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EFFECT OF IGNORANCE OR MISTAKE

DRAFT
RSA 626:31 EFFECT OF IGNORANCE OR MISTAKE

Mistake of Fact

Evidence has been introduced that the defendant acted under a mistaken belief of fact. This is an affirmative defense that the defendant has the burden of proving by a preponderance of the evidence.¹

If you find that the defendant has proved beyond a reasonable doubt that he/she acted under a mistaken belief of fact, then you should consider whether this mistake negates the culpable mental state required for the commission of this offense. Thus if you find that the defendant's mistaken belief of fact prevented the state from proving beyond a reasonable doubt that he/she acted [purposely][knowingly][recklessly] in this case you must find the defendant not guilty.

In this case, the statute defines this offense expressly provides that a mistake of fact as to _____, is a defense. Thus if you find that the defendant has proved by a preponderance of the evidence that he/she acted under a mistake of fact as to _____, then you should go on to consider whether the state has disproved this defense beyond a reasonable doubt.²

In this case, you have heard evidence of the defense of insert applicable justification . If you find by a preponderance of the evidence that the defendant acted under a mistaken belief of fact that would support his/her defense of insert applicable justification, then you should go on to consider whether the state has disproved this defense beyond a reasonable doubt.

Certain words in this definition need to be defined:

“Preponderance of the evidence” is a standard of proof that is less than proof beyond a reasonable doubt.

In this case, you must determine whether the defendant has established his/her mistake of fact by a preponderance of the evidence. That means that it is more likely than not that he/she did act under a mistake of fact in this case.

¹ *State v. Low*, 138 N.H. 86 (1993) Court characterizes this defense as an affirmative defense.

² The committee has been unable to find such a statute.

RSA 626:3 II EFFECT OF IGNORANCE OR MISTAKE

Mistake of Law

DRAFT

Evidence has been introduced that the defendant acted under a mistaken belief of law. A person is not relieved of criminal liability because he/she acts under a mistaken belief that his conduct does not, as a matter of law, constitute an offense, unless his/her belief is founded upon:

1. A statement of the law contained in;
- 2 a statute or other enactment or an administrative order or grant of permission or a judicial decision of a state or federal court or a written interpretation of the law relating to the offense officially made by a public servant agency or body legally empowered with authority to administer, enforce or interpret such law.

The defendant bears the burden of proving his/her mistaken belief of law by a preponderance of the evidence.

Certain words need to be defined further:

Preponderance of the evidence is a standard of proof that is less than beyond a reasonable doubt. In this case, you must determine whether the defendant has established his/her mistake of law defense by a preponderance of the evidence. That means that it is more likely than not that he/she acted under a mistaken belief that his/her conduct did not as a matter of law constitute an offense.