendant [*or* another participant in the crime] possessed a dangerous instrument and used or threatened the immediate use of that dangerous instrument.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Robbery in the First Degree as charged in the ___ count.

On the other hand, 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 the crime of Robbery in the First Degree as charged in the ___ count.