

SHOPLIFTING [ALTERING/REMOVING LABELS/TAGS]
N.J.S.A. 2C: 20-11(b)(3)

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

[READ INDICTMENT OR APPLICABLE COUNT]

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

For any person purposely to alter, transfer or remove any label, price tag or making indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment and to attempt to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of all or some part of the 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 [altered] [transferred] [removed] any label, price tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or 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 purposely attempted to purchase such merchandise personally or in consort with another at less than the full retail value; and
4. 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 [altered] [transferred] [removed] any label, price tag or making indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale by [name commercial establishment]. The term “merchandise” means any goods, chattels, foodstuffs or wares

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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 conduct if it is his/her 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 he/she is aware of the existence of such circumstances or believes or hopes that they exist.²

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 purposely attempted to purchase such merchandise personally or in consort with another at less than the full retail value. 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 fourth 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 value thereof. I have already defined "purpose" for you earlier in these instructions.

The term “deprive” means to withhold property permanently or for so extended a

¹ N.J.S.A. 2C:20-11(a)(3).

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).

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period as to appropriate a substantial portion of its economic value.⁵

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

The term “value” means the fair market value at the time and place of the alleged alteration, transfer or removal of the label, price tag or making indicia of value.⁷

Purpose and knowledge are states 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 defendant 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 defendant’s 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.

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 [altered] [transferred] [removed] any label, price tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or 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 purposely attempted to purchase such merchandise personally or in consort with another at less than the full retail value; and

⁵ N.J.S.A. 2C:20-1(a)(1).

⁶ N.J.S.A. 2C:20-11(a)(4).

⁷ N.J.S.A. 2C:1-14(m).

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4. 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 merchandise 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.