

DEFAULT IN REQUIRED APPEARANCE (BAIL JUMPING)
(N.J.S.A. 2C:29-7)

The indictment charges the defendant with a violation of our criminal law, specifically N.J.S.A. 2C:29-7 which provides in pertinent part:

"A person set at liberty by Court order with or without bail or who has been issued a summons upon condition that he will subsequently appear at a specified time and place in connection with any offense or any violation of law punishable by a period of incarceration commits an offense if, without lawful excuse, he fails to appear at that time and place."

Therefore in order to convict the defendant of the crime charged in this indictment, the State has the burden of proving each of the following elements of this offense beyond a reasonable doubt:

(1) That the defendant(s) was charged with the commission of a crime.¹

The State has the burden of proving beyond a reasonable doubt that _____
(named defendant) has been charged with the commission of a crime known as _____
(state the nature of the crime).

For the purpose of determining whether the State has proven this element, you are instructed that the crime known as _____ is a violation of N.J.S.A. 2C:_____.²

(2) That _____ (name defendant) has been issued a summons or set at liberty by court order with or without bail.

(3) That there was in fact a condition that (he/she) would subsequently appear at a specified time and place in connection with that specific crime charged.

¹ If the defendant is charged with any other offense or violation of law punishable by a period of incarceration and was set at liberty, thereafter if the State were to prove a default in required appearance, then under this act the offense would be at most a disorderly persons offense. However, it should be cautioned that the jury may need instruction as to any lesser included offenses to the crime charged if there is a factual dispute that arises in the particular case.

² If a defendant is charged with more than one offense for which (he/she) does not make a required appearance, it may be necessary to advise the jury of the degree of each crime so that a verdict could be returned according to their decision as to the specific crime or crimes which (he/she) did not appear.

DEFAULT IN REQUIRED APPEARANCE

(BAIL JUMPING)

(N.J.S.A. 2C:29-7)

Page 2 of 4

(4) That the _____ (name defendant) had knowledge of the conditions of (his/her) release and the obligation to appear at a particular time and place and that (he/she) knowingly failed to appear, without lawful excuse.

(Such knowledge may be inferred from a certified copy of the notice setting forth the contents of the order.)

To have acted knowingly means this: that the defendant without lawful excuse acted with knowledge; that the defendant acted knowingly with respect to the nature of (his/her) conduct or the attendant circumstances; that (he/she) was consciously aware of what (he/she) was doing and aware that such circumstances existed or at least (he/she) was aware of the high probability of the existence of such circumstances; that (he/she) was practically certain that (his/her) conduct would cause the result that occurred (i.e., failure to appear at the hearing).

(The acts of the defendant would constitute a crime under this act where (his/her) required appearance was to answer either a charge of a crime, a trial of any such charge or a disposition of any such charge if you find beyond a reasonable doubt that the elements of this crime has been proven to you.)

(The required appearance of the defendant is not limited to courtroom appearance. Thus, defendant can be convicted of the crime if (he/she) has been released for a period of time between judgment and the commencement of sentence.)

(If the defendant asserts a lawful excuse, use the following as an element of the crime.)

The State must prove that the defendant's non-appearance was not as a result of a lawful excuse. In this case the defense asserts that _____ (named defendant) did not appear at the scheduled hearing because (he/she) had a lawful excuse (recite reason(s) from recollection of the evidence).

The burden of proving to you beyond a reasonable doubt that the defendant's excuse was not a lawful one is upon the State.

A lawful excuse is one that is warranted, authorized or sanctioned by the law. One that is not contrary or forbidden by law (i.e., confinement to a hospital, institution, etc., at a specific

DEFAULT IN REQUIRED APPEARANCE

(BAIL JUMPING)

(N.J.S.A. 2C:29-7)

Page 3 of 4

time).

(If applicable, charge the following.)

If you find that the State has proven beyond a reasonable doubt that the defendant knowingly either took flight or went into hiding in order to avoid arrest, trial or sentence and did not physically appear for any one of these appearances, then this would not constitute a lawful excuse.

(If the defendant asserts an affirmative defense that (he/she) did not knowingly fail to appear, then charge the following:)

AFFIRMATIVE DEFENSE

The defendant in this case has offered evidence to prove that (he/she) did not knowingly fail to appear. If you are satisfied by a preponderance of the evidence in this case that the defendant did not know (he/she) was to appear, then you must find the defendant not guilty.

I have previously defined the term knowledge to you.

By a preponderance of the evidence is meant the greater weight of the credible (believable) evidence. A preponderance means evidence that is more probable, more persuasive, or of greater probative value. By that I mean the evidence which is introduced in behalf of the defendant must weigh more heavily in your minds and be more convincing than that introduced on behalf of the State. It does not mean that the defendant must produce more witnesses than the State. The burden of proof is sustained by the quality of the evidence rather than its quantity.

In determining whether or not an issue has been proven by the preponderance of the evidence, you should consider all of the evidence bearing upon that issue regardless of who produced it.

If the weight of the evidence is equally balanced, the defendant has not established such issue by a preponderance of the evidence.

If you conclude, therefore, that the State has proven the defendant either jumped bail or defaulted in a required appearance beyond a reasonable doubt, but that the defendant has proven the defense of not knowingly failing to appear by a preponderance of the evidence, then you must find the defendant not guilty of the crime. If the State has failed to prove any of the elements of the offense beyond a reasonable doubt, you must find the defendant not guilty. If

DEFAULT IN REQUIRED APPEARANCE
(BAIL JUMPING)
(N.J.S.A. 2C:29-7)
Page 4 of 4

you conclude that the State has proven all of the elements of bail jumping, etc. beyond a reasonable doubt (and that the defendant has not proven the affirmative defense of not knowingly failing to appear by a preponderance of the evidence), then you must find the defendant guilty of the crime charged.