

GANG CRIMINALITY¹
(N.J.S.A. 2C:33-29)

Count _____ of the indictment charges defendant with gang criminality.

[READ COUNT OF INDICTMENT]

That section of our statutes provides in pertinent part:

A person is guilty of the crime of gang criminality if, while knowingly involved in criminal street gang activity, he commits, attempts to commit, or conspires to commit, whether as a principal or an accomplice the crime[s]² of [read crime(s) set forth in indictment].³

In order to convict defendant of the charge, the State must prove the following elements beyond a reasonable doubt:

1. That defendant was knowingly involved in criminal street gang activity,

and
2. That while knowingly involved in criminal street gang activity, defendant **[choose appropriate]**[committed] [attempted to commit] [conspired to commit] [as a principal] [as an accomplice] the crime(s) in the indictment.

The first element that the State must prove beyond a reasonable doubt is that defendant was knowingly involved in criminal street gang activity. "Criminal street gang" means three or more persons associated in fact. Individuals are associated in fact if: (1) two of the following

¹ This crime became effective January 13, 2008.

² It may be necessary to conduct a bifurcated trial if the defendant is simultaneously charged with a substantive offense that is being alleged to act as one of the predicate offenses that form the basis of criminal liability for the gang criminality statute. See State v. Ragland, 105 N.J. 189, 193-194 (1986) (The charge of Certain Persons Previously Convicted of a Crime Not to Possess a Weapon, N.J.S.A. 2C:39-7, to be bifurcated from any substantive weapons possessions charge); State v. Chenique-Puey, 145 N.J. 334, 343 (1996) (Bifurcated trial ordered when charges of contempt of a domestic-violence restraining order and an underlying criminal offense arise from the same criminal episode).

If a bifurcated trial is appropriate, it should be conducted before the same jury and the charges tried sequentially. See Ragland, *supra*, 105 N.J. at 195; Chenique-Puey, *supra*, 145 N.J. at 343.

³ The underlying crimes are those specified in Title 2C Chapters 11, 12, 13, 14, 15, 16, 17, 18, 20, 33, 35, and 37; N.J.S.A. 2C:34-1; N.J.S.A. 2C:39-3; N.J.S.A. 2C:39-4; N.J.S.A. 2C:39-4.1; N.J.S.A. 2C:39-5 and N.J.S.A. 2C:39-9.

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seven criteria that indicate criminal street gang membership apply: (a) self-proclamation; (b) witness testimony or official statement; (c) written or electronic correspondence; (d) paraphernalia or photographs; (e) tattoos; (f) clothing or colors; (g) any other indicia of street gang activity; and (2) individually or in combination with other members of a criminal street gang, while engaging in gang related activity, have committed or conspired or attempted to commit, within the preceding five years from the date of the present offense,⁴ one or more offenses on separate occasions.⁵

Here, the State alleges that defendant indicated street gang membership through (list the criteria from (a) to (g) relevant to the case) and that within five years preceding (date of present offense(s)) defendant committed on (give dates when offenses committed) the crimes of [CHOOSE APPROPRIATE] [robbery], [carjacking], [aggravated assault], [assault], [aggravated sexual assault], [sexual assault], [arson], [burglary], [kidnapping], [extortion], [tampering with witnesses and informants], [homicide], [N.J.S.A. 2C:35-3], [N.J.S.A. 2C:35-4], [N.J.S.A. 2C:35-6], [N.J.S.A. 2C:35-7] [Chapter 39].⁶ [Charge elements of the substantive crimes or, if already charged, remind jurors of these definitions]. A crime is committed while involved in a criminal street gang related activity if the crime was committed for the benefit of, at the direction of, or in association with a criminal street gang.

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

⁴ The statute excludes from the five year period any time the defendant spent in prison. N.J.S.A. 2C:33-29a. If this is relevant in a case, the parties and trial court should discuss a way to inform the jury of that fact without unduly prejudicing the defendant.

⁵ The statute does not require that defendant was convicted of the listed offenses, only that defendant committed these offenses. If the State is relying upon activity that did not result in a conviction, it presumably would have to prove defendant’s guilt of the offense beyond a reasonable doubt.

⁶ If the allegations include attempts or conspiracy to commit the enumerated offenses, the definitions of attempt and/or conspiracy should also be provided. See Model Jury Charges for Attempt, N.J.S.A. 2C:5-1, and Conspiracy, N.J.S.A. 2C:5-2.

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Knowledge is a state of mind that cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that the State produce witnesses to testify that a defendant said that he/she or knowingly did something. His/Her knowledge may be gathered from his/her acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances reflected in the testimony [and evidence adduced at trial].

The second element that the State must prove beyond a reasonable doubt is that defendant **[choose appropriate]** [committed] [attempted to commit] [conspired to commit] [as a principal] [as an accomplice] the crime(s) in the indictment. “Principal” means “the person who committed the crime.” A crime is committed while involved in a criminal street gang related activity if the crime was committed for the benefit of, at the direction of, or in association with a criminal street gang. “Benefit” means a “gain or advantage.”⁷ “At the direction” means “at the order or command of.”

In you find that the State has proven every element of the offense beyond a reasonable doubt, then you must find defendant guilty. If you find that the State has failed to prove any element beyond a reasonable doubt, then you must find defendant not guilty.

⁷ See N.J.S.A. 2C:27-1(a).