

216.93 LARCENY OF PINE STRAW. FELONY.

The defendant has been accused of larceny of pine straw.

Now I charge that for you to find the defendant guilty of larceny of pine straw, the State must prove six things beyond a reasonable doubt:

First, that the defendant took pine [needles] [straw] being produced on the land of another.<sup>1</sup>

Second, that the defendant carried away<sup>2</sup> the pine [needles] [straw].

Third, that the victim did not consent to the taking and carrying away of the pine [needles] [straw].

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

Fifth, that the defendant knew *he* was not entitled to take the pine [needles] [straw].

And Sixth, that [notices] [signs] [posters] prohibiting the [raking] [removal] of pine [needles] [straw] had at that time been placed on the land.<sup>4</sup>

So I charge that if you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away pine [needles] [straw] being produced on the land of another person, that the victim did not consent to the taking and carrying away of the pine [needles] [straw], that at the time of the taking, the defendant intended to deprive the victim of its use permanently, that the defendant

knew *he* was not entitled to take the pine [needles] [straw], and that [notices] [signs] [posters] prohibiting the [raking] [removal] of pine [needles] [straw] had at that time been placed on the land, it would be your duty to return a verdict of guilty of larceny of pine straw. However, 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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1. If there is evidence of conduct which would constitute "taking" but there is also evidence that the defendant's conduct fell short of what would constitute "taking," add the following to this element "*Describe conduct which would constitute a taking*" would be a taking." See *S. v. Carswell*, 296 N.C. 101 (1978).

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. N.C. Gen. Stat. § 14-159.7 states "he notices, signs or posters . . . shall measure not less than 120 square inches and shall be conspicuously posted on private lands not more than 200 yards apart close to and along the boundaries. At least one such notice, sign or poster shall be posted on each side of such land, and one on each corner thereof, provided that said corner can be reasonably ascertained."