

Escape
N.J.S.A. 2C:29-5a

Count _____ of the indictment charges the defendant with escape in violation of a statute which provides as follows:

A person commits an offense if he without lawful authority removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period.

In order for the defendant to be found guilty of escape, the State must prove the following elements beyond a reasonable doubt:

(1) that the defendant knowingly removed (himself)(herself) from official detention;

OR

(1) that the defendant knowingly failed to return to official detention following temporary leave granted for a specific purpose or limited period;

AND

(2) that the defendant knew that (he)(she) was without lawful authority to do so.¹

The first element the State must prove beyond a reasonable doubt is that the defendant knowingly [removed (himself)(herself) from official detention] [failed to return to official detention following temporary leave granted for a specific purpose or limited period]. “Official detention” means [arrest] [detention in any facility for custody of (persons under charge or conviction of a crime or offense)(persons committed pursuant to chapter 4 of this Title)², (persons alleged or found to be delinquent)], [detention for extradition or deportation] [any other detention for law enforcement purposes.]³ [“Official detention” does not, however, include supervision of probation or

¹ It seems clear that this authority may be either express or implied.

² See N.J.S.A. 2C:4-1 to 2C:4-11.

³ N.J.S.A. 2C:29-5a

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parole, or constraint incidental to release on bail.]]⁴

The evidence that the defendant was held in custody has been introduced only for the specific, narrow purpose of establishing that defendant was subject to official detention. You must not speculate as to the reasons why. You may not infer from this evidence that a defendant has a tendency to commit crimes or that (he/she) is a bad person. You may not decide that, just because a defendant is in official detention, (he/she) must be guilty of the offense(s) charged in this indictment. The State's evidence is offered only to show that the defendant was in official detention and may be used for no other purpose.

The second element the State must prove beyond a reasonable doubt is that the defendant [removed (himself)(herself) from official detention] [failed to return to official detention] knowing that (he)(she) was without lawful authority to do so. "Without lawful authority" means without the legal right to engage in such conduct.⁵

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) conduct will cause such a result.

⁴ Id.

⁵ If the defendant claims that the conditions of confinement were such that escape was necessary to save himself or herself, he or she may conceivably raise the defense of necessity or duress, see State v. Saxon, 226 N.J. Super. 653 (Law Div. 1988), aff'd sub. nom. State v. Morris, 242 N.J. Super. 532 (App. Div. 1990), certif. denied 127 N.J. 321 (1992); Cannel, Criminal Code Annotated, comment 5, N.J.S. 2C:29-5 (Gann 2005). When the charge is escape, however, these defenses are extremely difficult to make out. Morris, 242 N.J. Super. at 537-42.

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Knowledge is a condition of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's conduct, words or acts. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he had a particular knowledge. It is within the power of the jury to find that the proof of knowledge has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.

**[IF LEGAL IRREGULARITY IS RAISED, CHARGE IF THE
ESCAPE IS FROM A PRISON OR OTHER CUSTODIAL
FACILITY OR FROM DETENTION PURSUANT TO
COMMITMENT BY OFFICIAL PROCEEDINGS]⁶**

Legal irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to a prosecution under this section.

**[IF LEGAL IRREGULARITY IS RAISED, CHARGE IN
CASE OF OTHER DETENTIONS]⁷**

In a case such as this, where the defendant is accused of escaping from [confinement] [arrest] [detention], legal irregularity in bringing about or maintaining [confinement] [arrest] [detention], or lack of jurisdiction of the committing or detaining authority is a defense, but only if [the escape involved no substantial risk of harm to the person or property of anyone other than the defendant] [the detaining authority did not act in good faith under color of state law]. In other words, even

⁶ Legal irregularity or lack of jurisdiction is not available as a defense when the escape is from a prison or other custodial facility or from detention pursuant to commitment by official proceedings. N.J.S.A. 2C:29-5d.

⁷ Legal irregularity or lack of jurisdiction may be available as a defense when the escape is from a detention that is not a prison, another custodial facility or detention pursuant to commitment by official proceedings. N.J.S.A. 2C:29-

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where the detaining authority has not followed proper procedures, or has acted unlawfully or improperly in effecting confinement, still there is no defense unless [the defendant acts in a manner that will involve no substantial risk of harm to the person or property of anyone else] [the detaining authority failed to act in good faith based upon its own understanding of its lawful authority]. Thus, simply put, the law provides that an escape from an illegal [confinement] [arrest] [detention] is not criminal [where it involves no substantial risk of harm to another] [even if it involves a substantial risk of harm to another, where there is a clear case of abusive (confinement) (arrest) (detention) by an authority who knows there is not a basis for the action].

It is for you to determine whether there has been a legal irregularity by the detaining authority providing a defense to escape under the law as I have just defined it for you. The burden of proof is on the State to disprove the defense once it has been raised and the standard of proof is, as always, beyond a reasonable doubt.⁸

[CHARGE IN ALL CASES]

If the State has failed to prove any one or more of the elements as I have described them to you beyond a reasonable doubt, you must find the defendant not guilty of the crime of escape. If the State has proven each element beyond a reasonable doubt, you must find the defendant guilty of the crime of escape.

5d.

⁸

See State v. Moultrie, 357 N.J. Super. 547, 554-555 (App. Div. 2003). To bring this defense into play there must be some evidence, however slight, that the officer did not act in good faith under color of state law. Id. at 559. Quoting the Criminal Law Revision Commission Commentary, the Moultrie court states that this involves "clear cases of abusive arrest by officers who know there is no basis for the arrest." Id. More than just an absence of probable cause is needed. Id.

[GRADING]

If you find that the State has proven defendant guilty beyond a reasonable doubt of this crime, then you must determine whether or not the State has proven beyond a reasonable doubt that the defendant employed [force] [a threat] [a deadly weapon] [a dangerous instrumentality] to effect the escape.

["Force" means any degree of physical power or strength used against another person, even though it entails no pain or bodily harm and leaves no mark.]⁹

[A "deadly weapon" is any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury.¹⁰]

[A "dangerous instrumentality" is an instrument, substance or condition so inherently dangerous that it may cause serious bodily injury or death without human use or interference.¹¹]

If you find that the State has proven beyond reasonable doubt that the defendant employed [force] [a threat] [a deadly weapon] [a dangerous instrumentality] to effect the escape, then you must

⁹ See Model Charge, N.J.S.A. 2C:15-1, Robbery in Second Degree (Revised 11/07/05); State v. Brannon, 178 N.J. 500, 510 (2004).

¹⁰ This definition of deadly weapon is set forth at N.J.S.A. 2C:11-1(c). While N.J.S.A. 2C:11-1 limits the definition to "chapters 11 through 15," it seems appropriate to use this definition here.

¹¹ Black's Law Dictionary (7th ed. 1999).

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find him guilty of this form of escape. If, on the other hand, you find that the State has failed to prove this element beyond a reasonable doubt, you must find him not guilty of this form of escape.