

GRAND LARCENY IN THE SECOND DEGREE
(Extortion)
Penal Law §155.40(2)
(Committed on or after Sept. 1, 1967)

The (*specify*) count is Grand Larceny in the Second Degree.

Under our law, a person is guilty of Grand Larceny in the Second Degree when that person steals property and when the property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another will

Select appropriate alternative(s):

cause physical injury to some person in the future;

cause damage to property;

use or abuse his or her position as a public servant by engaging in conduct within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

The term, "steals property," used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

A person STEALS PROPERTY and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or herself [*or to a third person*], such person wrongfully takes, obtains, or withholds such property from an owner of the property.¹

The following terms used in that definition have a special meaning:

¹See Penal Law § 155.05(1).

PROPERTY means any money, personal property, or thing of value.²

OWNER means a person having a right to possession of the property superior to that of the person who takes it.³

INTENT means conscious objective or purpose. Thus, a person acts with INTENT TO DEPRIVE ANOTHER OF PROPERTY OR TO APPROPRIATE PROPERTY TO HIMSELF OR HERSELF [*or to a third person*] when such person's conscious objective or purpose is:

(1) to withhold the property or cause it to be withheld permanently⁴, *or*

(2) to exercise control over the property, [*or to aid a*

² See Penal Law § 155.00(1). The statutory definition of property also includes the following: “or real property, computer data, computer program, thing in action, evidence of debt or contract, or any article, substance or thing of value including any gas, steam, water or electricity, which is provided for a charge or compensation.” Unless the property listed in this portion of the definition is in issue, this portion of the definition need not be read.

³ See Penal Law § 155.00(5). Also see that section for special definitions of “owner” to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

⁴ In the typical larceny, it should not be necessary to include the alternate statutory language which follows the word “permanently”; namely: “or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such person.”

third person to exercise control over it], permanently⁵, or

(3) to dispose of the property either for the benefit of himself or herself [or a third person], or, under such circumstances as to render it unlikely that an owner will recover such property.⁶

A person WRONGFULLY TAKES, OBTAINS, OR WITHHOLDS property from an owner when that person obtains such property, regardless of its nature or value, by extortion.

A person obtains property by extortion when that person compels or induces another person to deliver such property to himself or herself [or to a third person] by means of instilling in that person a fear that, if the property is not so delivered, the actor or another will

Select appropriate alternative(s):

cause physical injury to some person in the future;

cause damage to property;

use or abuse his or her position as a public servant by engaging in conduct within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

In order for you to find the defendant guilty of this crime,

⁵ In the typical larceny, it should not be necessary to include the alternate statutory language which follows the word “permanently”; namely: “or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such person.”

⁶See Penal Law §§ 15.05(1); 155.00(3); 155.03(4).

the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), wrongfully obtained property from its owner by extortion; and
2. That the defendant did so with the intent to deprive another of the property or to appropriate the property to himself/herself [or to a third person].

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.