

COMPUTER CRIMINAL ACTIVITY – ACCESSES TO DEFRAUD
N.J.S.A. 2C:20-25(c)

The indictment charges the defendant with the offense of computer criminal activity. That section of our statute reads in pertinent part:

A person is guilty of computer criminal activity if the person purposely or knowingly and without authorization, or in excess of authorization, accesses or attempts to access any data, data base, computer, computer storage medium, computer program, computer software, computer equipment, computer system or computer network for the purpose of executing a scheme to defraud, or to obtain services, property, personal identifying information, or money, from the owner of a computer or any third party.

In order to find the defendant guilty of this offense, the State must prove each of the following elements beyond a reasonable doubt:

- (1) That he/she accessed or attempted to access data, a data base, a computer storage medium, a computer program, computer software, computer equipment, a computer, a computer system, or a computer network;
- (2) That he/she did so purposely or knowingly;
- (3) That he/she accessed or attempted to access the item either without authorization or in excess of his/her authorization; and
- (4) That he/she acted with the purpose of executing a scheme to defraud, or to obtain services, property, personal identifying information, or money, from the owner of a computer or any third party;

The first element that the State must prove beyond a reasonable doubt is that the defendant purposely or knowingly accessed or attempted to access an item.

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 he/she is aware of the existence of such circumstances or he/she believes or hope that they exist. “With purpose,” “designed,” “with design” or equivalent terms have the same meanings.¹

¹ N.J.S.A. 2C:2-2(b)(1).

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A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their 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.”²

Purpose and knowledge are conditions of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary, members of the jury, that the State produce witnesses to testify that an accused said he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and his/her conduct, and from all he/she said and did at the particular time and place, and from all of the surrounding circumstances.

“Access” means to instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer storage medium, computer system, or computer network.³

Under New Jersey law, a person is guilty of an attempt to commit a crime, if acting with the kind of culpability otherwise required for the commission of the crime, he or she

- (1) Purposely engages in conduct which would constitute the crime if the attendant circumstances were as a reasonable person would believe them to be; or
- (2) When causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing such result without further conduct on his part; or
- (3) Purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.⁴

² N.J.S.A. 2C:2-2(b)(2).

³ N.J.S.A. 2C:20-23(a).

⁴ N.J.S.A. 2C:5-1(a).

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The second element that the State must prove beyond a reasonable doubt is that the item accessed was [**CHOOSE APPROPRIATE**] data, a data base, a computer, computer storage medium, a computer program, computer software, computer equipment, a computer system, or a computer network.

[CHOOSE APPROPRIATE]

“Data” means information, facts, concepts, or instructions contained in a computer, computer storage medium, computer system, or computer network. It shall also include, but not be limited to, any alphanumeric, hexadecimal, octal or binary code.⁵

“Data base” means a collection of data.⁶

“Computer” means an electronic, magnetic, optical, electrochemical or other high speed data processing device or another similar device capable of executing a computer program, including arithmetic, logic, memory, data storage or input-output operations and includes all computer equipment connected to such a device, computer system or computer network, but shall not include an automated typewriter or typesetter or a portable, hand-held calculator.⁷

“Computer program” means a series of instructions or statements executable on a computer, which directs the computer system in a manner to produce a desired result.⁸

“Computer software” means a set of computer programs, data, procedures, and associated documentation concerned with the operation of a computer system.⁹

“Computer equipment” means any equipment or devices, including all input, output, processing, storage, software, or communication facilities, intended to interface with the computer.¹⁰

“Computer system” means a set of interconnected computer equipment intended to operate as a cohesive system.¹¹

⁵ N.J.S.A. 2C:20-23(h).

⁶ N.J.S.A. 2C:20-23(i).

⁷ N.J.S.A. 2C:20-23(b).

⁸ N.J.S.A. 2C:20-23(e).

⁹ N.J.S.A. 2C:20-23(f).

¹⁰ N.J.S.A. 2C:20-23(c).

¹¹ N.J.S.A. 2C:20-23(g).

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“Computer network” means the interconnection of communication lines, including microwave or other means of electronic communications, with a computer through remote terminals, or a complex consisting of two or more interconnected computers, and shall include the Internet.¹²

[RESUME CHARGE]

The third element that the State has to prove beyond a reasonable doubt is that the defendant accessed the item without authorization or in excess of his/her authorization.

I have already explained the meaning of “access” to you.

“Authorization” means permission, authority or consent given by a person who possesses lawful authority to grant such permission, authority or consent to another person to access, operate, use, obtain, take, copy, alter, damage or destroy a computer, computer network, computer system, computer equipment, computer software, computer program, computer storage medium, or data. An actor has authorization of a reasonable person would believe that the act was authorized.¹³

The fourth element that the State must prove beyond a reasonable doubt is that the defendant acted with the purpose of executing a scheme to defraud, or to obtain services, property, personal identifying information, or money, from the owner of a computer or any third party.

I have already explained the concept of acting with purpose, or acting purposefully, to you.

“Personal identifying information” means any name, number, or other information that may be used, alone or in conjunction with any other information, to identify a specific individual and includes, but is not limited to, the name, address, telephone number, date of birth, social security number, official State issues identification number, employer or taxpayer number, place of employment, employee identification number, demand deposit account number, savings account number, credit card number, mother’s maiden name, unique biometric data, such as fingerprint, voice print, retina or iris image or other unique physical representation, or unique

¹² N.J.S.A. 2C:20-23(d).

¹³ N.J.S.A. 2C:20-23(q).

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electronic identification number, address, or routing code of the individual.¹⁴ It shall include passwords and other codes that permit access to any data, data base, computer, computer storage medium, computer program, computer software, computer equipment, computer system, or computer network, where access is intended to be secure, restricted, or limited.¹⁵

If after a consideration of all the evidence you find that the State has failed to prove any element of the offense beyond a reasonable doubt, you must find the defendant not guilty.

If, however, after a consideration of all the evidence you are convinced beyond a reasonable doubt that, then you must find the defendant 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 value of the services, property, personal identifying information or money obtained or sought to be obtained.

[CHARGE WITH RESPECT TO VALUE]

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 value of the services, property, personal identifying information or money obtained or sought to be obtained exceeded \$5,000.

[CHARGE IF FIRST-DEGREE ALLEGED]

If you find that the State has proven every element of the offense beyond a reasonable doubt that the defendant purposely or knowingly and without authorization, or in excess of authorization accessed or attempted to access any data, data base, computer, computer storage medium, computer program, computer software, computer system, or computer network for the purpose of executing a scheme to defraud, or to obtain services, property, personal identifying information, or money, from the owner of a computer or any third party, then you must go on to determine whether the offense resulted in:

¹⁴ N.J.S.A. 2C:20-1(v). Although the computer-theft statute references N.J.S.A. 2C:21-17, the relevant portion was relocated to N.J.S.A. 2C:20-1(v) in 2002.

¹⁵ N.J.S.A. 2C:20-23(l).

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- (1) a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service.¹⁶ The term ‘substantial interruption or impairment’ shall mean such interruption or impairment that:
 - (a) affects 10 or more structures or habitations; or
 - (b) lasts for two or more hours; or
 - (c) creates a risk of death or significant bodily injury to any person; or
- (2) damages or loss in excess of \$250,000; or
- (3) significant bodily injury¹⁷ to any person.

If the State has proved these additional elements beyond a reasonable doubt, you must find the defendant guilty of first-degree computer criminal activity.

If the State has not proved these additional elements beyond a reasonable doubt, you must find the defendant guilty of either second-degree or third-degree computer criminal activity, depending on what you found with respect to the value of the services, property, personal identifying information or money obtained or sought to be obtained.

¹⁶ N.J.S.A. 2C:20-25(g).

¹⁷ Significant bodily injury is defined at N.J.S.A. 2C:11-1(d) to mean bodily injury that creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.