

**CLAIM OF RIGHT DEFENSE TO THEFT OFFENSES**  
**(N.J.S.A. 2C:20-2c(2))**

In addition to his/her general denial of guilt, the defendant contends that he/she is not guilty of (insert appropriate offenses such as theft or receiving stolen property) because he/she was acting pursuant to a claim of right to the property.

Our law provides that it is a defense to prosecution<sup>1</sup> for (insert appropriate charge such as theft or receiving stolen property) that the defendant acted under an honest claim of right to the property (or service) involved or that he/she had a right to acquire or dispose of the property as he/she did. An honest claim is one that is genuinely, though not necessarily correctly, believed by the defendant.

This defense, you should note, is not limited to situations in which a defendant believed he/she owned the property.<sup>2</sup> Rather, it includes those situations in which the defendant honestly, although not necessarily correctly, believed that he/she had either the right or the authorization to receive, take, acquire, or dispose of the property.

As I have mentioned to you, since this is a criminal case the burden of proof is on the State. The defendant is, therefore, not required to prove that he/she acted pursuant to a claim of right; rather the burden is on the State to prove that the defendant did not act pursuant to a claim of right. Thus, if the State has proven all the elements of (insert offense) beyond a reasonable doubt and has also proven beyond a reasonable doubt that the defendant did not honestly believe that he/she had a right to the property or was authorized to receive, take, acquire, or dispose of the property, then you must find the defendant guilty of (insert offense).

On the other hand, if the State has failed to prove beyond a reasonable doubt one or more elements of (insert offense) or if the State has failed to prove beyond a reasonable doubt that the defendant did not honestly believe he/she had a right to the property or was authorized to receive, take, acquire, or dispose of the property, then you must find the defendant not guilty.

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<sup>1</sup> The statute literally states that a claim of right is an “affirmative defense,” but when the charge is given the term “affirmative” should be deleted in order to avoid any suggestion that the defendant bears the burden of proof. However, since the defense is an affirmative one, the charge should only be given when there is some evidence which would support it. N.J.S.A. 2C:1-13b(1). See State v. Ippolito, 287 N.J. Super. 375 (App. Div. 1996) where the Court found an evidential basis for this charge in the defendant’s testimony that his co-defendant told him that the co-defendant’s boss had approved his taking of the property. (Id. at 378).

<sup>2</sup> State v. Ippolito, supra.