

112A EXAMPLE ARMED ROBBERY: ROBBERY (UNARMED)

The information in this case charges that:

[READ THE CHARGE IN THE INFORMATION.]

To this charge, the defendant has entered a plea of not guilty which means the State must prove every element of the offense charged beyond a reasonable doubt.

[READ INSTRUCTION ON ARMED ROBBERY, OMITTING THE LAST PARAGRAPH.]

If you are not so satisfied, you must not find the defendant guilty of armed robbery, and you should consider whether the defendant is guilty of unarmed robbery in violation of § 943.32(1) of the Criminal Code of Wisconsin, which is a lesser included offense of armed robbery.

Make Every Reasonable Effort to Agree

You should make every reasonable effort to agree unanimously on your verdict on the charge of armed robbery before considering the offense of unarmed robbery. However, if after full and complete consideration of the evidence, you conclude that further deliberation would not result in unanimous agreement on the charge of armed robbery, you should consider whether the defendant is guilty of unarmed robbery.

The difference between armed robbery and unarmed robbery is that armed robbery requires one additional element: that the defendant used or threatened to use a dangerous weapon.

If you are satisfied beyond a reasonable doubt that all the elements of armed robbery were present, except the element requiring that the defendant used or threatened to use a dangerous weapon, you should find the defendant guilty of unarmed robbery.

In other words, if you are satisfied beyond a reasonable doubt that the defendant took property from the person of _____, that the defendant took the property with the intent to steal, and that the defendant used force against _____ with intent to overcome _____'s physical resistance to the taking or carrying away of the property, you should find the defendant guilty of unarmed robbery.

You are not, in any event, to find the defendant guilty of more than one of the foregoing offenses. If you are satisfied beyond a reasonable doubt that the defendant committed armed robbery, the offense charged in the information, you should find the defendant guilty of that offense, and you must not find the defendant guilty of the other lesser included offense I have submitted to you.

If you are not satisfied beyond a reasonable doubt that the defendant committed either one of the offenses I have submitted to you, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 112A EXAMPLE was originally published in 1985 and revised in 1990, 1991, and 1997. It was republished without substantive change in 2000.

The 1990 change substituted "which means the state must prove every element of the offense charged beyond a reasonable doubt" for "which means a denial of every material allegation in the (information) (complaint)." No change in substance is intended. The Committee concluded that the previous version could be misleading in cases where the defense is directed at a specific element rather than being a general denial of every material allegation.