

THEFT FROM THE PERSON
N.J.S.A. 2C:20-2b(2)(d)

Count _____ of the indictment charges defendant with theft from the person.

(READ INDICTMENT)

The statute upon which this count of the indictment is based states in pertinent part:

A person is guilty of theft if he unlawfully takes, or exercises control over movable property of another with purpose to deprive him thereof.

In order for you to find defendant guilty of this offense, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant knowingly took or unlawfully exercised control over movable property;
2. That the movable property was property of another;
3. That the movable property was taken from the person of another; and
4. That defendant's purpose was to deprive the other person of the movable property.

The first element the State must prove beyond a reasonable doubt is that defendant knowingly took or exercised unlawful control over movable property. Movable property means property the location of which can be changed, including things growing on, affixed to, or found in land, or documents, although the rights represented thereby have no physical location.

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. "Knowingly," "with knowledge," or equivalent terms have the same meaning.

In this case, the State alleges that the movable property taken or over which control was unlawfully exercised was (describe property). The State need not prove that the property was carried out of the place in which it was kept, but only that it was moved or taken from its original location or

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that defendant exercised unlawful control over it.¹

Knowledge is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and his/her conduct and from all he/she said and did at the particular time and place, and from all of the surrounding circumstances.

The second element that the State must prove beyond a reasonable doubt is that the movable property is property of another. Property of another includes [**choose appropriate**] property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.²

The term property of another is broadly defined so as to include services and intangibles, anything of value.³ Anything of value is defined as any direct or indirect gain or advantage to any person.⁴

The third element that the State must prove beyond a reasonable doubt is that the property was taken from the person of another. That is, the State must prove that at the time of the theft, the property stolen was within the immediate custody and control of another.

The fourth element that the State must prove beyond a reasonable doubt is that defendant's purpose was to deprive the other person of the movable property. Deprive means to withhold or cause to be withheld property of another permanently or for so extended a period as to appropriate a

¹ State v. Link, 197 N.J. Super. 615, 619 (App. Div.), certif. denied, 101 N.J. 234 (1985).

² N.J.S.A. 2C:20-1h.

³ State v. Dixon, 114 N.J. 111 (1989).

⁴ N.J.S.A. 2C:20-1n.

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substantial portion of its economic value or with purpose to restore only upon payment of reward or other compensation or to dispose or cause disposal of the property so as to make it unlikely that the owner will recover it.

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if the individual is aware of the existence of such circumstances or the individual believes or hopes that they exist. “With purpose,” “designed,” “with design” or equivalent terms have the same meaning.

Purpose is a condition of the mind. A condition of the mind cannot be seen. It can only be determined by inference from defendant’s conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

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