

PROMOTING GAMBLING – BOOKMAKING
(N.J.S.A. 2C:37-2a(1))

Count _____ of the indictment charges defendant with committing the offense of promoting gambling through bookmaking. In pertinent part, the indictment alleges that

(Read material part of Count _____ to jury)

The statute that defendant is accused of violating states that: a [defendant] is guilty of promoting gambling when he/she knowingly accepts or receives money or other property pursuant to an agreement or understanding with [another] person whereby [that person] participates or will participate in the proceeds of gambling activity. In this case, the form of gambling activity that defendant is accused of promoting is alleged to be bookmaking.

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

1. That defendant accepted or received money or other property from another person;
2. That the money or other property was accepted or received pursuant to an agreement or understanding whereby the other person participates or will participate in the proceeds of gambling activity, and
3. That defendant acted knowingly when he/she engaged in such conduct.

The first element that the State must prove beyond a reasonable doubt is that defendant accepted or received money or other property from another person.

The second element that the State must prove beyond a reasonable doubt is that the money or other property was accepted pursuant to an agreement or understanding that the other person participates or will participate in the proceeds of gambling activity. Under the statute, “gambling” means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the actor’s control or influence, upon an agreement or understanding that he/she will receive something of value in the event of a certain outcome.¹

¹ See N.J.S.A. 2C:37-1b.

The type of gambling activity that defendant stands accused of promoting is bookmaking. The statute defines bookmaking as advancing gambling activity by the unlawful accepting of bets from members of the public [based] upon the outcome of future contingent events as a business.²

The third element that the State must prove beyond a reasonable doubt is that defendant acted knowingly when he/she engaged in such conduct. A defendant acts knowingly or with knowledge with respect to the nature of his/her conduct or the attendant circumstances if defendant is aware that his/her conduct is of that nature, or that such circumstances exist, or defendant is aware of a high probability of their existence. A defendant acts knowingly with respect to a result of his/her conduct if defendant is aware that it is practically certain that his/her conduct will cause such a result.³ In this case, it is alleged that when defendant allegedly accepted or received (money/property) from (person), defendant knew that (person) would thereby participate in the proceeds of a bookmaking scheme or enterprise.

You should understand that 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 defendant stated, for example, that he/she acted with knowledge when he/she did a particular thing. 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 place where the acts occurred and all that was done or said by defendant preceding, connected with, and immediately succeeding the events in question are among the circumstances to be considered.

* * * * *

[STATUTORY DEFENSE – CHARGE IF APPLICABLE]

Defendant contends that he/she is not guilty of promoting gambling through bookmaking because he/she was a "player" rather than a participant in the bookmaking scheme or enterprise. Under the statute, it is a defense to the charge of promoting gambling that defendant was a player rather than a participant in the bookmaking scheme or enterprise. A "player" means a person who engages in any form of gambling as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than his/her personal gambling winnings and who

² See N.J.S.A. 2C:37-1g.

³ See N.J.S.A. 2C:2-2b (2).

does not otherwise render any material assistance to the establishment, conduct or operation of the particular gambling activity.⁴

Defendant must prove this defense by clear and convincing evidence.⁵ This is to be distinguished from the State's burden of proving defendant's guilt beyond a reasonable doubt. Clear and convincing evidence is that which produces in your mind a firm belief or conviction as to the truth of the fact sought to be established and is evidence so clear, direct, weighty and convincing as to enable you to come to a clear conviction, without hesitancy, of the truth of the matter in issue.⁶

Regarding the "player" defense asserted in this case, defendant need not prove that he/she was a player beyond a reasonable doubt, but rather, the evidence admitted in support of this defense should produce in your mind a firm belief or conviction that defendant's contention that he/she participated only as a player is true. In other words, the law does not require absolute certainty that defendant participated as a player, but reasonable certainty that it is true. If you find by clear and convincing evidence that defendant was a player rather than a participant in a bookmaking scheme or enterprise, he/she must be found not guilty of Count ____.

* * * * *

If you find that the State has failed to prove beyond a reasonable doubt any of the elements of the offense, you must find defendant not guilty. But if you find that the State has proved each of the elements of promoting gambling through bookmaking beyond a reasonable doubt, you must find defendant guilty of that offense.

* * * * *

If you conclude that defendant has promoted gambling through bookmaking, you must then determine whether the State has proved the following beyond a reasonable doubt:

⁴ See N.J.S.A. 2C:37-1c.

⁵ See N.J.S.A. 2C:37-2c.

⁶ See In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 339 (App. Div. 1981), mod. o.g. and aff'd 90 N.J. 361 (1982), cert. den. sub nom. Perlman v. Attorney General of New Jersey, 459 U.S. 1081 (1982).

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(N.J.S.A. 2C:37-2a(1))

Page 4 of 4

1. That defendant promoted bookmaking to the extent that he received or accepted in any one day more than five bets totaling more than \$1,000.⁷

YES _____

NO _____

2. If the answer to the above question is NO, determine whether the State has proved beyond a reasonable doubt that defendant received or accepted three or more bets in any two week period.⁸

YES _____

NO _____

⁷ Conviction of this form of promoting gambling through bookmaking is a third degree offense. See N.J.S.A. 2C:37-2b(1).

⁸ Conviction of this form of promoting gambling through bookmaking is a fourth degree offense. Otherwise, promoting gambling is a disorderly person's offense. See N.J.S.A. 2C:37-2b (2). If a verdict sheet is to be submitted to the jury, the jury's findings on these gradation of offense issues should be indicated on it.