

THEFT OF SERVICES

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

The defendant is charged with theft of services in violation of N.J.S.A. 2C:20-8b. That section of our statute reads in pertinent part:

A person commits theft if, having control over the disposition of services of another, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled hereto.

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

- (1) that defendant had control over the disposition of the services;
- (2) that defendant was not entitled to the services (nor was the recipient if other than defendant);
- (3) that defendant diverted services of another to (his/her) own benefit or to the benefit of another; and
- (4) that defendant did so knowingly.

The first element that the State must prove beyond a reasonable doubt is that the defendant had control over the disposition of the services.

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, accommodations in hotels, restaurants or elsewhere, entertainment, admission to exhibitions, use of vehicles or other movable property.

The second element that the State must prove beyond a reasonable doubt is that the defendant was not entitled to the services (nor was the recipient of the services, if other than the defendant).

The third element that the State must prove beyond a reasonable doubt is that the defendant diverted services of another to (his/her) own benefit or to the benefit of another.

The fourth element that the State must prove beyond a reasonable doubt is that the defendant did so knowingly.

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

THEFT OF SERVICES
(N.J.S.A. 2C:20-8b)
PAGE 2 of 2

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.

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, 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 inferences¹ 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.

If the defendant knowingly diverted the services in question it does not matter whether (he/she) diverted them to (his/her) own benefit or to the benefit of another person who was not entitled to the services.

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

If, however, you find that the State has proved each element beyond a reasonable doubt, then you must find defendant guilty of theft of 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))

¹ See N.J.S.A. 2C:20-8l for inferences that may be applicable.

[CHARGE WHERE APPROPRIATE]

An inference is a deduction of fact that may be drawn logically and reasonably from another fact or group or 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.