

FELONIOUS LARCENY--FIREARM. G.S. 14-70, 14-72(b)(4).<sup>1</sup> FELONY.

The defendant has been charged with felonious larceny, which is the taking and carrying away of another's firearm 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> a firearm belonging to the victim. ((Describe firearm) is a firearm.)<sup>3</sup>

Second, that the defendant carried away<sup>4</sup> the firearm.

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

Fourth, that at the time of the taking, the defendant intended<sup>5</sup> to deprive the victim of its use permanently.<sup>6</sup>

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<sup>1</sup>Note the exemptions in G.S. 14-72(b)(4).

<sup>2</sup>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).

<sup>3</sup>G.S. 14-72(b)(4) defines "firearm" to include "any instrument used in the propulsion of a shot, shell or bullet by the action of gunpowder or any other explosive substance within it. A 'firearm,' which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols."

Where there is conflicting evidence as to what the defendant possessed, explain what would and would not be a firearm.

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

<sup>5</sup>See N.C.P.I.--Crim. 120.10 if a further definition of intent is needed.

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And Fifth, that the defendant knew he was not entitled<sup>7</sup> to take the firearm.

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 firearm 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. However, 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>8</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 a firearm.

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

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<sup>6</sup>In the event that there is some dispute as to permanent deprivation. See S. v. Smith, 268 N.C. 167 (1966).

<sup>7</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>8</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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victim of its use permanently, it would be your duty to return a verdict of guilty of misdemeanor larceny. 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.

