

FINANCIAL FACILITATION OF CRIMINAL ACTIVITY
[MONEY LAUNDERING]
(N.J.S.A. 2C:21-25b(2))
[Concealment Prong]

Count ____ of the Indictment charges the defendant with the crime of Financial Facilitation of Criminal Activity. The Statute upon which this count of the Indictment is based reads as follows:

A person is guilty of a crime if the person engages in a transaction involving property known or which a reasonable person would believe to be derived from criminal activity knowing that the transaction is designed in whole or in part:

- (a) to conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity

or

- (b) to avoid a transaction reporting requirement under the laws of this State or any other state or of the United States.

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

1. the defendant knowingly engaged in a transaction involving property;
 2. the defendant knew, or a reasonable person would have believed, that the property was derived from criminal activity;
 3. the defendant knew that the transaction was designed in whole or in part:
 - a. to conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity;
- or
- b. to avoid a transaction reporting requirement under the laws of this State or any other state or of the United States.

The first element the State must prove beyond a reasonable doubt is the defendant knowingly engaged in a transaction involving property. Here the State alleges that this property included

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_____ [describe property].

[If the defendant is not an individual person, charge the following:]

A person means any corporation, unincorporated association or any other entity or enterprise¹ which is capable of holding a legal or beneficial interest in property.²

[Charge in all cases:]

Property means anything of value [read appropriate phrases:], including real estate, tangible and intangible personal property, trade secrets, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric, gas, steam or other power, financial instruments, information, data and computer software, in either human readable or computer readable form, copies or originals.³ Property includes any benefit or interest without reduction for expenses incurred for acquisition, maintenance or any other purpose.⁴

A person acts knowingly with respect to the nature of his/her conduct of 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 the high probability of their existence. A person acts knowingly as to a result of his/her conduct if he/she is aware that it is practically certain that that conduct will cause such a result. Knowing, with knowledge, or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inferences from conduct, words or acts. Therefore, it is not necessary for the State to produce witnesses to testify that a particular defendant stated, for example, that he/she acted with knowledge

¹ Charge the definition of an enterprise, if appropriate: an enterprise includes any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact, although not a legal entity, and it includes illicit as well as licit enterprises and governmental as well as other entities. N.J.S.A. 2C:20-1q.

² N.J.S.A. 2C:21-24.

³ N.J.S.A. 2C:20-1g.

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when he/she had engaged in a particular act. It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances.

The second element the State must prove beyond a reasonable doubt is that the defendant knew, or a reasonable person would have believed that the property was derived from criminal activity.

The term “derived from” means obtained directly or indirectly from, maintained by or realized through.⁵

For the purposes of this section, property is known to be derived from criminal activity if the person knows that the property involved represents proceeds from some form, though not necessarily which form, of criminal activity.⁶

In other words, the defendant must know that the transaction involved criminally derived property but the defendant need not have known that the subject property was derived from specific unlawful activity.⁷ Any criminal activity will suffice.⁸

For the purposes of this section, property is known to be derived from criminal activity if the person knows that the property involved represents proceeds from some form, though not necessarily which form, of criminal activity.⁹

You may infer that the defendant had this requisite knowledge if you find the following:

(1) the property is transported or possessed in a fashion inconsistent with the ordinary

⁴ N.J.S.A. 2C:21-24.

⁵ N.J.S.A. 2C:21-24.

⁶ N.J.S.A. 2C:21-25d. See also State v. Harris, 373 N.J. Super. 253, 264, 265 (App. Div. 2004), certif. denied, 183 N.J. 257 (2005).

⁷ State v. Harris, 373 N.J. Super. at 269.

⁸ An independent predicate offense is not necessary to the prosecution of this statute. State v. Harris, 373 N.J. Super. at 267.

⁹ N.J.S.A. 2C:21-25d. See also State v. Harris, 373 N.J. Super. 253, 264, 265 (App. Div. 2004), certif. denied,

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or usual means of transportation or possession of such property; and

- (2) the property is discovered in the absence of any documentation or other indicia of legitimate origin or right to such property.¹⁰

An inference is a deduction of fact that may be drawn logically and reasonably from another fact or group of facts established by the evidence. Whether or not an inference should be drawn is for you to decide using your own common sense, knowledge and everyday experience. Ask yourselves is it probable, logical and reasonable. However, you are never required or compelled to draw an inference. You alone decide whether the facts and circumstances shown by the evidence support an inference and you are always free to draw or not to draw an inference. If you draw an inference, you should weigh it in connection with all the other evidence in the case, keeping in mind that the burden of proof is upon the State to prove all the elements of the crime beyond a reasonable doubt.¹¹

The third element the State must prove beyond a reasonable doubt is that the defendant knew that the transaction was designed in whole or in part:

- a. to conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity;
- or
- b. to avoid a transaction reporting requirement under the laws of this State or any other state or of the United States.

[With regard to subparagraph a:]

To conceal means to put out of sight, hide, to keep from another's knowledge, to keep

¹⁸³ N.J. 257 (2005).

¹⁰ N.J.S.A. 2C:21-26.

¹¹ Presumably, the model charge entitled "Circumstantial Evidence," concerning direct and circumstantial

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secret.¹²

To disguise means to make appear different from usual so as to be unrecognizable; to hide or obscure the existence or real nature of.¹³

[With regard to subparagraph b:]

Among the factors that you may consider in determining that a transaction has been designed to avoid a transaction reporting requirement shall be whether the person, acting alone or with others, conducted one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner.¹⁴

The phrase “in any manner” includes the breaking down of a single sum of currency exceeding the transaction reporting requirement into smaller sums, including sums at or below the transaction reporting requirement, or the conduct of a transaction, or series of currency transactions, including transactions at or below the transaction reporting requirement.¹⁵

The transaction or transactions need not exceed the transaction reporting threshold at any single financial institution on any single day in order to demonstrate a violation of this section of the law.¹⁶

Here, the State alleges _____ [describe the transaction reporting requirement alleged to have been violated].¹⁷

[Charge in all cases:]

If you find that the State has proven beyond a reasonable doubt each of these elements, then you must find the defendant guilty. If, on the other hand, you find that the State has failed to prove

evidence, should already have been charged.

¹² Webster’s New World College Dictionary, Fourth Edition (2005).

¹³ Webster’s New World College Dictionary, Fourth Edition (2005).

¹⁴ N.J.S.A. 2C:21-25d.

¹⁵ N.J.S.A. 2C:21-25d.

¹⁶ N.J.S.A. 2C:21-25d.

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any one of these elements beyond a reasonable doubt, then you must find the defendant not guilty.

The State must prove the amount of the property involved beyond a reasonable doubt. If you found the State has proven all the elements of the offense(s) charged beyond a reasonable doubt, then you must indicate whether you find that the State has proven the amount of the property involved beyond a reasonable doubt

[choose appropriate:]

- 1) is \$500,000.00 or more;
- 2) is at least \$75,000.00 but less than \$500,000.00;
- 3) is less than \$75,000.00.¹⁸

The State must prove beyond a reasonable doubt that the property involved has some value.

As I indicated to you previously, property means anything of value [choose appropriate phrases:], including real estate, tangible and intangible personal property, trade secrets, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric, gas, steam or other power, financial instruments, information, data and computer software, in either human readable or computer readable form, copies or originals.¹⁹ Property includes any benefit or interest without reduction for expenses incurred for acquisition, maintenance or any other purpose.²⁰

Value means the fair market value of the property at the time and place of the alleged

¹⁷ If the Defendant asserts a defense, describe the circumstances of the defense to the jury at this time.

¹⁸ N.J.S.A. 2C:21-27a. The jury should mark its selection on the verdict sheet. It is unclear how the State is to proceed in the situation where the State is seeking to impose an anti-money laundering profiteering penalty pursuant to N.J.S.A. 2C:21-27.2b & c; i.e., whether the jury has to determine the value of property involved in order for the State to seek a penalty equal to three times that value given the factors to be considered pursuant to N.J.S.A. 2C:21-27.2c. For the penalty pursuant to N.J.S.A. 2C:21-27.2a, the jury will have decided the degree of the crime by its verdict with regard to categories listed above.

¹⁹ N.J.S.A. 2C:20-1g.

²⁰ N.J.S.A. 2C:21-24.

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operative act.²¹ Fair market value is the price that a buyer would be willing to pay and a seller would be willing to accept if both parties were aware of all the relevant surrounding circumstances and neither party were under any compulsion to buy or sell.

The State has the burden of proving the fair market value of the property involved. This means the State must prove beyond a reasonable doubt that the property is worth what the State claims it to be.

Amounts involved in transactions conducted pursuant to one scheme or course of conduct may be aggregated in determining the amount involved.²²

²¹ N.J.S.A. 2C:1-14m.

²² N.J.S.A. 2C:21-27a.