

LARCENY OF MOTOR FUEL VALUED AT LESS THAN \$1,000. G.S. 14-72.5(a).
MISDEMEANOR.

NOTE WELL: Pursuant to G.S. 14-72.5(c), the court shall report final convictions of violations of this section to the Division of Motor Vehicles, and the Division shall revoke a person's drivers license for a second or subsequent conviction of this section. See also G.S. 20-17(a)(16). Pursuant to G.S. 20-16(e2), a judge may allow the person whose license was revoked a limited driving privilege for a period not to exceed the period of revocation.

The defendant has been charged with larceny of motor fuel¹ valued at less than \$1,000.²

For you to find the defendant guilty of this offense, the State must prove five things beyond a reasonable doubt:

First, that the defendant took³ motor fuel belonging to the victim which was valued at less than \$1,000.

Second, that the defendant carried away⁴ the motor fuel.

Third, that the victim did not consent to the taking and carrying away of the motor fuel.

Fourth, that at the time of the taking, the defendant intended⁵ to steal the motor fuel and to deprive the victim of its use permanently.⁶

1. Motor fuel includes gasoline, diesel fuel, and blended fuel. See §105-449.60(20).

2. See N.C.P.I. Crim. 216.10 for larcenies involving goods worth \$1,000 or more.

3. If the property was severed from the possession of the victim and was under the control of the defendant for any period of time, even if only for an instant, this would constitute a taking. See *S. v. Carswell*, 296 N.C. 101 (1978).

4. In the event that there is some dispute as to asportation, the jury should be told that the slightest movement is sufficient.

5. See N.C.P.I.—Crim. 120.10 if a further definition of intent is needed.

6. In the event there is some dispute as to permanent deprivation, the jury should be told that a temporary deprivation will not suffice. But cf. *S. v. Smith*, 268 N.C. 167 (1966).

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And Fifth, that the defendant knew the defendant was not entitled⁷ to take the motor fuel.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away the victim's motor fuel valued at less than \$1,000 without the victim's consent, knowing that the defendant was not entitled to take it and intending at that time to steal the fuel and deprive the victim of its use permanently, it would be your duty to return a verdict of guilty. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

7. In the event that the defendant relies on claim of right, the jury should be told that if the defendant honestly believed that he was entitled to take the property, he cannot be guilty of larceny. Perkins & Boyce, CRIMINAL LAW, 3d Ed. (1982), at 326.