

**SHOPLIFTING [REMOVING SHOPPING CART(S)]**  
**N.J.S.A. 2C: 20-11(b)(6)**

[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 remove a shopping cart from the premises of a store or other retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of permanently depriving the merchant of the possession, use or benefit of such cart.

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 removed a shopping cart from the premises of a store or retail mercantile establishment (name of commercial establishment) without the consent of the merchant at the time of such removal;
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 possession, use or benefit of such cart.

The first element that the State must prove beyond a reasonable doubt is that defendant purposely removed a shopping cart from the premises of a store or retail mercantile establishment (name of commercial establishment) without the consent of the merchant at the time of such removal.

The term “shopping cart” means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from

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the stores to a place outside the store.<sup>1</sup>

The term “premises of a store or retail mercantile establishment” means and includes but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.<sup>2</sup>

The term “merchandise” means any goods, chattels, foodstuffs or wares of any type and description, regardless of the value thereof.<sup>3</sup> 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.<sup>4</sup>

A person acts purposely with respect to the nature of his/her conduct or a result of his/her 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.<sup>5</sup>

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 him/her conduct, and from all he/she said and did at the particular time and place, and from all of the surrounding circumstances.

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<sup>1</sup> N.J.S.A. 2C:20-11(a)(1).

<sup>2</sup> N.J.S.A. 2C:20-11(a)(8).

<sup>3</sup> N.J.S.A. 2C:20-11(a)(3).

<sup>4</sup> N.J.S.A. 2C:20-11(a)(4).

<sup>5</sup> N.J.S.A. 2C:2-2(b)(1).

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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.<sup>6</sup>

The third element that the State must prove beyond a reasonable doubt is that defendant acted with the purpose of permanently depriving the merchant of the possession, use or benefit of such cart. I have already defined "purpose" and “merchant” for you earlier in these instructions.

The term “deprive” means to withhold property permanently or for so extended a period as to appropriate a substantial portion of its economic value.<sup>7</sup>

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.<sup>8</sup>

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 removed a shopping cart from the premises of a store or retail mercantile establishment (name of commercial establishment) without the consent of the merchant at the time of such removal;
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 possession, use or benefit of such cart.

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.

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<sup>6</sup> N.J.S.A. 2C:20-11(a)(2).

<sup>7</sup> N.J.S.A. 2C:20-1(a)(1).

<sup>8</sup> N.J.S.A. 2C:20-11(a)(4).

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**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.

The term "full retail value" means the merchant's stated or advertised price of the merchandise.<sup>9</sup>

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<sup>9</sup> N.J.S.A. 2C:20-11(a)(7).