

RACKETEERING¹
(N.J.S.A. 2C:41-2c)

Count _____ of the indictment charges defendant with racketeering.

[READ COUNT OF INDICTMENT]

That section of our statutes provides in pertinent part:

It is unlawful for any person employed by or associated with any enterprise engaged in or activities of which affect trade or commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs [through a pattern or racketeering activity] [through collection of unlawful debt].

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

1. That there was an enterprise;
2. That the enterprise was engaged in trade or commerce or that its activities affected trade or commerce;
3. That the defendant was employed or associated with the enterprise;
4. That the defendant participated directly or indirectly in the conduct of the enterprise's affairs;
5. That the defendant did so through a pattern of racketeering

OR

5. That the defendant did so through collection of an unlawful debt;
6. That the defendant acted purposely or knowingly.

The first element that the State must prove beyond a reasonable doubt is that there was an enterprise. The term enterprise means any individual, sole proprietorship, partnership, corporation, association, or other entity or group of individuals associated in fact although not a legal entity.² It includes illicit as well as licit enterprises and governmental as well as other entities.

There does not need to be a distinct, ascertainable structure to constitute an enterprise. Rather, the term embodies any group of persons associated in fact and includes traditional organized

¹ The statute also provides that a defendant can be charged with conspiracy to commit any of the substantive offenses of racketeering. N.J.S.A. 2C:41-2d. If a defendant is charged under this subsection, the trial judge should use the Model Jury Charge on Conspiracy. See N.J.S.A. 2C:5-2.

crime groups, with internal command systems or structures, as well less organized and non-traditional criminal groups. While the term is broad, it targets only organized crime type activities that are substantial in nature.³

The enterprise must have an organization, the hallmark of which consists in the kinds of interactions that become necessary when a group, to accomplish its goal(s), divides among its members tasks that are necessary to achieve a common purpose. The division of labor and the separation of functions undertaken by the participants serve as the distinguishing marks of the enterprise because when a group divides and assembles its labors in order to accomplish its criminal purposes, it must necessarily engage in a high degree of planning, cooperation and coordination, and, in effect, constitute itself as an organization.⁴

Evidence of an ascertainable structure will support an inference that the group engaged in carefully planned or highly coordinated criminal activity and thus, will support the conclusion that an enterprise existed. But apart from an organization's structure, the focus of the evidence must be on the number of people involved, their knowledge of the objectives of the association, how they associated with each other, whether they each performed discrete roles in carrying out the scheme, the level of planning involved, how decisions were made, the coordination involved in implementing decisions and how frequently the group engaged in incidents or committed acts of racketeering activity and the length of time between the acts.⁵

The second element that the State must prove beyond a reasonable doubt is that the enterprise engaged in trade or commerce in New Jersey or that the activities affected trade or commerce in New Jersey.⁶ The terms "trade or commerce" include any type of economic activity that relates to services or commodities.

The third element that the State must prove beyond a reasonable doubt is that defendant was employed by or associated with the enterprise. A person is employed by or associated with an enterprise if he/she has a position or a functional connection with the enterprise that enables him/her

² See N.J.S.A. 2C:41-1c.

³ State v. Ball, 141 N.J. 142, 161 (1995), cert. denied sub nom. Mocco v. New Jersey, 516 U.S. 1075, 116 S.Ct. 779 (1996).

⁴ State v. Ball, 141 N.J. at 162.

⁵ State v. Ball, 141 N.J. at 162-63.

⁶ State v. Casilla, 362 N.J. Super. 554, 565 (App. Div.), certif. denied, 178 N.J. 251 (2003) (State must prove that enterprise engaged in trade or commerce in New Jersey or affected trade or commerce in New Jersey).

to engage or participate directly or indirectly in the affairs of the enterprise. To conduct or participate in the affairs of the enterprise means to act purposefully or knowingly in the affairs of the enterprise in the sense of engaging in activities that seek to further, assist or help effectuate the goals of the enterprise. Those activities may include acts that are managerial or supervisory or exercise control and direction over the goals or over the methods used to achieve the goals of the enterprise.

However, the State does not have to show that the defendant is himself/herself a supervisor or a manager.⁷ Participatory conduct or activities also may be found in acts that are below the managerial or supervisory level, and do not exert control or direction over the affairs of the enterprise, as long as the actor, directly or indirectly, knowingly seeks to carry out, assist, or further the operations of the enterprise or otherwise seeks to implement or execute managerial or supervisory decisions.

The fourth element that the State must prove beyond a reasonable doubt is that defendant participated directly or indirectly in the conduct of the enterprise's affairs. Essentially, a defendant participates in the affairs of the enterprise if he/she directly or indirectly purposely or knowingly seeks to carry out, assist or further the operations of the enterprise. The State must prove beyond a reasonable doubt that the defendant was involved in incidents of racketeering conduct in a knowing effort to assist the enterprise's goal, which the State alleges was _____.

The fifth element that the State must prove beyond a reasonable doubt is that defendant participated directly or indirectly in the conduct of the enterprise's affairs through 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,⁸ 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.

⁷ State v. Ball, 141 N.J. at 174-75.

⁸ 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.

The concept of pattern of racketeering activity is not designed to punish mere repeated offenses. To be a pattern, there must be more than a string of two or more similarly-committed crimes. There must be some degree of relatedness, of continuity or threat of continuity. You should use a totality of the circumstances approach, considering factors such as the number of unlawful acts, the length of time over which the acts were committed, the similarity of the acts, the number of victims, the number of perpetrators and the character of the unlawful activity in determining whether a pattern existed.

There may be incidents that occur sequentially over time. This criminal activity must encompass incidents of criminal conduct that are not disconnected or isolated. Incidents of racketeering that occur sequentially, to overcome any inference that they are totally disconnected or isolated, must exhibit some temporal connection or continuity over time.⁹

In this case, the State alleges that the incidents of racketeering activity were _____ **[Charge elements of substantive crimes or, if already charged, remind jurors of those definitions].**¹⁰ The State must prove beyond a reasonable doubt that defendant committed [at least two of] these crimes and that the crimes he/she committed were a continuing series of crimes that constitute a pattern of racketeering. You must unanimously agree about the crimes defendant committed.

While the pattern of racketeering activity is a separate and distinct element from the element of enterprise, nevertheless, evidence that serves to prove one element may also be considered in determining whether the State has proven the other. In other words, evidence that proves the existence of the enterprise need not be distinct or different from the proof that establishes the pattern of racketeering activity.¹¹

OR

⁹ State v. Ball, 141 N.J. at 167-69.

¹⁰ The crimes or conduct which are eligible for racketeering activity are set forth in N.J.S.A. 2C:41-1a(1) and (2). Note that N.J.S.A. 2C:41-1a(1) was amended in 1995, 1999, 2003, 2005 and 2007 to add various crimes to those eligible for racketeering activity. Inclusion in the indictment of a crime which was not in effect at the time of the alleged offense could raise an ex post facto issue, at least in the absence of a continuing crime.

¹¹ State v. Ball, 141 N.J. at 161-62.

The fifth element that the State must prove beyond a reasonable doubt is that defendant participated directly or indirectly in the conduct of the enterprise's affairs through collection of unlawful debt. Unlawful debt means a debt which was incurred or contracted in gambling activity which was in violation of the law of the United States, a state or political subdivision or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the laws relating to usury.¹²

In this case, the State alleges that defendant _____ (set forth allegations of collection of unlawful debt).

The sixth element that the State must prove beyond a reasonable doubt is that defendant acted purposely or knowingly. 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.

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.

Purpose and knowledge are states 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].

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 any element beyond a reasonable doubt, then you must find the defendant not guilty.

¹² See N.J.S.A. 2C:41-1e.

[CHARGE IF APPROPRIATE]¹³

If you find defendant guilty of racketeering beyond a reasonable doubt, you must go on to consider whether the State has proven beyond a reasonable doubt that the pattern of racketeering activity involved a crime of violence. Here, the State alleges that the racketeering activity involved the violent crime of _____.¹⁴

If you find that the State has proven beyond a reasonable doubt that the racketeering activity involved the violent crime of _____, then you must find defendant guilty of racketeering involving a crime of violence. If you find that the State has failed to prove beyond a reasonable doubt that the racketeering activity involved the violent crime of _____, then you must find defendant not guilty of racketeering involving a crime of violence and guilty of racketeering.

OR

If you find defendant guilty of racketeering beyond a reasonable doubt, you must go on to consider whether the State has proven beyond a reasonable doubt that the pattern of racketeering activity involved the use of a firearm. A firearm means [choose appropriate] any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person. Here, the State alleges that defendant used a _____.

If you find that the State has proven beyond a reasonable doubt that the racketeering activity involved the use of a _____, then you must find defendant guilty of racketeering

¹³ The racketeering statute provides that racketeering is ordinarily a second degree crime, but is a first degree crime when the defendant violates any provision of N.J.S.A. 2C:41-2 which involves a crime of violence, the use of firearms or a crime of the first degree. N.J.S.A. 2C:41-3a.

¹⁴ Presumably, the “crimes of violence” already have been charged to the jury. If not, the trial court must charge the jury on the elements of the crimes. See State v. MacIlwraith, 344 N.J. Super. 544, 548 (App. Div. 2001) (analyzing similar element in terroristic threats offense).

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involving the use of a firearm. If you find that the State has failed to prove beyond a reasonable doubt that the racketeering activity involved the use of _____, then you must find defendant not guilty of racketeering involving the use of a firearm, and guilty of racketeering.