

FELONIOUS LARCENY--[EXPLOSIVE DEVICE] [INCENDIARY DEVICE].  
G.S. 14-70, 14-72(b)(3).<sup>1</sup> FELONY.

The defendant has been charged with felonious larceny, which is the taking and carrying away of another's [explosive device] [incendiary device] without his consent, intending at that time to deprive him of its use permanently, the taker knowing that he was not entitled to take it.

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

First, that the defendant took<sup>2</sup> an [explosive device] [incendiary device] belonging to the victim. ((Describe explosive or incendiary device) is an [explosive device] [incendiary device].)

Second, that the defendant carried away<sup>3</sup> the [explosive device] [incendiary device].

Third, that the victim did not consent to the taking and carrying away of the [explosive device] [incendiary device].

Fourth, that at the time of the taking, the defendant intended to deprive the victim of its use permanently.<sup>4</sup>

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<sup>1</sup>Note the exemptions in G.S. 14-72(b)(3).

<sup>2</sup>If the property was severed from the possession of the victim and 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).

<sup>3</sup>In the event that there is some dispute as to asportation, the jury should be told that the slightest movement is sufficient.

<sup>4</sup>In the event that there is some dispute as to permanent deprivation, see S. v. Smith, 268 N.C. 167 (1966).

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And Fifth, that the defendant knew he was not entitled<sup>5</sup> to take the [explosive device] [incendiary device].

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 [explosive device] [incendiary device] without his consent, knowing that he was not entitled to take it and intending at that time to deprive the victim of its use permanently, it would be your duty to return a verdict of guilty of felonious larceny. If you do not so find or if you have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious larceny,<sup>6</sup> but will consider whether the defendant is guilty of misdemeanor larceny, which differs from felonious larceny in that the property taken and carried away need not be an [explosive device] [incendiary device].

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 property without his consent knowing that he was not entitled to take it and intending at that time to deprive the victim of its use permanently, it would be your duty to return a

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<sup>5</sup>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.

<sup>6</sup>If there is to be no instruction on lesser included offenses, the last phrase should be: ". . . it would be your duty to return a verdict of not guilty."

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verdict of guilty of misdemeanor larceny. However, 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.

