

THEFT OF MOVABLE PROPERTY
(N.J.S.A. 2C:20-3a)

[Count ____ of T]he Indictment charges defendant with theft by unlawful taking or disposition of movable property. The indictment reads as follows: **[read the appropriate portion of the indictment]**.

The statute upon which the indictment is based provides in pertinent part that:

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

The State must prove each of the following elements beyond a reasonable doubt:

- 1) that defendant knowingly took or unlawfully exercised control over movable property;
- 2) that the movable property was property of another;
- 3) that defendant's purpose was to deprive the other person of the movable property.

The first element which the State must prove beyond a reasonable doubt is that defendant knowingly took or exercised unlawful control over movable property. Property means anything of value, including **[select appropriate phrases: tangible and intangible personal property, trade secrets, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric, gas, steam or other power, financial instruments, information, data, and computer software, in either human readable or computer readable form, copies or originals.¹**]

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

¹ N.J.S.A. 2C:20-1g.

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no physical location.² For comparison purposes, “immovable property” is all other property.³

Defendant must knowingly take or exercise unlawful control over movable property. 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 reflected in the testimony [and evidence adduced at trial].

In this case, the State alleges that the movable property taken, or over which control was unlawfully exercised, is the following: **[describe property listed in the indictment]**. **[Read if appropriate:** It should be noted that the definition of “movable property” is broad, including the kind of property which has no real location.⁴] 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 that defendant exercised unlawful control over it, whether or not he/she was able to actually move or remove the property.

[Read the Supplemental Charge on Theft if appropriate]

The second element that the State must prove beyond a reasonable doubt is that the movable property is property of another. **[Choose appropriate language:** Property of another includes

² N.J.S.A. 2C:20-1e.

³ Ibid.

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property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and 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.⁵ Property in the 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.⁶] The term property of another is broadly defined so as to include services and intangibles, anything of value.⁷ Anything of value is defined as any direct or indirect gain or advantage to any person.⁸

The third element which the State must prove beyond a reasonable doubt is that defendant's purpose was to deprive the other person of the movable property. For the purpose of this statute, the term "deprive" specifically means: (1) to withhold or cause to be withheld property of another permanently or for so extended a period as to appropriate a substantial portion of its economic value, or with purpose to restore only upon payment of reward or other compensation; or (2) 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 he/she believes or hopes that they exist. A person acts purposely if he/she acts with design, with a specific intent, with a particular object or purpose, or if he/she means to do what he/she does.

⁴ For example, stock certificates.

⁵ N.J.S.A. 2C:20-1h.

⁶ Ibid.

⁷ State v. Dixon, 114 N.J. 111 (1989).

⁸ N.J.S.A. 2C:20-1n.

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Purpose is a condition of the mind that cannot be seen and that can be determined only 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 that 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 defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances.

If you find that the State has proven all three elements beyond a reasonable doubt, then you must find defendant guilty. 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.

Since the value of the movable property [or specific type of property] determines the degree or severity of the crime, the State must prove its value beyond a reasonable doubt [or the movable property taken beyond a reasonable doubt]. If you find defendant guilty, then you must indicate the value of the property (or whether the movable property is a specifically enumerated item). [Read to the jury the gradation theft offenses charge, N.J.S.A. 2C:20-2b].