

216.56 LARCENY FROM A MERCHANT.¹ Felony

The defendant has been charged with felonious larceny from a merchant.

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

First, that the defendant committed larceny. Larceny is the taking and carrying away of the personal property of another without consent with the intent to deprive the owner of possession permanently.²

Second, that the defendant committed larceny by: (*Choose one of the following.*)

- a) [taking property valued at more than \$200 by exiting the premises of the store through an emergency exit door.³
- b) [[removing] [destroying] [deactivating] a component of an [antishoplifting] [inventory control device] to prevent activation of any [antishoplifting] [inventory control device].]
- c) [affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual price.]
- d) [taking infant formula valued in excess of \$100.⁴]
- e) [exchanging property for cash, a gift card, a merchandise card, or some other item of value, knowing or having reasonable grounds to believe the property is stolen.]

And Third, that the victim was a merchant.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant took and carried away the personal

property of a merchant without consent and with intent to deprive the merchant of possession permanently by

- a) [taking property valued at more than \$200 by exiting the premises of the store through an emergency exit door.]
- b) [[removing] [destroying] [deactivating] a component of an [antishoplifing] [inventory control device] to prevent activation of any [antishoplifing] [inventory control device].]
- c) [affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual price.]
- d) [taking infant formula valued in excess of \$100.]
- e) [exchanging property for cash, a gift card, a merchandise card, or some other item of value, knowing or having reasonable grounds to believe the property is stolen.]

it would be your duty to return a verdict of guilty. 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.

1 N.C. Gen. Stat. 25-2-104 defines “merchant” as “a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge of skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.”

2 See *State v. Elliot*, 21 N.C. App. 555 (1974).

3 See 29 C.F.R. § 1910.36-.37.

4 The term “infant formula” means a food, which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its sustainability as a complete or partial substitute for human milk. See 21 U.S.C. § 321 (z).