Approved 5/13/19

SHOPLIFTING [TRANSFERRING MERCHANDISE]
N.J.S.A. 2C: 20-11(b)(4)

[Count _____ of] [T]he indictment charges the defendant with shoplifting.

[READ INDICTMENT OR APPLICABLE COUNT]

The statute provides in pertinent part that it is a crime:

> For any person purposely to transfer any merchandise displayed, held, stored or offered for sale by any store or other retail merchandise establishment from the container in or on which the same shall be displayed to any other container with intent to deprive the merchant of all or some part of the retail value thereof.

In order for you to find the defendant guilty of shoplifting, the State must prove each of the following elements beyond a reasonable doubt:

1. That defendant purposely transferred any merchandise displayed, held, stored or offered for sale by (name of commercial establishment) from the container in or on which the same was displayed to any other container;

2. That (name of commercial establishment) was a store or other retail mercantile establishment; and

3. That defendant did so with the purpose of depriving the merchant of all or some part of the retail value thereof.

The first element that the State must prove beyond a reasonable doubt is that defendant purposely transferred any merchandise displayed, held, stored or offered for sale by (name of commercial establishment) from the container in or on which the same was displayed to any other container. The term "merchandise" means any goods, chattels, foodstuffs or wares of any type and description, regardless of the value thereof.[1]

A person acts purposely with respect to the nature of his/her conduct or a result of his/her

[1] N.J.S.A. 2C:20-11(a)(3).

conduct if it is the person's conscious object to engage in conduct of that nature or to cause such a result. That is, a person acts purposely if he/she means to act in a certain way or to cause a certain result. A person acts purposely with respect to attendant circumstances if the person is aware of the existence of such circumstances or believes or hopes that they exist.[2]

Purpose is a state of mind. A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary, members of the jury, that the State produce witnesses to testify that an accused said he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and his/her conduct, and from all he/she said and did at the particular time and place, and from all of the surrounding circumstances.

The second element that the State must prove beyond a reasonable doubt is that (name of commercial establishment) was a store or other retail mercantile establishment. The term “store or other retail mercantile establishment” means a place where merchandise is displayed, held, stored, or sold or offered to the public for sale.[3]

The third element that the State must prove beyond a reasonable doubt is that defendant acted with the purpose of depriving the merchant of all or some part of the retail value thereof. I have already defined "purpose" for you earlier in these instructions.

The term "full retail value" means the merchant’s stated or advertised price of the merchandise.[4]

The term “deprive” means to withhold property permanently or for so extended a period as to appropriate a substantial portion of its economic value.[5]

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[2] N.J.S.A. 2C:2-2(b)(1).
[3] N.J.S.A. 2C:20-11(a)(2).
[4] N.J.S.A. 2C:20-11(a)(7).
[5] N.J.S.A. 2C:20-1(a)(1).

The term "merchant" means any owner or operator of any store or other retail mercantile establishment, or any agent, servant, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or proprietor.[6]

PERMISSIVE INFERENCE [WHERE APPROPRIATE][7]
(N.J.S.A. 2C:20-11(d))

If you find that defendant purposely concealed unpurchased merchandise of any store either on the premises or outside the premises of such store or other retail mercantile establishment, you may infer that defendant so concealed such merchandise for the purpose of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof. The term "conceal" means to conceal merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.[8]

If you find that defendant concealed or caused to be concealed such merchandise upon his/her person or among his/her belongings, or upon the person or among the belongings of another, you may infer that defendant did so purposely. An inference is a deduction of fact that may be drawn logically and reasonably from another fact or group of facts established by the evidence. Whether or not an inference should be drawn is for you to decide using your own

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[6] N.J.S.A. 2C:20-11(a)(4).

[7] A court should exercise care in deciding if the factual scenario presented at trial requires instruction on the presumption. See generally Cannel, New Jersey Criminal Code Annotated (2019), Comment 6 to N.J.S.A. 2C:20-11 and Comment 6, N.J.S.A. 2C:1-13(e). Before the statutory presumption is used, it must also be determined that its use would satisfy constitutional requirements of due process to make sure its use does not improperly shift the burden of proof by directing a verdict on an essential element of the crime. County Court of Ulster County, New York v. Allen, 442 U.S. 140 (1979) and State v. Ingram, 98 N.J. 489 (1985). The statutory language contained in N.J.S.A. 2C:20-11(d) has been interpreted to be constitutional in Carollo v. Supermarkets General Corp., 251 N.J. Super. 264, 268-69 and n. 1 (App. Div. 1991). See also State v. Fitzmaurice, 126 U.S. 361 (App. Div.), certif. den. 65 N.J. 562 (1974) (assessing the precursor statutory language of N.J.S.A. 2A:170-99).

[8] N.J.S.A. 2C:20-11(a)(6). In Henry v. Shopper's World, 200 N.J. Super. 14, 18 (App. Div. 1985), the Court held that 'the term "concealed unpurchased merchandise" ... may be construed as applying to items in plain view but worn or carried as though they had been purchased.' However, the phrase that the Court was construing is found in N.J.S.A. 2C:20-11(e), which provides civil and criminal immunity to merchants or others under certain circumstances, and the opinion does not refer to the term 'conceal' in subsection (a)(6). See also State v. Evans, 340 N.J. Super. 244, 251 (App. Div. 2001).

common sense, knowledge and everyday experience. Ask yourselves is it probable, logical and reasonable. However, you are never required or compelled to draw an inference. You alone decide whether the facts and circumstances shown by the evidence support an inference and you are always free to draw or not to draw an inference. If you draw an inference, you should weigh it in connection with all the other evidence in the case, keeping in mind that the burden of proof is upon the State to prove all the elements of the crime beyond a reasonable doubt.

To summarize, in order for you to find defendant guilty of shoplifting, the State must prove these elements beyond a reasonable doubt:

1. That defendant purposely concealed upon his person or otherwise any merchandise offered for sale by [name of commercial establishment];

2. That (name of commercial establishment) was a store or other retail mercantile establishment; and

3. That defendant did so with the purpose of depriving the merchant of the processes, use, or benefit of such merchandise [OR of converting such merchandise to his/her use] without paying the merchant the value thereof.

If you find that the State has proven all of these elements beyond a reasonable doubt, then you must find the defendant guilty. If the State has failed to prove any of these elements, you must find defendant not guilty.

To summarize, in order for you to find defendant guilty of shoplifting, the State must prove these elements beyond a reasonable doubt:

1. That defendant purposely transferred any merchandise displayed, held, stored or offered for sale by (name of commercial establishment) from the container in or on which the same was displayed to any other container;

2. That (name of commercial establishment) was a store or other retail mercantile establishment; and

3. That defendant did so with the purpose of depriving the merchant of all or some part of the retail value thereof.

If you find that the State has proven all of these elements beyond a reasonable doubt, then you must find the defendant guilty. If the State has failed to prove any of these elements, you must find defendant not guilty.

VALUE OF MERCHANDISE (N.J.S.A. 2C:20-11(c))

If you find the State has proven all of the previous elements beyond a reasonable doubt, you must then determine whether the State has proven beyond a reasonable doubt that the full retail value of the property involved

[CHOOSE APPROPRIATE ALTERNATIVES]

(1) is $75,000 or more; or

(2) exceeds $500 but is less than $75,000; or

(3) is at least $200, but does not exceed $500; or

(4) is less than $200.

I have already defined "full retail value" for you earlier in these instructions.