

Approved (3/22/04)

UNAUTHORIZED USE OF ATP CARD OR FOOD STAMP COUPONS

OR BENEFIT CARD

(N.J.S.A. 2C:20-36 and 2C:20-37)

The defendant(s) is (are) charged in Count _____ of the indictment with unauthorized use of an ATP Card or Food Stamp Coupon or benefit card.

[READ COUNT OF INDICTMENT]

The applicable statute provides, in pertinent part, that:

an individual shall be guilty of [unauthorized use of an ATP card or food stamp coupon or benefit card] if he purposely or knowingly and without authorization:

[CHOOSE AS APPROPRIATE]

a. Receives or uses the proceeds of food stamp coupons or an ATP card or benefit card for which he has not applied or has not been approved by the department [of Human Services] to use;

OR

b. Engages in any transaction to convert food stamp coupons or an ATP card or benefit card to other property contrary to federal and State government rules and regulations governing the Work First New Jersey Program, the federal food stamp program, the New Jersey Supplementary Food Stamp Program, or any other program included in the electronic benefit distribution system;

OR

c. Transfers food stamp coupons or an ATP card or benefit card to another person who is not lawfully entitled or approved by the department [of Human Services] to use coupons or an ATP card or benefit card.

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In order for you to find the defendant guilty, the first element that the State must prove beyond a reasonable doubt is:

[CHOOSE AS APPROPRIATE]

that defendant received or used the proceeds of food stamp coupons or an ATP card or benefit card for which he/she had not applied or has not been approved by the department [of Human Services] to use;

OR

that defendant engaged in any transaction to convert food stamp coupons or an ATP card or benefit card to other property, contrary to certain rules and regulations;¹

OR

that defendant transferred food stamp coupons or an ATP card or benefit card to another person who is not lawfully entitled or approved by the department to use the coupons or ATP or benefit card.

"ATP card" means a document issued by a State or federal agency, to a certified household, to show the food stamp allotment a household is authorized to receive on presentation.²

¹ See N.J.S.A. 44:10-5.1 et seq. (Public Assistance Electronic Benefit Distribution System Act) and N.J.S.A. 44:10-55 et seq. (Work First New Jersey Act); N.J.S.A. 44:10-75 et seq. (New Jersey Supplementary Food Stamp Program Act) and N.J.A.C. 10:87-1 et seq. (regulations governing food stamps) N.J.A.C. 10:90 et seq. (regulations governing Work First Program). See also 7 U.S.C. '2011 et seq.; 7 C.F.R. 217 et seq. (regulations concerning Food Stamp and Food Distribution Program).

² ATP is a shorthand reference to the term "authorized to participate."

"Benefit card" means a card used or intended for use to access Work First New Jersey, food stamp or other benefits as determined by the Commissioner of Human Services under the electronic benefit distribution system established pursuant to the "Public Assistance Electronic Benefit Distribution System Act."³

"Department" means the Department of Human Services.

"Food stamp coupon" means any coupon or stamp used or intended for use in the purchase of food pursuant to the federal food stamp program authorized by [the federal food stamp program]⁴ or the New Jersey [food stamp program].⁵

[CHARGE WHERE APPROPRIATE]

"Transfer" means to convey or move from one place or person to another. It includes selling or giving.

[CHARGE IN ALL CASES]

The second element that the State must prove beyond a reasonable doubt is that defendant acted without authorization from the Department of Human Services or its designee.

The third element that the State must prove is that defendant acted purposely or knowingly.

³ See N.J.S.A. 44:10-5.1 et seq. (Public Assistance Electronic Benefit Distribution System Act) and N.J.S.A. 44:10-55 et seq. (Work First New Jersey Act) and N.J.A.C. 10:87-1 et seq. (regulations governing food stamps) N.J.A.C. 10:90 et seq. (regulations governing Work First Program).

⁴ See 7 U.S.C. 2011 et seq.; 7 C.F.R. 217 et seq. (regulations concerning Food Stamp and Food Distribution Program).

⁵ See N.J.S.A. 44:10-79 et seq. (New Jersey Supplementary Food Stamp Program Act).

A person acts purposely with respect to the result of his/her conduct if it is his conscious object to cause such a result. 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 does.

A person acts knowingly with respect to the result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result.

The terms purposely and knowingly are conditions 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 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.

[CHARGE IN ALL CASES]

If you find that the State has proven all three elements beyond a reasonable doubt, then you must find defendant guilty of unauthorized use of **[Choose as appropriate: an ATP card or benefit card or food stamp coupon]**. If you find that the State has failed to prove any element beyond a reasonable doubt, then you must find defendant not guilty of **[Choose as appropriate: an ATP card or benefit card or food stamp coupon]**.

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The State also must prove the face value of the property beyond a reasonable doubt. If you find the defendant guilty of the offense, then you must indicate whether you find the amount or face value of the food stamp coupon, ATP card or benefit card involved:

- (1) is \$150 or more;
- (2) is less than \$150;

[CHARGE WHERE APPROPRIATE]

The State has the burden of proving the face value of the property involved. This means that the State must prove beyond a reasonable doubt that the property is worth what the State claims.

[CHARGE WHERE APPROPRIATE]

If you find that the State has proven beyond a reasonable doubt that the amounts involved were taken in thefts committed pursuant to one scheme or course of conduct, the amounts may be added together to form a single total amount.