

104.40 DOCTRINE OF RECENT POSSESSION.

The State seeks to establish the defendant's guilt by the doctrine of recent possession. For this doctrine to apply, the State must prove three things beyond a reasonable doubt:

First, that property was stolen.

Second, that the defendant had possession of this property. A person possesses property when that person is aware of its presence, and has (either alone or together with others) both the power and intent to control its disposition or use.

NOTE WELL: If constructive possession of the stolen property is an issue, or if an amplified definition of actual possession is needed, the trial judge should refer to N.C.P.I.-Crim. 104.41 for further instructions.

And Third, that the defendant had possession of this property so soon after it was stolen and under such circumstances as to make it unlikely that the defendant obtained possession honestly.

If you find these things from the evidence beyond a reasonable doubt, you may consider them together with all other facts and circumstances in deciding whether or not the defendant is guilty of [robbery] [breaking or entering] [larceny] (name other crime).¹

¹ This charge is adaptable to robbery, breaking or entering, and larceny. See e.g., *State v. Frazier*, 268 N.C. 249, 150 S.E.2d 431 (1996) (unlawful taking of a vehicle). It is also adaptable to possession of stolen goods. *State v. Griffin*, 235 N.C. App. 425, 763 S.E. 2d 927, 2014 WL 3824232 (August 5, 2014) (unpublished opinion). The doctrine of recent possession is not applicable to the crime of receiving stolen goods. It is applicable to obtaining property by false pretenses. *State v. Street*, ___ N.C. App. ___, 802 S.E.2d 526 (2017).

