

**IGNORANCE OR MISTAKE<sup>1</sup>**  
**(N.J.S.A. 2C:2-4)**

**[Charge when N.J.S.A. 2C:2-4a is claimed]**

In this case, defendant contends that he/she is not guilty of (offense charged) because he/she mistakenly believed that (describe mistake of fact or law). If you find that defendant held this belief,<sup>2</sup> then he/she could not have acted with the state of mind that the State is required to prove beyond a reasonable doubt.<sup>3</sup>

**[IF OFFENSE CHARGED REQUIRES A PURPOSEFUL OR KNOWING  
STATE OF MIND, CONTINUE CHARGE AS FOLLOWS]**

If you find that the State has failed to prove beyond a reasonable doubt that defendant did not believe that (mistake of fact or law), then you must find him/her not guilty of (offense charged). However, if you find that the State has proven beyond a reasonable doubt that defendant did not believe (mistake of fact or law), and you find that the State has proven all of the elements of the offense beyond a reasonable doubt, then you must find him/her guilty of (offense charged).

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<sup>1</sup> Although the statute refers to mistake of fact or law as a “defense,” caselaw makes it clear that it is not genuinely a defense at all: instead, it is “an attack on the prosecution’s ability to prove the requisite mental state for at least one objective element of the crime.” State v. Sexton, 160 N.J. 93, 99-100 (1999). Since it is obviously impossible for any single charge to “explain precisely how the offered defense plays into the element[s]” of every possible offense that mistake of fact or law could apply to (Sexton, 160 N.J. at 106), and at best can offer “a more general charge on the subject” of mistake of fact or law (State v. Pena, 178 N.J. 297, 319 (2004)), this model charge is organized by reference to the state of mind under N.J.S.A. 2C:2-2b contained in the offense charged by the State, and then by the degree to which the mistake of fact or law exonerates or mitigates the defendant’s guilt. As always, the trial court must tailor the precise type of mistake that defendant relies on to the facts of the particular crime or offense charged and the facts adduced at trial. State v. Concepcion, 111 N.J. 373, 379-380 (1988).

<sup>2</sup> Since even an unreasonable mistake can negate the required state of mind for the charged offense, the statutory requirement that the defendant “reasonably arrived at the conclusion underlying the mistake” was eliminated and, therefore, is not referred to in this model charge. Sexton, 160 N.J. at 105; Pena, 178 N.J. at 306.

<sup>3</sup> Sexton, 160 N.J. at 100; Pena, 178 N.J. at 306.

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**[OFFENSE CHARGED REQUIRES A RECKLESS STATE OF MIND,  
CONTINUE CHARGE AS FOLLOWS]**

If you find that the State has failed to prove beyond a reasonable doubt that defendant did not believe that (mistake of fact or law), or that he/she was reckless in forming that belief, as I have already defined that term for you, then you must find him/her not guilty of (offense charged). However, if you find that the State has proven beyond a reasonable doubt that defendant did not believe that (mistake of fact or law), or that he/she acted recklessly in forming that belief, and you find that the State has proven all of the elements of the offense beyond a reasonable doubt, then you must find defendant guilty of (offense charged).<sup>4</sup>

**[IF DEFENDANT CLAIMS “INCOMPLETE MISTAKE-OF-FACT”  
PURSUANT TO N.J.S.A. 2C:2-4b, CHARGE AS FOLLOWS]**

In this case, defendant contends that he/she believed that (describe mistake of fact or law). If you find that defendant held this belief, then he/she would not be guilty of (offense charged). Instead, he/she would be guilty of (lesser offense),<sup>5</sup> the crime that he/she actually would have committed had the facts proven to be as he believed.<sup>6</sup> The elements of the (lesser offense) are \_\_\_\_\_.

If you find that the State has failed to prove beyond a reasonable doubt that defendant did not believe the (mistake of fact or law), then you must find defendant guilty of (lesser offense).

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<sup>4</sup> In Sexton, 160 N.J. at 106, the Court gives an example of how the jury should be instructed on mistake of fact when reckless manslaughter is charged and the defendant contends that he mistakenly believed that the weapon he fired was not loaded.

<sup>5</sup> In Pena, 178 N.J. at 313, the Court found a legislative “intent to allow the imperfect mistake-of-fact defense to a defendant who commits one crime while believing himself to be committing another, non-lesser included, offense.”

<sup>6</sup> Pena, 178 N.J. at 315.

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However, if you find that the State has proven beyond a reasonable doubt that defendant did not believe that (mistake of fact or law), and you find that the State has proven all of the elements of the offense beyond a reasonable doubt, then you must find defendant guilty of (charged offense).<sup>7</sup>

**[IF DEFENDANT CLAIMS THAT HE/SHE BELIEVED THAT  
HIS/HER CONDUCT DID NOT LEGALLY CONSTITUTE AN  
OFFENSE PURSUANT TO N.J.S.A. 2C:2-4c, CHARGE AS FOLLOWS]**

In this case, defendant contends that he/she believed that his/her conduct was not illegal because (describe mistake of law).<sup>8</sup> If you find that defendant held this belief under the circumstances I will discuss shortly, then you cannot find him/her guilty of (offense charged), because under these circumstances defendant could not have acted with the state of mind that the State is required to prove beyond a reasonable doubt before he/she can be convicted of (offense charged).

In order for you to find that defendant's belief that his/her conduct was not illegal negates the state of mind required for (offense charged), defendant must convince you by clear and convincing evidence that (choose appropriate alternative):

(1) The statute defining the offense is not known to the actor and has not been published or otherwise reasonably made available prior to the conduct alleged;<sup>9</sup> or

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<sup>7</sup> In Pena, 178 N.J. at 319, the Court gives an example of how the jury should be instructed when he/she is charged with possession of CDS, but contends that he believed that he possessed stolen property other than CDS.

<sup>8</sup> In State v. Wikliff, 378 N.J. Super. 328, 335 (App. Div. 2005), the Court noted that the mistakes of law ordinarily cognizable under subsection a. will be "as to some external body of law which may destroy the mens rea for the crime charged" rather than "ignorance of the legal standard established by the statute..." The latter type of mistake is excusable only under the narrow exceptions spelled out in subsection c.

<sup>9</sup> N.J.S.A. 2C:2-4c(1).

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(2) He/She acted in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in (a) a statute, (b) judicial decision, opinion, judgment, or rule, (c) an administrative order or grant of permission, or (d) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense;<sup>10</sup> or

(3) He/She otherwise diligently pursues all means available to ascertain the meaning and application of the offense to his conduct and honestly and in good faith concludes his conduct is not an offense in circumstances in which a law-abiding and prudent person would also so conclude.<sup>11</sup>

Clear and convincing evidence is that which produces in your mind a firm belief or conviction as to the truth of the facts sought to be proven and is evidence so clear, direct, weighty and convincing as to enable you to come to a clear belief, without hesitancy, of the truth of the particular facts in issue.<sup>12</sup>

If you find that defendant's belief that his/her conduct was not illegal, and he/she has convinced you by clear and convincing evidence that (applicable provision of subsection c), then you must find him/her not guilty of (offense charged). However, if defendant has not convinced you by clear and convincing evidence that (applicable provision of subsection c), or if you find that the State has proven beyond a reasonable doubt that defendant did not believe that his/her conduct was not illegal, and if you find that the State has proven all of the elements of the offense beyond a reasonable doubt, then you must find defendant guilty of (offense charged).

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<sup>10</sup> N.J.S.A. 2C:2-4c(2).

<sup>11</sup> N.J.S.A. 2C:2-4c(3).

<sup>12</sup> In re: Broadwalk, 180 N.J. Super 324 (App. Div. 1981).