

POSSESSION OF FELONIOUSLY TAKEN PROPERTY OTHER THAN BY LARCENY (e.g., EMBEZZLEMENT). FELONY, MISDEMEANOR. G.S. 14-70; 14-71.1; 14-72(a).

NOTE WELL: Use this instruction only when the indictment alleges that the property was embezzled, taken by false pretenses, taken in a manner constituting larceny by an employee, or in any other felonious manner. Use N.C.P.I.--Crim. 216.46, 216.47, 216.48, 216.48A, 216.49, or 216.49B when the indictment alleges that the property was stolen. Larceny by an employee is a form of embezzlement rather than larceny.

The defendant has been charged with possession of goods which were feloniously taken, which is possessing property which the defendant knew or had reasonable grounds to believe had been (describe crime, e.g., "taken pursuant to embezzlement").

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

First, that (describe property, e.g., "A color TV set") had been feloniously taken.¹ Property is feloniously taken when (summarize elements of relevant crime, e.g., embezzlement).

Second, that this property was taken pursuant to (a) (an) e.g. embezzlement.

¹When the charge is possession, as opposed to receiving, it is not necessary for the State to prove that someone other than the defendant stole the property, as it is under a receiving charge.

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Third, that the defendant possessed this property. One has possession of property when one has both the power and intent to control its disposition or use.

NOTE WELL: *When constructive possession is at issue, or when a fuller definition of actual possession is desired, incorporate the relevant portions of N.C.P.I.--Crim. 104.41 at this point.*

Fourth, that the defendant knew or had reasonable grounds to believe that the property had been (*describe crime, e.g., "taken pursuant to an embezzlement"*).

And Fifth, that the defendant possessed the property with a dishonest purpose.² (*Describe purpose, e.g., "Converting it to his own use,"*) would be a dishonest purpose.

If you find from the evidence beyond a reasonable doubt that (*describe property*) was (*describe crime, e.g., "taken pursuant to an embezzlement"*), and that on or about the alleged date the defendant possessed this property, that the defendant knew or had reasonable grounds to believe that it was feloniously taken, and that the defendant possessed this property for a dishonest purpose, it would be your duty to return a verdict of guilty of possession of goods which were feloniously taken. If you do not so find, or have a reasonable doubt as to one or more of these

²S. v. Parker, 316 N.C. 295, 305 (1986).

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things, you would not return a verdict of guilty of possession of goods which were feloniously taken, but must determine whether the defendant is guilty of non-felonious possession of stolen goods. Non-felonious possession of stolen goods differs from felonious possession in that the State need not prove that the goods were feloniously taken.

If you find from the evidence beyond a reasonable doubt that (*describe property*) was stolen, and that on or about the alleged date the defendant possessed this property and knew or had reasonable grounds to believe that it was stolen, and that the defendant possessed this property for a dishonest purpose, it would be your duty to return a verdict of guilty of non-felonious possession of stolen goods. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

