

216.95 FELONIOUS LARCENY OF UNGATHERED CROPS. FELONY.

The defendant has been charged with felonious larceny of ungathered crops. Ungathered crops are any fruits, beans, vegetables, grains, tobacco, cotton or any other produce cultivated for food or market which are growing, standing or remaining ungathered in any field or ground.

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

First, that the defendant took (*describe crops*) belonging to the victim.

Second, that the defendant carried away the (*describe crops*).¹

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

Fourth, at that time the defendant intended to deprive the victim of the use of the crops permanently.²

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

And Sixth, that the crops taken by the defendant were ungathered, that is growing, standing or remaining ungathered in (*name victim*)'s field or ground.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away the victim's (*describe crops*) without *his* consent, knowing that *he* was not entitled to

take them and intending at that time to deprive the victim of the use of (*describe crops*) permanently, and that (*describe crops*) were ungathered in the victim's field or ground, 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.

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. 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.