

SHOPLIFTING

G.L. c. 266, § 30A

[If the value is alleged to be \$250 or more, include supplemental instruction 3.]

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).

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

A. Shoplifting.

In order to prove the defendant guilty of shoplifting, the Commonwealth must prove the following 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.

In order to prove the defendant guilty of shoplifting by concealing merchandise, the Commonwealth must prove the following 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 to convert it to his [her] own use without having paid full value for it).

C. Shoplifting by a switching price tag.

In order to prove the defendant guilty of shoplifting by switching (a) price tag(s), the Commonwealth must prove the following 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.

In order to prove the defendant guilty of shoplifting by switching containers, the Commonwealth must prove the following 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 the intent to deprive the merchant of its full price.

E. Shoplifting by ringing up a false price.

In order to prove the defendant guilty of shoplifting by ringing up a false price, the Commonwealth must prove the following 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.

In order to prove the defendant guilty of removing a shopping cart, the Commonwealth must prove the following 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 the 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. 740, 532 N.E.2d 706 (1989).

3. Shoplifting \$250 or more. If you determine that the Commonwealth has proved beyond a reasonable doubt that the defendant is guilty of shoplifting, you must also go on to determine whether (if more than one item stolen: all) the property that was shoplifted was worth \$250 or more. You may use your general knowledge in evaluating the value of the property; it is not required that you have any expert evidence of its value.

Effective April 13, 2018, the aggravated form of this offense was increased from \$100 to \$250. St. 2018, c. 69, § 139. For offenses committed prior to April 13, 2018, this instruction can be utilized, just inserting \$100 wherever it refers to \$250.

The jury may use its common knowledge, and does not require expert evidence, in evaluating value. *Commonwealth v. Hosman*, 257 Mass. 379, 386 (1925); *Commonwealth v. McCann*, 16 Mass. App. Ct. 990, 991 (1983).

NOTES:

1. **Larceny prosecution is alternative only for goods with value of \$250 or more.** Where the retail value of the goods obtained is less than \$250, § 30A shall apply to the exclusion of § 30. G.L. c. 266, § 30A, para. 7.