

BAD CHECKS
(N.J.S.A. 2C:21-5)

Count _____ of the indictment charges defendant with issuing (or passing) bad checks. That section of our statutes provides in pertinent part that

A person who issues [or passes] a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits an offense.

In order to obtain a conviction, the State must prove each of the following elements beyond a reasonable doubt

- 1). That defendant knowingly issued [or passed] a check [or sight order] for the payment of money and
- 2). That defendant knew at the time (he/she) issued [or passed] the check [or sight order] that it would not be honored by the drawee.

The first element which the State must prove beyond a reasonable doubt is that defendant knowingly issued [or passed] a check [or sight order] for the payment of money. A check is a draft payable on demand and drawn on a bank [or a cashier's check or a teller's check]. An instrument may be a check even though it is described on its face by another term, such as money order.¹ A sight order is an instrument for the immediate collection of money.²

To issue a check [or sight order] means to move the check [or sight order] into circulation.³ To pass a check [or sight order] means to deliver or circulate or hand the check [or sight order] from one person to another.⁴

¹ See N.J.S.A. 12A:3-104.

² United Benefit Fire Insurance Co. v. First National Bank of Arizona, 405 P.2d 488 (Ariz. 1965).

³ N.J.S.A. 12A:3-102.

⁴ State v. Beaver, 145 S.E.2d 330 (N.C. 1965).

A drawee is the financial institution at which the issuer had, or made representation that (he/she) had, an account at the time the check [or sight order] was issued [or passed].

The second element which the State must prove beyond a reasonable doubt is that the defendant knew at the time (he/she) issued [or passed it] the check [or sight order] that it would not be honored by the drawee.⁵

A person acts knowingly with respect to the nature of (his/her) conduct or the attendant circumstances if (he/she) is aware that (his/her) conduct is of that nature, or that such circumstances exist, or (he/she) is aware of a high probability of their existence. A person acts knowingly with respect to a result of (his/her) conduct if (he/she) is aware that it is practically certain that (his/her) conduct will cause such a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning. Knowingly is a state of mind and cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that witnesses be produced by the State to testify that a defendant said that (he/she) knowingly did something. (His/Her) knowledge may be gathered from (his/her) acts and (his/her) conduct and from all (he/she) said and did at the particular time and place and from all the surrounding circumstances.

[CHARGE IF APPROPRIATE]

You may infer⁶ that the issuer knew that the check [or sight order] would not be paid if

1). The issuer had no account with the drawee at the time the check [or sight order] was issued

OR

⁵ There is a difference of opinion as to whether the State must prove that the defendant intended to defraud the victim. In State v. Passafiume, 184 N.J. Super. 447, 449 (App. Div. 1982), the Appellate Division held that passing a bad check requires a fraudulent intent. However, in State v. Kelm, 289 N.J. Super. 55 (App. Div. 1996), certif. denied, 146 N.J. 68 (1996), without citing to Passafiume, the Appellate Division determined that the statute merely required the State to prove that at the time the check was issued or passed, the defendant knew it would not be honored by the drawee.

⁶ These inferences do not apply to a post-dated check or sight order.

2). Payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal or after notice has been sent to the issuer's last known address. Notice of refusal may be given to the issuer orally or in writing in any reasonable manner by any person.

An inference is a deduction of fact that may be drawn logically and reasonably from another fact or group of facts established by the evidence. Whether or not an inference should be drawn is for you to decide using your own common sense, knowledge and everyday experience. Ask yourselves is it probable, logical and reasonable. However, you are never required or compelled to draw an inference. You alone decide whether the facts and circumstances shown by the evidence support an inference and you are always free to draw or not to draw an inference. If you draw an inference, you should weigh it in connection with all the other evidence in the case, keeping in mind that the burden of proof is upon the State to prove all the elements of the crime beyond a reasonable doubt.

If you find that the State has proven both elements beyond a reasonable doubt, then you must find the defendant guilty. If you find that the State has failed to prove any of the elements beyond a reasonable doubt, then you must find the defendant not guilty.

If you find that the State has proven each of the elements of this crime beyond a reasonable doubt, then the State has the burden of proving beyond a reasonable doubt the amount of the check [or sight order]. You must specify if the amount of the check [or sight order] is:

- (a) \$75,000 or more;
- (b) \$1,000 or more but less than \$75,000;
- (c) \$200 or more but less than \$1,000; or
- (d) less than \$200.