

Instruction 2.40

THEFT

The defendant is charged with theft. The definition of the crime of theft has four parts. The State must prove each part of this definition beyond a reasonable doubt. Thus, the State must prove:

1. That the defendant took, obtained or exercised unauthorized control over certain property; and,
2. That the property was property of another person. This means that someone other than the defendant had an interest in the property. Even if the defendant had an interest in the property, he cannot exercise unauthorized control over another person's interest in the property; and,
3. That the defendant obtained the property with the specific purpose to deprive the other person of the property.

This means that the defendant specifically intended to keep the property permanently, or to keep or use the property in such a way that a substantial portion of its economic value, use or benefit would be lost, or to dispose the property in such a way that it would be unlikely that the owner would recover the property.

4. That the property had a value of _____ . [See Instruction 2.42].

R.S.A. 637:3

Instruction 2.41

THEFT BY DECEPTION

The defendant is charged with theft by deception. The definition of the crime of theft by deception has five parts. The State must prove each part of this definition beyond a reasonable doubt. Thus, the State must prove:

1. That the defendant obtained or exercised unauthorized control over certain property; and,

2. That the property was property of another person.

This means that someone other than the defendant had an interest in the property. Even if the defendant has an interest in the property, he cannot exercise unauthorized control over another person's interest in the property; and,

3. That the defendant obtained the property with the specific purpose to deprive the other person of the property.

This means that the defendant specifically intended to keep the property permanently or to keep or use the property in such a way that a substantial portion of its economic value, use or benefit be lost, or to dispose of the property in such a way that it would be unlikely that the owner would recover the property.

4. That the defendant obtained the property by deception. To prove deception, the State must prove that the defendant:

R.S.A. 637:4, II(a) - Fraudulent Impression

Purposely created [or reinforced] an impression which was false and which the defendant believed to be false. In this case, the State alleges that the defendant created [or reinforced] the false impression that _____ .

R.S.A. 637:4, II(b) - Failure to Correct Fraudulent Impression

Purposely failed to correct a false impression which the defendant had created [or reinforced] and which the defendant believed to be false. In this case, the State alleges that the defendant failed to correct the false impression that _____ .

5. That the property had a value of _____ . [See Instruction 2.42].

Instruction 2.42

VALUE

The State must prove beyond a reasonable doubt that the property in this case was worth _____. In deciding the value of property, the value is the market value of the property. Market value means the price which the property would bring in a fair market after fair and reasonable efforts have been made to find a buyer who will pay the highest price. You should decide the value of the property based on its market value as of the time and place of the alleged crime.

State v. Moody, 113 N.H. 191, 304 A.2d 374 (1973)

State v. Belanger, 114 N.H. 616, 325 A.2d 789 (1974)

R.S.A. 637:2, V

Instruction 2.43

LESSER INCLUDED OFFENSES

If you decide that the defendant is not guilty of the crime of _____, then you should go on to consider and decide whether he is guilty of a similar, but less serious, crime.

A similar, but less serious, crime is different from a more serious crime in one of two ways: either it requires a less serious physical act, or it requires a less serious mental intent.

Here, if you decide that the defendant is not guilty of _____, then you should consider whether the State has proven beyond a reasonable doubt that he is guilty of the similar, but less serious crime of _____.

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