

Larceny, Robbery, OPFP

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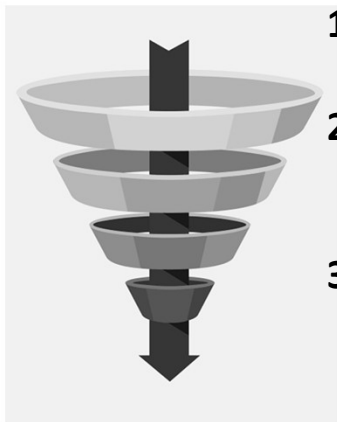
Basic School for Magistrates:

Criminal Session

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3 Levels of Coverage



1) Core Charges:

Larceny, Robbery

2) Related Charges:

OPFP, Poss. Stolen Property,
Shoplifting, Embezzlement

3) Quick Coverage:

Retail Theft, Financial Card
Theft

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#1: Core Charges

- Misdemeanor Larceny
- Felony Larceny
- Common Law Robbery
- Armed Robbery



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Misdemeanor Larceny

- 1) Takes
- 2) Personal Property
- 3) In the Possession of Another *and*
- 4) Carries it Away
- 5) Without the Consent of the Possessor *and*
- 6) With Intent to Deprive Possessor Permanently
- 7) Knowing Not Entitled to It



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Felony Larceny

Same as Misd. Larceny #1-7, *and* add #8:

- a) Property Worth More Than \$1,000
- b) From the Person
- c) Committed Pursuant to a B&E Offense
- d) Of an Explosive/Incendiary Device
- e) Of a Firearm
- f) Of a Record Paper at NC State Archives
- g) Of a Horse/Mule/Swine/Cattle/Dog



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Common Law Robbery

Larceny From a Person (or the Person's Presence)
and:

Committed by...

- 1) Violence
- or*
- 2) Intimidation



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Armed Robbery

Larceny (or Attempt) From a Person or the Person's Presence, and:

Committed by...

- 1) Possession, Use, or Threatened Use of a Firearm or Other Dangerous Weapon
- 2) That Endangers or Threatens the Life of a Person



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#2: Related Charges

- Obtain Property by False Pretenses
- Stolen Property
- Unauthorized Use of M.V.
- Shoplifting
- Embezzlement
- Extortion



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Obtain Property by False Pretenses

- 1) Representation about past/existing fact
- 2) That is false
- 3) Calculated/intended to deceive
- 4) Does deceive other person
- 5) Thereby obtains any thing of value



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Misd. Possession of Stolen Property

- 1) Possesses
- 2) Stolen Property
- 3) Knowing, or Having Reasonable Grounds to Know, That it was Stolen
- 4) With a Dishonest Purpose



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Felony Possession of Stolen Property

Misdemeanor PSP, **plus Element #3 (& 4):**

- 1) Possesses
- 2) Property
- 3) Stolen or Taken Feloniously
- 4) Knowing, or Having Reasonable Grounds to Know, That it was Stolen Feloniously
- 5) With a Dishonest Purpose



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Receiving Stolen Property

- 1) Receives or Conceals
- 2) Property
- 3) Stolen or Taken (Feloniously) by Another
- 4) Knowing, or with Reasonable Grounds to Believe, That it was (Feloniously) Stolen or Taken
- 5) With a Dishonest Purpose



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Unauthorized Use of a Motor Vehicle

- 1) Willfully
- 2) Takes or Operates
- 3) Car (or Other “Motor-Propelled Conveyance”)
- 4) Of Another
- 5) Without the Consent of the Owner, or Other Person in Lawful Possession



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Shoplifting (“Basic”)

- 1) Willfully Conceals
- 2) Goods or Merchandise of a Store
- 3) Without Authority
- 4) Without Having Purchased the Goods or Merchandise *and*
- 5) While Still on the Premises of the Store



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Shoplifting (“Advanced”)

- 1) Repeat Shoplifting by Concealment
- 2) Concealing by Using a Lead- or Aluminum-Lined Bag
- 3) Shoplifting by Substitution of Prices
- 4) Repeat Shoplifting by Substitution of Prices



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Embezzlement (Standard)

- 1) Fraudulently, or Knowingly and Willingly
- 2) Uses for a Purpose Other Than That for Which the Defendant Received It
- 3) Property of Another
- 4) Held by Defendant Under His Care



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Embezzlement (Variations)

- 1) By Employee (Most Common)
- 2) Of State Property by Public Officers and Employees
- 3) By Officers, Agents or Employees of Government Agencies, Local Boards, Churches, or Institutions
- 4) By Clerks, Sheriffs, Treasurers, Register of Deeds, Other Officials

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Extortion

- 1) Threatens, or Communicates a Threat to Another
- 2) With the Intent to Obtain Wrongfully
- 3) Property of Another
- 4) Anything of Value, or any Acquittance, Advantage, or Immunity



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#3: Quick Coverage

- Retail Theft
- Other Motor Vehicle Charges
- Financial Card Crimes
- Serial Number Offenses

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“Retail Theft” Offenses

- 1) Larceny from a Merchant
- 2) Organized Retail Theft
- 3) Receiving or Possessing Stolen Retail Property



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Other Motor Vehicle Offenses

- 1) Possession of a Stolen Vehicle
- 2) Receiving/Transferring a Stolen Vehicle
- 3) Altering/Destroying Vehicle or Parts
- 4) Purchasing/Selling Car with Altered VIN
- 5) Permitting "Chop Shop" Activity
- 6) Purchasing/Disposing Vehicles or Parts in Connection With a "Chop Shop"
- 7) Larceny of Vehicle Parts

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Financial Transaction Card Theft

- 1) Taking or Withholding a Card
- 2) Receiving a Wrongfully Obtained Card
- 3) Wrongful Retention of Misplaced Card
- 4) Buying a Card
- 5) Selling a Card
- 6) Receiving Two Cards in Different Names
- 7) Obtaining/Receiving Encoded Information

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Serial Number Offenses

- 1) Altering/Removing Serial Number
- 2) Buying/Selling/Possessing Property With an Altered Serial Number



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Pause for Questions?



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Larceny, Robbery & OPFP



Review Questions and Answers

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Question #1

- A man picks a lock and enters a home at 4 p.m., takes a magazine off the coffee table and nothing else.

- **Felonious larceny (pursuant to B+E).**
- **Issue: small value irrelevant – stolen pursuant to a B&E.**

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Question #2

- A man goes into another man's field and takes a hunting dog worth about \$300.
- **Felonious larceny (of horse, dog, etc., under 14-81).**
- **Issue: not B&E or over \$1000, but special statutes for animals.**

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Question #3

- A woman is trying on jackets at a department store. While the sales clerk is busy elsewhere, the woman puts on one of the jackets worth \$200 and walks out without paying for it.
- **Misdemeanor larceny, <\$1,000.**
- **Issue: Maybe shoplifting, based on concealed in plain view, but she left the premises.**

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Question #4

- At the State Farmers' Market, a man is selling "gluten-free doughnuts" for \$1 each, but testing shows they are made with regular wheat flour.
- **Obtaining property by false pretenses, 14-100.**
- **Issue: Felony for obtaining any "thing of value," even if it's just a dollar.**

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Question #5

- Two men are working together at the State Fair. While one man bumps into, pushes, and starts an argument with the victim, the second man slips behind the victim and takes his wallet. There is \$25 in the wallet.
- **Felonious larceny from the person, 14-72(b)(1) (and conspiracy, simple assault). Could also be common law robbery depending on whether force induced victim to part with wallet.**
- **See notes on *Carter*, p.380 (no robbery where mace sprayed on back of head merely distracted victim).**

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Question #6

- Seeing that the clerk at a jewelry store has gone to the back of the store, a man tells a 6-year old kid that he left his wife's ring on the store counter. The child goes in, picks up the ring off the counter, and brings it out to the man. The ring, which belongs to the store, is worth about \$1,750.
- Obtain property by false pretenses, 14-100.
Issue: person deceived does not have to be the person who suffered the loss.
- Felony larceny > \$1000, 14-72.
Issues: (1) Defendant still guilty as a principal – “acting indirectly” through child; no conspiracy b/c child not aware; (2) not larceny from the person because clerk stepped away.

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Question #7

- Two neighbors have been arguing for several months about which one owns a lawn mower. Each asserts that another neighbor who moved recently gave it to him. One night one of the two men sneaks over to the other's yard and takes the mower. It is worth about \$80.
- No charge.
- Issue: Fails the “knew he was not entitled to it” element.
- Charges outside Chs. 13 & 14? Possible trespassing, or just a civil matter.

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Question #8

- A man steals two television sets from the beach cottage he is renting. The sets were bought for \$1,500 about a year and a half before. The owner says he recently had someone offer to buy the sets for \$950.
- **Misd. Larceny, <\$1,000, 14-72 (probably).**
- **Issue: But what if \$950 was a lowball offer? Might seek additional information about value – check eBay?**

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Question #9

- A man hits another man over the head with a blackjack and takes from him a wallet containing \$12.
- **Armed robbery, 14-87.**
- **Issue: Just a regular armed robbery – it does happen sometimes... ☺**

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Question #10

- A man enters a grocery store and tells the clerk that he will shoot her unless she gives him the cash from her cash register. He has an object in his pocket which he points at her. She hands over the cash. The man is captured as he leaves the store; all that is found in his pocket other than the cash is a large cell phone. The amount of cash was \$327.
- **Common law robbery, 14-87.1.**
- **Issue: Appearance of weapon not enough for RWDW *if it is clear that the appearance was false.***
What if he is captured much later and *claims* he only had a cell phone...? Now charge RWDW, because the appearance is enough, absent evidence that the appearance was false.

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Question #11

- While searching a house for drugs, officers finds 2 new iPhones which were stolen one week earlier in a housebreaking. The iPhones are worth about \$450 each.
- **Felony Poss. Stolen Property (b/c stolen feloniously)**
- **Possibly felonious larceny (pursuant to B&E), using doctrine of recent possession, 14-72.**
- **Issue: *Receiving* stolen goods? No, because no PC that the items were stolen by another.**

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Question #12

- A man has a television set worth \$450 and a stereo worth \$600 he is holding for a friend. The friend, who is taking a short vacation out of state, tells him the goods are stolen. The man will be giving the goods back to the friend when he returns in a week.
- **(F) Poss. Stolen Property, 14-71.1/72, or (F) Receiving Stolen Property, 14-71.**
- **Issue: But would the man have known or had reason to know that the items were worth >\$1,000? Or know stolen pursuant to B&E? If not, or if the items were stolen separately, this could potentially be Misd. Poss./Receiving Stolen Property.**

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Question #13

- Two teenage boys see a car with the keys still in it, get in, and drive the car around town for about five hours. They then leave the car parked on the street about two miles from where they took it.
- **Unauthorized use of conveyance, 14-72.2.**
- **Issue: Probably not larceny or possession of stolen motor vehicle because no intent to deprive permanently.**
- **Some may disagree – left it 2 miles away.**

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Question #14

- A store employee sees a man put a pen worth \$3.00 in his pocket while shopping in the store.
- **Concealment of merchandise (shoplifting), 14-72.1.**
- **Issue: detained on premises, classic shoplifting example.**

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Question #15

- A man slips a tablet computer worth \$300 under his coat and leaves the store through an emergency exit without paying for it.
- **Larceny from a Merchant, 14-72.11(1).**
- **Issue: Over \$200, used emergency exit. More often, you will see an offense under 14-72.11(2) for removing/disabling an anti-theft device.**

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Question #16

- A man goes into a sporting goods store, puts on a tennis racket a price tag which was on another racket, listing the price at \$25 instead of \$75, then takes the racket to the cashier to pay for it.
- **Shoplifting, via substitution of price, 14-72.1.**
- **Issue: frequent question – could this be felony larceny from a merchant, 14-72.11, which addresses committing a larceny “by affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price?”**
- **Some districts do this, but it’s not recommended. That statute is talking about using a fake price sticker created for that purpose (e.g., fired employee who stole a price gun and made fakes), rather than just swapping a legitimate price sticker from one item to another.**

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Larceny and Robbery: Q&A

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