

COMPUTER CRIMINAL ACTIVITY – OBTAINS
N.J.S.A. 2C:20-25(e)

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, obtains, takes, copies or uses any data, data base, computer program, computer software, personal identifying information, or other information stored in a computer, computer network, computer system, computer equipment or computer storage medium.

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 obtained, took, copied or used data, a data base, a computer program, computer software, personal identifying information, or other information stored in a computer, computer network, computer system, computer equipment or computer storage medium;
- (2) That he/she did so purposefully or knowingly; and
- (3) That he/she did so either without authorization or in excess of his/her authorization.

The first element that the State must prove beyond a reasonable doubt is that the defendant purposely or knowingly obtained, took, copied or used 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

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 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

¹ N.J.S.A. 2C:2-2(b)(1).

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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.

The second element that the State must prove beyond a reasonable doubt is that the item taken, copied or used was [**CHOOSE APPROPRIATE**] data, a data base, a computer program, computer software, personal identifying information, or other information stored in a computer, computer network, computer system, computer equipment or computer storage medium.

[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.³

“Data base” means a collection of data.⁴

“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.⁵

“Computer software” means a set of computer programs, data, procedures, and associated documentation concerned with the operation of a computer system.⁶

“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

² N.J.S.A. 2C:2-2(b)(2).

³ N.J.S.A. 2C:20-23(h).

⁴ N.J.S.A. 2C:20-23(i).

⁵ N.J.S.A. 2C:20-23(e).

⁶ N.J.S.A. 2C:20-23(f).

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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 electronic identification number, address, or routing code of the individual.⁷ 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.⁸

"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.⁹

"Computer system" means a set of interconnected computer equipment intended to operate as a cohesive system.¹⁰

"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.¹¹

[RESUME CHARGE]

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

"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,

⁷ 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.

⁸ N.J.S.A. 2C:20-23(l).

⁹ N.J.S.A. 2C:20-23(b).

¹⁰ N.J.S.A. 2C:20-23(g).

¹¹ N.J.S.A. 2C:20-23(d).

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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.¹²

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, then you must find the defendant not guilty.

If, however, after a consideration of all the evidence you are convinced beyond a reasonable doubt that the State has proven every element beyond a reasonable doubt, then you must find the defendant guilty.

[CHARGE AS TO VALUE]

If you find that the State has proven every element of the offense beyond a reasonable doubt, then you must go on to consider whether the data, data base, computer program, computer software, or information:

- (1) is or contains personal identifying information, medical diagnoses, treatments or other medical information concerning an identifiable person; or
- (2) is or contains governmental records or other information that is protected from disclosure by law, court order or rule of court; or
- (3) has a value exceeding \$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 took, copied, or used any data, data base, computer program, computer software, personal identifying information, or other information stored in a computer, computer network, computer system, computer equipment or computer storage medium, then you must go on to determine whether the offense resulted in:

- (1) a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service.¹³ The term ‘substantial interruption or impairment’ shall mean such interruption or impairment that:
 - (a) affects 10 or more structures or habitations; or

¹² N.J.S.A. 2C:20-23(q).

¹³ N.J.S.A. 2C:20-25(g).

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- (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 injury¹⁴ 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 data, data base, computer program, computer software, or information.

¹⁴ 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.