

**THEFT OF PROPERTY LOST, MISLAID,
OR DELIVERED BY MISTAKE
(N.J.S.A. 2C:20-6)**

Defendant is charged in count _____ of the indictment with theft of property lost, mislaid or delivered by mistake.

(HERE READ PERTINENT COUNT OF INDICTMENT)

That section of our statutes provides in pertinent part that:

A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, knowing the identity of the owner and with purpose to deprive said owner thereof, he converts the property to his own use.

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

1. That defendant came into control of property of another.
2. That defendant knew that the property was [lost] [mislaid] [delivered under a mistake as to [the nature] [the amount] [the identity of the recipient]].
3. That defendant knew the identity of the owner.
4. That defendant converted the property to his/her own use with the purpose to deprive the owner of the property.

The first element that the State must prove beyond a reasonable doubt is that defendant came into control of the property of another. Property means anything of value, including [select 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 originals¹].

Property of another includes property in which any person other than the defendant has an interest in which the defendant is not privileged to infringe, regardless of the fact that the defendant

¹ N.J.S.A. 2C:20-1g.

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also has an interest in the property and 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.² Property in the 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.³ The term property of another is broadly defined so as to include services and intangibles, anything of value.⁴ Anything of value is defined as any direct or indirect gain or advantage to any person.⁵

Merely handling a lost article for purposes of examination of the property or merely learning the whereabouts of lost property does not constitute control. Rather, the State must prove that defendant exercised some control over the property, such as by taking it or using it.

The second element that the State must prove beyond a reasonable doubt is that defendant knew that the property was [lost] [mislaid] [delivered under a mistake as to the [nature] [amount] [identity of the recipient]]. A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of its existence. 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. "Knowing," "with knowledge," or equivalent terms have the same meaning.

If defendant acted under the honest though mistaken belief that the property was his/her or was owed to him/her or intended for him/her, then he/she did not know that the property was that of another and is not guilty of the offense.

The third element that the State must prove beyond a reasonable doubt is that defendant knew the identity of the owner.

The fourth element that the State must prove beyond a reasonable doubt is that defendant converted the property to his/her own use with the purpose to deprive the owner of that property. To

² N.J.S.A. 2C:20-1h.

³ Ibid.

⁴ State v. Dixon, 114 N.J. 111 (1989).

⁵ N.J.S.A. 2C:20-1n.

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deprive means to withhold permanently or for such an extended period of time as to appropriate a substantial portion of the property's economic value, or to withhold the property with the purpose of restoring it only upon payment of a reward or other compensation. Deprivation of property can also result if the property is disposed of so as to make it unlikely that the owner would ever recover it.⁶

A negligent failure to restore the property is not theft.

A person acts purposely with respect to the nature of his/her conduct or a result thereof 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 individual is aware of the existence of such circumstances or the individual believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.

Purposely or knowingly are states of mind and cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that witnesses be produced by the State to testify that a defendant said that he/she purposely or knowingly did something. His/Her purpose or knowledge may be gathered from his/her acts and his/her conduct and from all 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].

If the defendant failed to restore the property to the owner through carelessness or otherwise without a purpose to deprive the owner of his/her property, he/she would not be guilty of the crime.

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

[If defendant alleges claim of right defense, N.J.S.A. 2C:20-2c(2), charge the following]

In addition to his/her general denial of guilt, defendant contends that he/she is not guilty of this offense because he/she was acting pursuant to a claim of right to the property.

⁶ N.J.S.A. 2C:20-1a.

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Our law provides that it is a defense to a prosecution for theft of property lost, mislaid or delivered by mistake that the defendant acted under an honest claim of right to the property (or service) involved or that he/she had a right to acquire or dispose of the property as he/she did. An honest claim is one that is genuinely, though not necessarily correctly, believed by the defendant.

This defense is not limited to situations in which a defendant believed he/she owned the property.⁷ Rather, it includes those situations in which the defendant honestly, although not necessarily correctly, believed that he/she had either the right or the authorization to receive, take, acquire, or dispose of the property.

As I have mentioned to you, since this is a criminal case the burden of proof is on the State. The defendant is, therefore, not required to prove that he/she acted pursuant to a claim of right; rather the burden is on the State to prove that the defendant did not act pursuant to a claim of right. Thus, if the State has proven all the elements of theft by property lost, mislaid or delivered by mistake beyond a reasonable doubt and has also proven beyond a reasonable doubt that the defendant did not honestly believe that he/she had a right to the property or was authorized to receive, take, acquire, or dispose of the property, then you must find the defendant guilty of the offense.

On the other hand, if the State has failed to prove beyond a reasonable doubt any element of the offense or if the State has failed to prove beyond a reasonable doubt that defendant did not honestly believe he/she had a right to the property or was authorized to receive, take, acquire, or dispose of the property, then you must find the defendant not guilty.

CHARGE IN ALL CASES]⁸

The State must prove the amount (or 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 of money (or value of the property) involved:

[Choose appropriate sections]

⁷ State v. Ippolito, 287 N.J. Super. 375 (App. Div. 1996).

⁸ The foregoing charge is for use when grading is dependent on the amount of money or value of the property involved. Under N.J.S.A. 2C:20-2b, other factors may also determine grading, e.g., if the property is a controlled dangerous substance, or a firearm, etc. In these situations, the appropriate charge should be given.

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- (1) is \$75,000.00 or more;
- (2) exceeds \$500.00, but is less than \$75,000.00;
- (3) is at least \$200.00, but does not exceed \$500.00; or
- (4) is less than \$200.00.

[Charge where appropriate]

Value means the fair market value of the property at the time and place of the alleged theft.⁹ Fair market value is the price that a buyer would be willing to pay and a seller would be willing to accept if both parties were aware of all the relevant surrounding circumstances and neither party were under any compulsion to buy or sell.

The State has the burden of proving the fair market 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 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, whether stolen from one person or from several persons.¹⁰

⁹ N.J.S.A. 2C:1-14m.
¹⁰ N.J.S.A. 2C:20-2b(4).