

SHOPLIFTING

General Laws c. 266, § 30A provides for aggravated punishment when the retail value of shoplifted goods is \$100 or more. When the aggravated form of the statute is charged and supported by the evidence, the jury should additionally be asked to determine whether the Commonwealth has proved beyond a reasonable doubt that the retail value of the shoplifted goods is \$100 or more. The statute also provides for aggravated punishment for subsequent offenses.

The defendant is charged with (shoplifting) (shoplifting by concealing merchandise) (shoplifting by switching a price tag) (shoplifting by switching containers) (shoplifting by ringing up a false price) (removing a shopping cart). Section 30A of chapter 266 of our General Laws provides in substance:

Instruct on one or more of the following alternatives, as applicable:

A. *Shoplifting.*

“Any person who intentionally (takes possession of, carries away, transfers) (or) (causes to be carried away or transferred)

any merchandise displayed, held, stored or offered for sale by a store or other retail merchant,

with the intention of depriving the merchant of its possession, use or benefit or converting it to his (her) use without

having paid the merchant its value,
shall be punished.”

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First: That the defendant intentionally (took possession of, carried away, or transferred) (or) (caused to be carried away or transferred) retail merchandise;

Second: That the merchandise was owned or possessed by someone other than the defendant; and

Third: That the defendant (took possession of, carried away, or transferred) (or) (caused to be carried away or transferred) that merchandise and did so (with an intent to deprive the merchant of its possession, use or benefit) (or) (with an intent to convert it to his [her] own use without having paid full value for it).

B. *Shoplifting by concealing merchandise.*

“Any person who intentionally conceals on his person or elsewhere any retail merchandise,
with the intention of depriving the merchant of the proceeds, use

or benefit of that merchandise or converting it to his (her) use without paying the merchant its value, shall be punished.”

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First: That the defendant concealed retail merchandise on his (her) person or elsewhere under his (her) control;

Second: That the merchandise was owned or possessed by someone other than the defendant; and

Third: That the defendant concealed that merchandise (with an intent to deprive the merchant of its possession, use or benefit) (or) (with an intent of converting it to his [her] own use without having paid full value for it).

C. *Shoplifting by switching a price tag.*

“Any person who intentionally alters, transfers or removes any label, price tag or other marking for determining the price of retail merchandise which is being displayed, held, stored or offered for sale,

and attempts to purchase such merchandise personally or in collaboration with another person at less than its full retail price, with the intention of depriving the merchant of all or some part of its retail value, shall be punished.”

In order to prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

***First:* That the price of retail merchandise owned or possessed by someone other than the defendant was contained on a label, price tag or other marking;**

***Second:* That the defendant intentionally (altered) (transferred) (removed) that label, price tag or marking from the merchandise;**

***Third:* That the defendant, personally or by agreement with another person, then attempted to purchase that merchandise at less than the full retail price; and**

***Fourth:* That the defendant did so with the intent to deprive the merchant of all or some part of its retail value.**

D. *Shoplifting by switching containers.*

“Any person who intentionally transfers merchandise displayed, held, stored or offered for sale, from the container in or on which it is being displayed to some other container, with the intention of depriving the merchant of all or some of its retail value, shall be punished.”

In order to prove the defendant guilty of this offense, the

Commonwealth must prove four things beyond a reasonable doubt:

First: That retail merchandise was displayed in or on a container;

Second: That the merchandise was owned or possessed by someone other than the defendant;

Third: That the defendant intentionally transferred the merchandise to some other container; and

Fourth: That the defendant did so with an intent to deprive the merchant of its full price.

E. *Shoplifting by ringing up a false price.*

“Any person who intentionally records a value for retail merchandise which is less than its actual retail value, with the intention of depriving the merchant of its full retail value, shall be punished.”

In order to prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

***First:* That the defendant intentionally rang up or recorded a price for merchandise;**

***Second:* That the price rung up was less than the actual retail price;**

***Third:* That the defendant knew that the price rung up was less than the actual retail price; and**

***Fourth:* That the defendant acted with the intent to deprive the merchant of the full price.**

F. *Removing a shopping cart.*

“Any person who intentionally removes a shopping cart from the premises of a retail merchant without the consent of the merchant at the time of the removal, with the intention of permanently depriving the merchant of the possession, use or benefit of the shopping cart, shall be punished.”

In order to prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

***First:* That the defendant intentionally removed a shopping cart from the premises of a retail merchant;**

***Second:* That the cart was owned by someone other than the defendant;**

***Third:* That the defendant removed the cart without the consent of that merchant; and**

***Fourth:* That the defendant did so with an intent to deprive the merchant of the possession or use of the cart permanently.**

SUPPLEMENTAL INSTRUCTIONS

1. **“Retail merchandise.”** **“Retail merchandise” means products or goods that are offered for sale in relatively small quantities directly to consumers. It refers to the type of merchandise sold in an ordinary store open to the public, as opposed to goods sold in bulk to merchants but not directly to the public.**

2. **“Conceal.”** **To “conceal” means to cover an object to keep it from being seen or to withdraw an object from view to prevent its discovery. To conceal is to take an action that makes it more difficult for the owner to discover the property or that makes discovery or identification of the property more difficult.**

Commonwealth v. Balboni, 26 Mass. App. Ct. 750, 532 N.E.2d 706 (1989).

NOTES:

1. **Larceny prosecution is alternative only for goods with value of \$100 or over.** *Commonwealth v. Hudson*, 404 Mass. 282, 285-289, 535 N.E.2d 208, 210-212 (1989), held that theft of retail merchandise may be prosecuted either under the shoplifting statute (G.L. c. 266, § 30A) or under the general larceny statute (G.L. c. 266, § 30). However, § 30A was amended by St. 1996, c. 430 (effective December 9, 1996) to provide that “[i]f the retail value of the goods obtained is less than one hundred dollars, this section shall apply to the exclusion of section thirty.” This appears to provide that shoplifting goods worth less than \$100 may now be prosecuted *only* under § 30A and may not be prosecuted under § 30.

2. See generally Cleary, “The Crime of Shoplifting: Some Constitutional and Other Problems,” 69 Mass. L. Rev. 20 (1984).