

N.C.P.I.—Crim. 214.40
BREAKING OR ENTERING INTO MOTOR VEHICLE AND LARCENY OF GOODS.
FELONY.
GENERAL CRIMINAL VOLUME
REPLACEMENT MAY 2024
N.C. Gen. Stat. § 14-56(a2)(5)

214.40 BREAKING OR ENTERING INTO MOTOR VEHICLE AND LARCENY OF
GOODS. FELONY.¹

NOTE WELL: G.S. 14-56 was amended, effective December 1, 2015. For offenses committed after December 1, 2015, it is not a violation of this statute when a person breaks or enters a motor vehicle, boat, etc., to provide assistance to a person inside needing first aid or emergency health care treatment.

NOTE WELL: Defendant may be charged with intent to commit a felony other than larceny. For breaking or entering into a motor vehicle with the intent to commit a felony, see N.C.P.I—Crim 214.40A.

NOTE WELL: This instruction covers any offense not covered under N.C. Gen. Stat. § 14-56(a2)(1)-(4), for example, the larceny of goods valued under \$1,500. For breaking or entering into a motor vehicle and larceny of goods with a value exceeding [\$1,500 but no more than \$20,000] [\$20,000 but no more than \$50,000] [\$50,000 but no more than \$100,000] [\$100,000], see N.C.P.I—Crim 214.40B.

NOTE WELL: For offenses involving motor vehicles owned or operated by any law enforcement agency, the North Carolina National Guard or any branch of the Armed Forces of the United States, use N.C.P.I—Crim 214.46.

The defendant has been charged with breaking or entering into a motor vehicle with the intent to commit larceny therein.²

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

First, that there was

[a breaking³ by the defendant. (*State how breaking allegedly occurred*) would be a breaking.]

[an entry by the defendant. (*State how entry allegedly occurred*) would be an entry.]

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[either a breaking or an entry by the defendant. (*State how breaking allegedly occurred*) would be a breaking. (*State how entry allegedly occurred*) would be an entry.]

Second, that it was a motor vehicle which was [broken into] [entered] [broken into or entered].

Third, that there [[was] [were]] [goods] [wares] [freight] [other thing of value (describe other thing of value)] in the motor vehicle.

Fourth, that the owner did not consent to the [breaking] [entering] [breaking or entering].

And Fifth, that at the time of the [breaking] [entering] [breaking or entering], the defendant intended⁴ to commit larceny therein. Larceny is the taking and carrying away of the personal property of another without that person's consent with the intent to deprive that person of its possession permanently. (If you find that the defendant was found in the motor vehicle and that the defendant had no lawful purpose for being there, you are permitted but not required to infer from this that the defendant entered with the intent to commit larceny therein.)

If you find from the evidence beyond a reasonable doubt, that on or about the alleged date, the defendant without the consent of the owner [broke into] [entered] [broke into or entered] another's motor vehicle which contained [goods] [wares] [freight] [other thing of value (describe other thing of value)], intending at that time to commit larceny therein, 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.

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

First, that the defendant took [goods] [wares] [freight] [other thing of value (describe other thing of value)] belonging to another person.⁵

Second, that the defendant carried away the [goods] [wares] [freight] [other thing of value (describe other thing of value)].⁶

Third, that the alleged victim did not consent to the taking and carrying away of the [goods] [wares] [freight] [other thing of value (describe other thing of value)].

Fourth, that at the time of the taking, the defendant intended to deprive the alleged victim of [its] [their] use permanently.⁷

Fifth, that the defendant knew *the defendant* was not entitled to take the [goods] [wares] [freight] [other thing of value (describe other thing of value)].⁸

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away another person's [goods] [wares] [freight] [other thing of value (describe other thing of value)] without that person's consent knowing that they were not entitled to take it and intending at that time to deprive that person of [its] [their] use permanently, it would be your duty to return a verdict of guilty of 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 on the larceny count.

1. Railroad cars, aircraft, boats or other watercraft, and trailers as well as motor vehicles are included under this statute.

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2. This offense also includes breaking out of any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind containing goods, wares, freight, or other thing of value after having committed any larceny therein.

3. A breaking need not be actual but may be by threat of force, by some trick or fraudulent representation. *State v. Jolly*, 297 N.C. 121, 254 S.E.2d 1 (1979).

4. If a definition of intent is required, see N.C.P.I.—Crim. 120.10.

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

6. In the event that there is some dispute as to asportation, the jury should be told that the slightest movement is sufficient. *S. V. Carswell*, 296 N.C. 101 (1978).

7. In the event that there is some dispute as to permanent deprivation, the jury should be told that an intent to temporarily deprive will not suffice. *State v. Watts*, 25 N.C. App. 194, 212 S.E.2d 557 (1975); *but cf.* *State v. Smith*, 268 N.C. 167 (1966).

8. 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. *State v. Fisher*, 70 N.C. 78 (1874).