

216.57B ORGANIZED RETAIL THEFT. RETAIL PROPERTY WITH VALUE EXCEEDING \$50,000, BUT NOT EXCEEDING \$100,000, AGGREGATED OVER 90-DAY PERIOD. FELONY.

*NOTE WELL:*

*For Organized Retail Theft of retail property with a value exceeding \$1,500, but not exceeding \$20,000, aggregated over a 90-day period use N.C.P.I.—Crim. 216.57.*

*For Organized Retail Theft of retail property with a value exceeding \$20,000, but not exceeding \$50,000, aggregated over a 90-day period use N.C.P.I.—Crim. 216.57A.*

*For Organized Retail Theft of retail property with a value exceeding \$100,000 aggregated over a 90-day period use N.C.P.I.—Crim. 216.57C.*

The defendant has been charged with organized retail theft.<sup>1</sup>

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

First, that the defendant conspired with another person (name other person)<sup>2</sup> to commit theft of retail property<sup>3</sup> from (a) retail establishment(s). A conspiracy is an agreement between two or more people to do an unlawful act or to do a lawful act in an unlawful manner.<sup>4</sup> Theft is the taking possession of, carrying away, transferring, or causing to be carried away the retail property of another with the intent to steal the retail property.

Second, that the value<sup>5</sup> of the retail property exceeded \$50,000 aggregated over a 90-day period.

Third, that the defendant intended<sup>6</sup> to sell that retail property for [monetary] [other gain (describe other gain)].

And Fourth, that the defendant [took the retail property] [caused the retail property] to be placed in the control of [a retail property fence<sup>7</sup>] [another person] for consideration.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant conspired with another person (name other person) to commit theft of retail property from (a) retail establishment(s), the value of the retail property exceeded \$50,000 aggregated over a 90-day period, the defendant intended to sell that retail property for [monetary] [other gain (describe other gain)], and that the defendant [took the retail property] [caused the retail property] to be placed in the control of [a retail property fence][another person] for consideration, 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.<sup>8</sup>

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1. See G.S. 14-86.5(3).

2. If one or more co-conspirators are named in the indictment, state their names. The jury must find that the defendant entered into an agreement with at least one of the named persons. *State v. Minter*, 111 N.C. App. 40 (1993), *cert. denied*, 335 N.C. 241 (1993). See also, *State v. Mickey*, 207 N.C. 608 (1935).

3. According to G.S. 14-86.5(1) “retail property” is any new article, product, commodity, item or component intended to be sold in retail commerce.

4. See *State v. Shelly*, 181 N.C. App. 608 (2007) (citations omitted).

5. According to G.S. 14-86.5(4) “value” is the retail value of an item as advertised by the affected retail establishment, to include all applicable taxes.

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

7. According to G.S. 14-86.5(2) a “retail property fence” is a person or business that buys retail property knowing or believing that the retail property is stolen.

8. If there is an issue as to whether the value of the property exceeds \$50,000, then give instruction(s) on lesser included offense(s), N.C.P.I.—Crim. 216.57 and/or 216.57A.