

216.20 FELONIOUS LARCENY - FROM THE PERSON. FELONY.

The defendant has been charged with felonious larceny.

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

First, that the defendant took property of another from the person<sup>1</sup> of the victim.

Second, that the defendant carried away<sup>2</sup> the property.

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

Fourth, that at that time, the defendant intended to deprive the victim of its use permanently.<sup>3</sup>

And Fifth, that the defendant knew *he* was not entitled to take the property.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away the property of another from the person of a victim without the victim's consent, the defendant knowing that the defendant 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. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious larceny, but will consider<sup>4</sup> whether the defendant is guilty of misdemeanor larceny. Misdemeanor larceny differs from felonious larceny in that the property need not be taken from the person of the victim.

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 that person's consent, the defendant knowing that the defendant 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 misdemeanor larceny. If you do not so find or have a reasonable doubt as to one or more of these other things, it would be your duty to return a verdict of not guilty.

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1. "Property is stolen from the person, if it was under the protection of the person at the time.... Property may be under the protection of the person although not actually 'attached' to him; for that which is taken in his presence is in law taken from his person." *S. v. Buckum*, 328 N.C. 313 (1991). (*But see S. v. Lee*, 88 N.C. App. 478 (1988)).

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

3. In the event that 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).

4. 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."