

THEFT OF SERVICES

(N.J.S.A. 2C:20-8a)

The defendant is charged with committing the offense of theft of services.

That section of our statute reads in pertinent part:

A person is guilty of theft if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token, slug, or other means, including but not limited to mechanical or electronic devices or through fraudulent statements, to avoid payment for the service.

The state must prove, beyond a reasonable doubt, each of the following elements of the crime:

- (1) that defendant purposely obtained a service;
- (2) that defendant knew the services were available only for compensation;
- (3) that defendant obtained the services by deception (or threat, or by a false token, etc.);
- (4) that defendant's purpose was to avoid payment.

The first element that the State must prove beyond a reasonable doubt is that the defendant purposely obtained a service. "Obtain" means to secure the performance of the service, whether for one's own benefit or for the benefit of another.

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) is aware of the existence of such circumstances or (he/she) believes or hopes that they exist.

The second element that the State must prove beyond a reasonable doubt is that the defendant knew the services were available only for compensation.

A person acts knowingly with respect to the nature of (his/her) conduct or the attendant circumstances if a person is aware that (his/her) conduct is of that nature, or that such circumstances exist or a person is aware of a high probability of their existence. A person acts knowingly with respect to a result of (his/her) conduct if a person is aware that it is practically certain that (his/her) conduct will cause such a result. One is said to act knowingly if one acts with knowledge, if one acts consciously, if (he/she) comprehends (his/her) acts.

Purpose and knowledge are conditions 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, members of the jury, that the State produce witnesses to testify that the defendant 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 inferences 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.

Services include labor, professional service, transportation, telephone (including using, selling, or possessing a computer to deprive a telephone company of its charges), or other public service, accommodation in hotels, restaurants or elsewhere, entertainment, admissions to exhibitions and use of vehicles or other movable property.

The third element that the State must prove beyond a reasonable doubt is that the defendant obtained the services by deception. A person “deceives” if he “purposely creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that (he/she) did not subsequently perform the promise.”¹ A person also deceives when (he/she) “prevents another from acquiring information which would affect his judgment of a transaction; or fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.”²

“Threat” means a communicated intent to inflict physical or other harm on any person or on property.³

“By a false token” means a false document or sign of the existence of a fact, in general, used for the purposes of fraud. It is a device used to obtain money by false pretenses.⁴ For example, the use of a slug is use “by a false token.” A slug is an object or article which by virtue

¹ N.J.S.A. 2C:20-4a.

² N.J.S.A. 2C:20-4b and c.

³ Black’s Law Dictionary, 6th ed.

⁴ Black’s Law Dictionary, 6th ed.

of its size, shape, or any other quality is capable of being inserted or deposited in a coin, currency, or credit card activated machine as an improper substitute for money.⁵

The fourth element that the State must prove beyond a reasonable doubt is that the defendant's purpose was to avoid payment.

[CHARGE WHERE APPROPRIATE]

Where compensation for service is ordinarily paid immediately upon the rendering of such service, as, for example, in hotels or restaurants, where a person absconds without payment or offer to pay, you may infer that absconding without payment or offer to pay gives rise to an inference that service was obtained by deception as to intention to pay.⁶

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.⁷

[CHARGE IN ALL CASES]

In conclusion:

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

However, if the State has proven each element beyond a reasonable doubt, then you must find the defendant guilty of theft services.

(If affirmative defense of claim of right is raised, charge here.

(N.J.S.A. 2C:20-2(c))

(If applicable, charge here on Gradation of Theft Offenses.

(N.J.S.A. 2C:20-2(b))

⁵ N.J.S.A. 2C:21-18.

⁶ N.J.S.A. 2C:20-8a.

⁷ See N.J.S.A. 2C:20-81 for other inferences that may be applicable.