

LEADER OF ORGANIZED CRIME

(N.J.S.A. 2C:5-2g)

Count _____ of the indictment charges defendant with the crime of being a leader of organized crime. **[READ COUNT OF INDICTMENT]**. That section of our statutes provides in pertinent part that

A person is a leader of organized crime if he/she purposely conspires with others as an organizer, supervisor or manager or financier to commit a continuing series of crimes which constitute a pattern of racketeering activity....

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

- (1) That defendant purposely conspired with two or more persons¹
- (2) That the purpose of the conspiracy was to commit a continuing series of crimes which constitute a pattern of racketeering activity and
- (3) That within that conspiracy, defendant was a
[CHOOSE APPROPRIATE] financier, organizer, supervisor or manager.

The first element that the State must prove beyond a reasonable doubt is that defendant purposely conspired with two or more persons. **[Read model jury charge on conspiracy; if conspiracy already charged, remind jurors of that definition]**.

The second element that the State must prove beyond a reasonable doubt is that the purpose of the conspiracy was to commit a continuing series of crimes, here [state crimes alleged] which, if

¹

See State v. Afanador I, 134 N.J. 162 (1993) (construing similar language in “drug kingpin” statute).

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proven beyond a reasonable doubt, constitute a pattern of racketeering activity. A pattern of racketeering requires the State to prove beyond a reasonable doubt (1) that defendant engaged in at least two incidents of racketeering conduct, one of which must have occurred after June 5, 1981, and the last of which must have occurred within 10 years of a prior incident of racketeering activity,² and (2) that the incidents of racketeering activity embrace criminal conduct that has either the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

In this case, the State alleges that defendant conspired to commit the crimes of _____
[Charge elements of substantive crimes or, if already charged, remind jurors of those definitions].³ The State must prove beyond a reasonable doubt that defendant conspired to commit at least two of these crimes and that the crimes he/she conspired to commit are a continuing series of crimes that constitute a pattern of racketeering. You must unanimously agree about the crimes defendant conspired to commit.

The third element that the State must prove beyond a reasonable doubt is that, within the conspiracy, defendant acted as **[CHOOSE APPLICABLE]** a financier,⁴ organizer, supervisor or manager of at least one other person.

² The statute excludes from the 10 year period any time the defendant spent in prison. N.J.S.A. 2C:41-1(d)(1). 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.

³ The crimes or conduct which are eligible for racketeering activity are set forth in N.J.S.A. 2C:41-1a(1) and (2).

⁴ Financier was included in the statute as of June 18, 2002.

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A financier means a person who provides money, credit or a thing of value with the purpose or knowledge that it will be used to finance or support the operations of a conspiracy to commit a series of crimes which constitute a pattern of racketeering activity, including but not limited to the purchase of materials to be used in the commission of crimes, buying or renting housing or vehicles, purchasing transportation for members of the conspiracy or otherwise facilitating the commission of crimes which constitute a pattern of racketeering activity.

An organizer is a person who purposely arranges, devises, or plans an organized crime conspiracy.

A supervisor is one who purposely oversees the operation of an organized crime conspiracy.

A manager is one who purposely directs the operations of an organized crime conspiracy.⁵

A person acts purposely with respect to the nature of (his/her) conduct or the result of that conduct 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 the person is aware of the existence of such circumstances or believes or hopes that they exist. “With purpose,” “designed,” “with design,” or equivalent terms have the same meaning.

[CHARGE WITH REGARD TO FINANCIER]

A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he 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

⁵ Cf. State v. Afanador I, 134 N.J. 162, 171 (1993).

result of the conduct if he is aware that it is practically certain that the conduct will cause a result.

“Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Purposely [and knowingly] is [are] a state[s] 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) purposely [or knowingly] did something. (His/Her) purpose [or 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].

Defendant, however, does not have to be the only or even the primary financier, organizer, supervisor, or manager, and it is no defense that defendant was subject to the supervision or management of another, nor that another person or persons were also leaders of the organized crime conspiracy.

If the State has proven each of these elements beyond a reasonable doubt, then you must find the defendant guilty. If the State has failed to prove beyond a reasonable doubt any element of this offense, then you must find the defendant not guilty.