

THEFT BY DECEPTION
(N.J.S.A. 2C:20-4)

Count _____ of the indictment charges defendant with theft by deception.

(Read count of indictment)

The statute upon which this count of the indictment is based states in pertinent part:

A person is guilty of theft if he purposely obtains property of another by deception.

In order to convict defendant of theft, the State must prove the following elements beyond a reasonable doubt:

1. That defendant obtained the property of another;
2. That defendant purposely obtained the property by deception; and
3. That the victim relied upon the deception in parting with the property.

The first element that the State must prove beyond a reasonable doubt is that defendant obtained the property of another. To obtain means to bring about a transfer or an apparent transfer of a legal interest in the property, whether to defendant himself/herself or to another person.

Property means anything of value, including [**choose appropriate**] tangible and intangible personal property, trade secrets, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric, gas, steam or other power, financial instruments, information, data, and computer software, in either human readable or computer readable form, copies or originals.¹

Property of another includes [**choose appropriate**] property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.²

The term property of another is broadly defined so as to include anything of value. Anything of value is defined as any direct or indirect gain or advantage to any person.³ Here, the State alleges

¹ N.J.S.A. 2C:20-1g.
² N.J.S.A. 2C:20-1h.
³ N.J.S.A. 2C:20-1n.

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that the property defendant obtained was (describe property).

The second element that the State must prove beyond a reasonable doubt is that defendant purposely obtained that property by deception. A person acts purposely with respect to the nature of his/her conduct or the result of that conduct 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 the person is aware of the existence of such circumstances or believes or hopes that they exist. “With purpose,” “designed,” “with design,” or equivalent terms have the same meaning.

Purpose is a state of mind that cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that the State produce witnesses to testify that a defendant said that he/she purposely did something. His/her purpose may be gathered from his/her acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances reflected in the testimony and evidence adduced at trial.

[CHOOSE APPROPRIATE]

A person deceives if he/she purposely creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind, and including, but not limited to, a false impression that the person is soliciting or collecting funds for a charitable purpose. The term deceive does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

Deception as to a person’s intention to perform a promise cannot be inferred solely from the fact that he/she did not subsequently perform the promise.

Moreover, not only must the defendant’s statement[s] have been false, but defendant must have known of [its] [their] falsity. If you find that the defendant believed in the accuracy of the impression created or reinforced, he/she is not guilty of deception, even though that belief was unreasonable. The State does not have the burden to prove that the defendant disbelieved; if he/she created the impression that he/she believed something to be true when in fact he/she had no belief on the subject, deception has occurred.⁴

Here, the State alleges that defendant _____.

OR

A person deceives if he/she purposely prevents another from acquiring information which

⁴ Final Report of the New Jersey Criminal Law Revision Comm’n, Vol. II: Commentary, Vol. II at 224-25 n.6 (1971).

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would affect his/her judgment of a transaction. Here, the State alleges that defendant _____. The term deceive does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

Moreover, not only must the defendant's [statement] [statements] have been false, but defendant must have known of [its] [their] falsity. If you find that the defendant believed in the accuracy of the impression created or reinforced, he/she is not guilty of deception, even though that belief was unreasonable. The State does not have the burden to prove that the defendant disbelieved; if he/she created the impression that he/she believed something to be true when in fact he/she had no belief on the subject, deception has occurred.⁵

OR

A person deceives if he/she purposely 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/she stands in a fiduciary or confidential relationship. Fiduciary means [**choose appropriate**] an executor, general administrator of an intestate, administrator with the will annexed, substituted administrator, guardian, substituted guardian, trustee under any trust, express, implied, resulting or constructive, substituted trustee, executor, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent or officer of a corporation, public or private, temporary administrator, administrator, administrator pendente lite, administrator ad prosequendum, administrator Appellate Division item or other person acting in a similar capacity.⁶ Here, the State alleges that defendant _____. The term deceive does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

Moreover, not only must the defendant's [statement] [statements] have been false, but defendant must have known of [its] [their] falsity. If you find that the defendant believed in the accuracy of the impression created or reinforced, he/she is not guilty of deception, even though that belief was unreasonable. The State does not have the burden to prove that the defendant disbelieved; if he/she created the impression that he/she believed something to be true when in fact he/she had no belief on the subject, deception has occurred.⁷

⁵ See footnote 4.

⁶ N.J.S.A. 2C:20-1b.

⁷ See footnote 4.

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The third element that the State must prove beyond a reasonable doubt is that the victim relied upon the deception and parted with the property.⁸ If the victim did not turn over property in reliance on any deception, then you may not find defendant guilty of obtaining the property by deception.⁹ Here, the State alleges that the victim _____.

If you find that the State has proven every element of the offense beyond a reasonable doubt, then you must find defendant guilty. If you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find defendant not guilty.

If you find that the State has proven every element of the offense beyond a reasonable doubt, then you must go on to determine the amount of the property involved.

The State must prove the amount 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 of property involved:

- (1) is \$75,000 or more;
- (2) exceeds \$500.00 but is less than \$75,000;
- (3) is at least \$200.00, but does not exceed \$500.00; or
- (4) is less than \$200.00.

⁸ If appropriate, the court should charge attempted theft by deception, using the attempt model jury charge. Model Jury Charge, (Criminal), Attempt, N.J.S.A. 2C:5-1.

⁹ State v. Mann, 244 N.J. Super. 622, 626-27 (App. Div. 1990).