

ADDITIONAL CHARGES

ALTERNATE THEORIES OF LARCENY

LARCENY BY EMBEZZLEMENT

A person [also] wrongfully takes, obtains, or withholds property from an owner when, having been entrusted to hold such property on behalf of the owner, such person thereafter, without the permission or authority of the owner, intentionally exercises control over it in a manner inconsistent with the continued rights of the owner, knowing that he has no permission or authority to do so.¹

LARCENY BY TRICK

A person [also] wrongfully takes, obtains, or withholds property from an owner when that person engages in some trick, fraudulent device, or artifice, and thereby obtains possession of the property, and exercises possession over that property for a period of time, however temporary, in a manner inconsistent with the continued rights of the owner.²

LARCENY BY FALSE PRETENSE

A person [also] wrongfully takes, obtains or withholds property from an owner when that person makes a false representation of a past or existing fact while aware that such representation is false, and obtains possession and title to the property as a result of the owner's reliance upon such representation.³

¹ See Penal Law § 155.05 (2) (a); *People v Yannett*, 49 NY2d 296, 301 (1980).

² See Penal Law § 155.05 (2) (a); *People v Olivo*, 52 NY2d 309, 316 (1981); *People v Churchill*, 47 NY2d 151, 155 (1979); *People v Miller*, 169 NY 339, 350 (1902).

³ See Penal Law § 155.05 (2) (a); *People v Hart*, 100 NY2d 550 (2003); *People v Norman*, 85 NY2d 609, 618 (1995); *People v Drake*, 61 NY2d 359, 362 (1984).

LARCENY BY ACQUIRING LOST PROPERTY

A person [also] wrongfully takes, obtains or withholds property from an owner by acquiring lost property. A person acquires lost property when he or she exercises control over property of another which he or she knows to have been lost or mislaid [or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property] without taking reasonable measures to return such property to the owner.⁴

LARCENY BY BAD CHECK

A person [also] wrongfully takes, obtains or withholds property from an owner thereof when he or she commits the crime of issuing a bad check.⁵ A person is guilty of issuing a bad check when (*insert appropriate provision of Issuing a Bad Check, Penal Law § 190.05.*)

LARCENY BY FALSE PROMISE

A person [also] wrongfully takes, obtains, or withholds property when, pursuant to a scheme to defraud, he or she obtains property of another by means of a representation, express or implied, that he or she or a third person will in the future engage in particular conduct, and when he or she does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct. The defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed.⁶

⁴ Penal Law § 155.05 (2) (b).

⁵ Penal Law § 155.05 (2) (c).

⁶ Penal Law § 155.05 (2) (d).

LARCENY BY WAGE THEFT ⁷

A person [also] wrongfully takes, obtains, or withholds property from an owner when that person hires an individual to perform services and that individual performs such services, and the person [who hired the individual] does not pay wages, at the minimum wage rate and overtime, or [pay a] promised wage, if greater than the minimum wage rate and overtime, to [that] individual for work performed.⁸

⁷ Penal Law § 155.05(2) reads: “A person obtains property by wage theft when he or she hires a person to perform services and the person performs such services and the person does not pay wages, at the minimum wage rate and overtime, or promised wage, if greater than the minimum wage rate and overtime, to said person for work performed.” This instruction modifies the statutory language for clarity’s sake, using gender neutral terms, and adding the words in brackets.

⁸ Penal Law §155.05 (2)(f). That statute continues: “In a prosecution for wage theft, for the purposes of venue, it is permissible to aggregate all nonpayments or underpayments to one person from one person, into one larceny count, even if the nonpayments or underpayments occurred in multiple counties. It is also permissible to aggregate nonpayments or underpayments from a workforce into one larceny count even if such nonpayments or underpayments occurred in multiple counties.”

If the alleged wage theft is an aggregate amount from multiple counties, the first element of the applicable larceny crime should read:

- 1) That on or about (*date*), in the County of (*specify County of indictment*) and (*specify*) , the defendant, etc.