

**PROMOTION OF ORGANIZED STREET CRIME<sup>1</sup>**  
**(N.J.S.A. 2C:33-30)**

Count \_\_\_\_\_ of the indictment charges defendant with promotion of organized street crime.

**[READ COUNT OF INDICTMENT]**

That statute provides in pertinent part:

A person is guilty of the crime of promoting organized street crime if he conspires with others as an organizer, supervisor, financier or manager to commit the crime[s] of [read crime[s] set forth in indictment].<sup>2</sup>

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 persons<sup>3</sup>
- (2) That the purpose of the conspiracy was to commit the crime[s] of [**choose appropriate crime**] 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. The Conspiracy statute provides as follows:

A person is guilty of conspiracy with other persons to commit a crime if with the purpose of promoting or facilitating its commission he:

**(SELECT APPROPRIATE SECTION)**

- (1) Agrees with such other persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

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<sup>1</sup> This crime became effective January 13, 2008.

<sup>2</sup> The underlying crimes are those specified in Title 2C Chapters 11 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes; N.J.S. 2C:34-1; N.J.S. 2C:39-3; N.J.S. 2C:39-4; section 1 of P.L.1998, c. 26 (C.2C:39-4.1); N.J.S. 2C:39-5; or N.J.S. 2C:39-9.

<sup>3</sup> See State v. Afanador I, 134 N.J. 162 (1993) (construing similar language in “drug kingpin” statute).

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- (2) Agrees to aid such other persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

A conspiracy to commit the crime of \_\_\_\_\_ is a crime in itself separate and distinct from the crime of \_\_\_\_\_. In other words, a defendant may be found guilty of the crime of conspiracy regardless of whether that defendant is guilty or not guilty of the crime of \_\_\_\_\_.

In order for you to find the element of conspiracy, the State must prove beyond a reasonable doubt:

- (1) That the defendant agreed with two or more persons that they or one or more of them would engage in conduct which constitutes a crime or an attempt or solicitation to commit such crime;

**OR**

That the defendant agreed to aid two or more persons in the planning or commission of a crime or of an attempt or solicitation to commit such crime.

A person acts purposely with respect to the nature of his conduct or a result thereof, if it is his conscious object to engage in conduct of that nature or cause such a result. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or hopes that they exist.

**(CHARGE THE FOLLOWING FOR CRIMES OF THE THIRD AND FOURTH DEGREE - EXCEPT FOR CRIMES ALLEGING DISTRIBUTION OR POSSESSION WITH INTENT TO DISTRIBUTE CDS OR CDS ANALOG)<sup>4</sup>**

- (2) That the defendant or a person with whom he conspired did an overt act in pursuance of the conspiracy.<sup>5</sup> An overt act is any act in pursuance of the conspiracy.<sup>6</sup>

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<sup>4</sup> See State v. Carbone, 10 N.J. 329 (1952).

<sup>5</sup> Language similar to the Model Jury Charge (Criminal), Conspiracy (rev. 4/12/10), relevant to overt acts is included in this jury charge. See N.J.S.A. 2C:5-2d. The Committee notes that the text of N.J.S.A. 33-30 does not contain similar language regarding overt acts. However, the Committee is of the opinion that the inclusion of overt act language is appropriate.

<sup>6</sup> Under certain circumstances, an omission may constitute an act. See N.J.S.A. 2C:2-1(b).

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A conspiracy may be proven by direct or circumstantial evidence. It is not essential that there be direct contact among all of the conspirators or that they enter the agreement at the same time.

If the defendant is aware that any person he conspired with also conspired with others to commit the same crime, the defendant is guilty of conspiring with the others. He need not be aware of their identity.

Mere association, acquaintance, or family relationship with an alleged conspirator is not enough to establish a defendant's guilt of conspiracy. Nor is mere awareness of the conspiracy. Nor would it be sufficient for the State to prove only that the defendant met with others, or that they discussed names and interests in common. However, any of these factors, if present, may be taken into consideration along with all other relevant evidence in your deliberations.

You have to decide whether the defendant's purpose was that he or a person with whom he was conspiring would commit the crime of \_\_\_\_\_. For him to be found guilty of conspiracy, the State has to prove beyond a reasonable doubt that when he agreed it was his conscious object or purpose to promote or make it easier to commit the crime(s) or (Identify substantive offense).

The nature of the purpose with which the defendant acted is a question of fact for you the jury to decide. Purpose is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated, for example, that he acted with a specific purpose. It is within your power to find that proof of purpose has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances.

It also makes no difference what the person or persons with whom the defendant actually conspired had in mind, so long as the defendant believed that he was furthering the commission of the crime of \_\_\_\_\_.

**(CHARGE THE FOLLOWING ONLY FOR THOSE CRIMES FOR WHICH IT IS  
NECESSARY TO PROVE OVERT ACTS, NAMELY ALL THIRD AND FOURTH  
DEGREE CRIMES EXCEPT THOSE ALLEGING DISTRIBUTION OR POSSESSION  
WITH INTENT TO DISTRIBUTE CDS OR CDS ANALOG)**

I have already explained that to find the defendant guilty of conspiracy you have to be convinced beyond a reasonable doubt that he agreed with somebody in the manner and with the

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purpose I described. In addition, for this type of conspiracy, one of the conspirators must have done at least one overt act in furtherance of the conspiracy, that is, any act directed toward the objective of committing the crime of (Identify substantive offense).<sup>7</sup>

The State is not required to prove an overt act by every conspirator. The State is only obligated to prove one overt act by any conspirator.

**WHERE APPLICABLE, SET FORTH THE OVERT ACTS IN EVIDENCE**

In order to convict you have to be satisfied beyond a reasonable doubt that the State has proven an overt act by a conspirator in furtherance of the conspiracy.<sup>8</sup>

In summary, the State must prove the following elements:

- (1) That the defendant agreed with two or more persons that they or one or more of them would engage in conduct which constitutes a crime or an attempt or solicitation to commit such crime;

**OR**

That the defendant agreed to aid two or more persons in the planning or commission of a crime or of an attempt or solicitation to commit a crime.

**(CHARGE THE FOLLOWING ONLY FOR CRIMES OF THE THIRD AND FOURTH DEGREE -- EXCEPT FOR CRIMES ALLEGING DISTRIBUTION OR POSSESSION WITH INTENT TO DISTRIBUTE CDS OR CDS ANALOG)**

- (2) That defendant or a person with whom he conspired did an overt act in pursuance of the conspiracy.

**(CHARGE IN ALL CASES)**

**(CHARGE THE FOLLOWING PARAGRAPH WHEN APPROPRIATE)**

Each offense and each defendant in this indictment should be considered by you separately. The fact that you may find a particular defendant guilty or not guilty of a particular crime should not control your verdict as to any other offense charged against that defendant, and it should not control your verdict as to the charges against any other defendant.

The second element that the State must prove beyond a reasonable doubt is that the purpose of the conspiracy was to commit a crime, here **[state crime[s] alleged]**. In this case, the State alleges that defendant conspired to commit the crime[s] of \_\_\_\_\_ **[Charge elements**

<sup>7</sup> Under certain circumstances, an omission may constitute an act. See N.J.S.A. 2C:2-1(b).

<sup>8</sup> Where appropriate charge Conspiracy-Renunciation (N.J.S.A. 2C:5-2e) - See Model Charge.

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of substantive crimes or, if already charged, remind jurors of those definitions].<sup>9</sup> [State the defendant's version if appropriate].

You have to decide whether the defendant's purpose was that he or a person with whom he was conspiring would commit the crime of \_\_\_\_\_. The State has to prove beyond a reasonable doubt that when he agreed it was his conscious object or purpose to promote or make it easier to commit the crime(s) or (Identify substantive offense).

I have already defined purposely for you.

The State must prove beyond a reasonable doubt that defendant conspired to commit this/these crime[s]. You must unanimously agree about the crime[s] 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, organizer, supervisor or manager of at least one other person.

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 the crime[s] alleged, 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 the crime[s] alleged.

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.<sup>10 11</sup>

I have already defined purposely for you.

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<sup>9</sup> The underlying crimes are those specified in Title 2C Chapters 11 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes; N.J.S. 2C:34-1; N.J.S. 2C:39-3; N.J.S. 2C:39-4; section 1 of P.L. 1998, c. 26 (C.2C:39-4.1); N.J.S. 2C:39-5; or N.J.S. 2C:39-9.

<sup>10</sup> Cf. State v. Afanador I, 134 N.J. 162, 171 (1993).

<sup>11</sup> See Model Jury Charge (Criminal), Leader of Organized Crime (N.J.S.A. 2C:5-2g) approved 9/8/03.

**[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 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.

Knowingly 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 knowingly did something. His knowledge may be gathered from his acts and conduct, from all that he 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.