

CREDIT CARD CRIMES:
INTENT OF CARDHOLDER TO DEFRAUD
(USE OF FORGED OR EXPIRED OR REVOKED CARD)
N.J.S.A. 2C:21-6d(1)

The defendant is charged with Credit Card Theft. Specifically,

(Read Count _____ of Indictment)

The applicable section of the statute reads as follows:

A person, who, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person . . . uses for the purpose of obtaining money, goods, services or anything else of value . . . a credit card which he knows is forged, expired, or revoked . . . is guilty of a crime.

In order to find the defendant guilty, the State must prove the following elements beyond a reasonable doubt:

1. The defendant used a credit card for the purpose of obtaining money, goods, services or anything else of value.
2. The defendant used the credit card which he/she knew was forged, expired or revoked.
3. The defendant had the intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person.

The first element that the State must prove beyond a reasonable doubt is that the defendant used the credit card for the purpose of obtaining money, goods, services or anything else of value.

“Credit card” means any tangible or intangible instrument or device issued with or without a fee by an issuer, a person or organization providing money, goods, services or anything else of value, or any other person, that can be used, alone or in connection with another means of account access, in obtaining money, goods, services or anything else of value on credit, including credit cards, credit plates, account numbers, or any other means of account access.

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The second element that the State must prove beyond a reasonable doubt is that the defendant used the credit card which he/she knew was forged, expired or revoked.

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. A person acts knowingly with respect to the nature of his/her conduct if he/she is aware that his/her conduct is of that nature. “Knowing,” “with knowledge” or equivalent terms have the same meaning.

Knowledge is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant acted knowingly.

[Charge if Applicable]

You may infer, if you choose to do so, based upon the facts presented, knowledge of revocation to have been received by a cardholder four (4) days after it has been mailed to him/her at the address set forth on the credit card or at his/her last known address by registered or certified mail, return receipt requested, and if the address is more than 500 miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone, and Canada, you may infer, if you choose to do so, based upon the facts presented, that notice had been received 10 days after mailing by registered or certified mail.¹

The third element that the State must prove beyond a reasonable doubt is that the defendant had the intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person.

¹ In the appropriate case, the jury may be advised that such inference may be made from the presence of the facts set forth in 2C:21-6d(1) if there is a factual basis to do so in the evidence, State v. Humphrey, 183 N.J. Super. 580 (Law Division 1982) or, under State in Interest of L.L.A., 178 N.J. Super. 555 (J.D.R.Ct. 1980), but it must be made clear that the inference is permissive, not conclusive; that it must be considered along with the other evidence in the case; and that it in no way shifts the burden of proof from the State to the defendant. See State v. Bott, 53 N.J. 391 and State v. DiRienzo, 53 N.J. 360 (1969) and particularly the additional instructions and comments to Model Charge 2.271 under N.J.S.A. 2A:139-1. See also N.J.S.A. 2C:1-13e and Evid.R.15.

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A person acts “with intent” when he/she acts with purpose. A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious objective 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 believes or hopes that they exist. One can be deemed to be acting purposely if he/she acts with design, with a purpose, with a particular objective, if the individual means to do what he/she does.

Purpose is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words, or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant acted purposely.

“To defraud” means to deprive a person of property or any interest, estate, or right by deceit or artifice, to cheat.

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

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