

216.08 FELONIOUS LARCENY-HABITUAL MISDEMEANOR LARCENY.
FELONY.

NOTE WELL: There must be evidence that a defendant has at least four convictions of misdemeanor or felony larceny, or both, in order for this instruction and elements six through nine of this instruction to be used. See N.C. Gen. Stat. § 15A-928 if the defendant admits to four prior convictions of larceny.

The defendant has been charged with larceny.

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

First, that the defendant took property belonging to another person;

Second, that the defendant carried away¹ the property;

Third, that the victim did not consent to the taking and carrying away of the property;

Fourth, at that time the defendant intended to deprive the victim of its use permanently²;

Fifth, that the defendant knew he was not entitled to take the property.³;

NOTE WELL: In order to use the elements listed below, there must be evidence that a defendant has committed at least four additional offenses of misdemeanor or felony larceny, or both. These additional offenses would constitute a felony larceny offense.⁴

Sixth, that on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] misdemeanor or felony larceny, or both, of (*name [misdemeanor larceny] [felony larceny] [misdemeanor and felony larceny]*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States].

Seventh, that on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] misdemeanor or felony larceny, or both, of (*name [misdemeanor larceny] [felony larceny] [misdemeanor and felony larceny]*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States].

Eighth, that on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] misdemeanor or felony larceny, or both, of (*name [misdemeanor larceny] [felony larceny] [misdemeanor and felony larceny]*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States].

And Ninth, that on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] misdemeanor or felony larceny, or both, of (*name [misdemeanor larceny] [felony larceny] [misdemeanor and felony larceny]*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States].

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 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, and that

(6) On (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] misdemeanor or felony larceny, or both, of (*name [misdemeanor larceny] [felony larceny] [misdemeanor and felony larceny]*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States]; and

(7) On (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] misdemeanor or felony larceny, or both, of (*name [misdemeanor larceny] [felony larceny] [misdemeanor and felony larceny]*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States]; and

(8) On (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] misdemeanor or felony larceny, or both, of (*name [misdemeanor larceny] [felony larceny] [misdemeanor and felony larceny]*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States]; and

(9) On (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] misdemeanor or felony larceny, or both, of (*name [misdemeanor larceny] [felony larceny] [misdemeanor and felony*

larceny]), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States],

it would be your duty to return a verdict of guilty. 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.⁵

1. In the event that there is some dispute as to asportation the jury should be told that the slightest movement is sufficient.

2. In the event there is some dispute as to permanent deprivation, the jury should be told that a temporary deprivation will not suffice. *But cf. S. v. Smith*, 268 N.C. 167 (1966).

3. Where the property taken is a conveyance, the crime of unauthorized use of conveyance, N.C. Gen. Stat. § 14-72.2, may be a lesser included offense.

4. N.C. Gen. Stat. § 14-72(b) states, "A conviction shall not be included in the four prior convictions required under this subdivision unless the defendant was represented by counsel or waived counsel at first appearance or otherwise prior to trial or plea"; N.C. Gen. Stat. § 14-72(b) goes on to state, "If a person is convicted of more than one offense of misdemeanor larceny in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used as a prior conviction under this subdivision; except that convictions based upon offenses which occurred in separate counties shall each count as a separate prior conviction under this subdivision"; *also see* N.C. Gen. Stat. § 15A-928.

5. Where the property taken is a conveyance, the crime of unauthorized use of conveyance, N.C. Gen. Stat. § 14-72.2, may be a lesser included offense.