

BIAS INTIMIDATION
[KNOWING INTIMIDATION]
(N.J.S.A. 2C:16-1a(2))

(Defendant) is charged by this indictment with bias intimidation.

[READ INDICTMENT]

Bias intimidation is a crime according to the following statute:

A person is guilty of the crime of bias intimidation if he **[CHOOSE APPLICABLE]** commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of **[SPECIFY OFFENSE]** _____¹ knowing that the conduct constituting the **[SPECIFY OFFENSE]** would cause an individual or group of individuals to be intimidated because of **[CHOOSE APPROPRIATE CATEGORY]** race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

For you to find **(defendant)** guilty of bias intimidation, the State must prove each of the following elements beyond a reasonable doubt:

1. That **(defendant)** **[CHOOSE AS APPROPRIATE]**: committed, attempted to commit, conspired with another to commit, or threatened the immediate commission of the crime **[offense]** of _____.
2. That **(defendant)** **[CHOOSE AS APPROPRIATE]**: committed, attempted to commit, conspired with another to commit, or threatened the immediate commission of the crime **[offense]** of _____ knowing that his/her conduct constituting the crime **[offense]** would cause an individual or group of individuals to be intimidated because of **[CHOOSE APPROPRIATE CATEGORY]**: race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

The first element that the State must prove beyond a reasonable doubt is that **(defendant)** **[CHOOSE AS APPROPRIATE]**: committed, attempted to commit, conspired with another to commit, or threatened the immediate commission of _____. Here, **(defendant)** is charged with **[CHOOSE AS APPROPRIATE]**: committing, attempting to commit,

¹ The offenses specified in N.J.S.A. 2C:16-1a are violations of Chapters 11 through 18 of Title 2C of the New Jersey Statutes; N.J.S.A. 2C:33-4; N.J.S.A. 2C:39-3; N.J.S.A. 2C:39-4 or -5.

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conspiring with another to commit, or threatening the immediate commission of _____
_____ [SPECIFY OFFENSE]. The elements of that offense are [SUMMARIZE
ELEMENTS].²

[CHOOSE AS APPROPRIATE]

ATTEMPT
(N.J.S.A. 2C:5-1)

ALTERNATIVE I

[To be used when defendant is charged with Attempt]

The indictment charges that the defendant attempted to commit the crime of
_____.

ALTERNATIVE II

[If the facts raise the question whether the crime was completed, the jury should be instructed to
"turn to a consideration of whether an attempt to commit the crime has been established."³]

The indictment charges that the defendant committed the crime of
_____. If you find that the State has failed to prove beyond a reasonable
doubt that the crime of _____ was committed, then you should consider
whether an attempt to commit the crime has been established.

**[If “knowing” or lesser culpability would have sufficed for the completed crime, add the
following]**

Before I explain the definition of an attempt, let me explain an important difference
between an attempt and the crime of _____. Although it is possible to commit
the crime of _____ with [knowledge/recklessness], to be guilty of an attempt
the defendant must act with purpose. In other words, the defendant must have the purpose to
commit the crime of _____, in order to be guilty of attempting it.⁴

[MAIN CHARGE]

² If attempt or conspiracy has already been charged to the jury go to “[Resumption of Main Charge].”

³ N.J.S.A. 2C:1-8d(2).

⁴ State v. Rhett, 127 N.J. 3, 6-7 (1992); State v. Robinson, 136 N.J. 476, 485-86 (1994).

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The law provides that a person is guilty of an attempt to commit a crime if the person:⁵

[Select the appropriate section]

[(1) Attempt - Impossibility]

Purposely engages in conduct which would constitute the crime if the attendant circumstances were as a reasonable person would believe them to be;

[or]

[(2) Attempt - When Causing a Particular Result is an Element of the Crime]

Does or omits to do anything with the purpose of causing [result] without further conduct on his part.

[or]

[(3) Attempt-Substantial Step]

Purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in the course of conduct planned to culminate in his commission of the crime.

Thus, in order to find the defendant guilty of a criminal attempt, the State must prove two elements beyond a reasonable doubt:

[Select the appropriate Section]

[(1) Attempt - Impossibility]

The first element is that the defendant acted purposely. A defendant acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person act purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist.

The second element is that the defendant engaged in conduct which would constitute the crime of _____ had the facts been as a reasonable person would have believed them to be.

[Here define the crime allegedly attempted if it has not been defined already, or refer jurors to the definition previously charged.]

⁵ Because all attempts must be purposeful, State v. Rhett, 127 N.J. 3; State v. Robinson, 136 N.J. 476, and because other portions of the statute include the requirement of purpose, the language in N.J.S.A. 2C:5-1a, “acting with the kind of culpability otherwise required for the commission of the crime,” should not be charged.

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If the accused purposely engaged in conduct that would constitute the crime of _____ had the facts been as a reasonable person would have believed them to be, you should consider that conduct as evidence of guilt of attempt to commit _____. It does not matter that the defendant failed to accomplish his/her intended result because the facts were not as a reasonable person would have believed them to be; it is no defense that the defendant could not succeed in reaching his/her intended result because of circumstances unknown to him/her. However, there cannot be an attempt to commit a crime unless the attempt, if completed, would have constituted the crime.⁶

[or]

[(2) When Causing a Particular Result is an Element of the Crime.]

First, that the defendant had the purpose to cause [here state the result that is an element of the alleged attempted crime]. A defendant acts purposely with respect to the nature of his/her conduct or a result thereof 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 he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist.

The second element is that the defendant did or omitted to do anything to cause [state the result which is an element] without further conduct or action on his/her part. Where the accused has done all that he/she believes necessary to cause [state the result which is an element], you should consider that as evidence of guilt of an attempt to commit _____.

[or]

[(3) Substantial Step]

First, that the defendant had the purpose to committing the crime of _____. A defendant acts purposely with respect to the nature of his/her conduct or a result thereof 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 he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist.

The second element is that the defendant purposely did or omitted to do anything, which, under the circumstances as a reasonable person would believe them to be, is an act or omission that is a substantial step in the course of conduct planned to culminate in his/her commission of the crime. However, the step taken must strongly show the defendant's criminal purpose. That

⁶ Final Report of the New Jersey Criminal Law Revision Commission, Vol. II: Commentary, pp.114-115, quoting from State v. Moretti, 52 N.J. 182, 186-90 (1968). N.J.S.A. 2C:5-1a(1) rejects outright the defense of impossibility.

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is, the step taken must be substantial and not just a very remote preparatory act, and must show that the accused has a firmness of criminal purpose.

[Charge in Every Case Except One Involving the Renunciation Defense:]

If you find that the State has proven each of these elements beyond a reasonable doubt, then you must find the defendant guilty of an attempt to commit_____. However, if you find that the State failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty of an attempt to commit_____.

[Charge Where Appropriate]

RENUNCIATION OF CRIMINAL PURPOSE

[To be used when the defendant’s conduct would otherwise constitute an attempt under Section 2 or 3 above]

As part of the defendant’s denial of guilt, the defendant raised the defense of renunciation of criminal purpose.

The accused must prove, by a preponderance of the evidence, that he/she abandoned his/her effort to commit the crime or otherwise prevented its commission under circumstances that show a complete and voluntary decision to renounce his/her criminal purpose. The abandonment of the criminal effort must begin with the defendant and not be forced upon him/her by some outside event, such as police intervention.⁷ Renunciation of criminal purpose is not voluntary if the reason for it is that it seems more likely that defendant will be detected or caught, or the objective seems more difficult than it did at the beginning of the course of conduct. Renunciation is not complete if the defendant only decides to postpone the criminal conduct to a better time or to focus on another but similar objective or victim. If mere abandonment of the criminal effort is not enough to prevent the offense, then the defendant must have taken further and affirmative steps that actually prevented the commission of the offense.⁸

As I stated, the defendant must prove renunciation by a preponderance of the evidence. I previously explained that the State has the burden of proving every element of the crime(s) charged beyond a reasonable doubt. The burden of proving renunciation by a preponderance of the evidence is a lesser burden. It simply means that the defendant has the burden of establishing that the evidence supporting renunciation is more likely true than not. Another way to describe it is the greater weight of the believable evidence in the case. It does not necessarily mean the

⁷ Code Commentary at 124.

⁸ Id. at 125.

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evidence of the greater number of witnesses, but rather, the evidence that carries the greater convincing power in your minds. I remind you, however, that the burden of proving every element of the attempt to commit _____ as I have previously defined it is always on the State and never on the defendant.

If you find that the State has failed to prove any one of these elements beyond a reasonable doubt, then you must find the defendant not guilty of an attempt to commit _____. Also, if you find the State has proven each of these elements beyond a reasonable doubt, but that the defendant has established by a preponderance of the evidence that he/she renounced his/her criminal purpose, then you must find the defendant not guilty. However, if you find that the State has proven each of these elements beyond a reasonable doubt and the defendant has failed to establish renunciation by a preponderance of the evidence, then you must find the defendant guilty.

[OR]

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

Under the _____ count of the indictment the defendant(s) is (are) charged with the crime of conspiracy to commit _____. N.J.S.A. 2C:5-2 provides as follows:

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

(SELECT APPROPRIATE SECTION)

- (1) Agrees with such other person or 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
- (2) Agrees to aid such other person or 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

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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 a defendant guilty of the crime of conspiracy, the State must prove beyond a reasonable doubt the following elements:

- (1) That the defendant agreed with another person or 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 another person or persons in the planning or commission of a crime or of an attempt or solicitation to commit such crime.

- (2) That the defendant's purpose was to promote or facilitate the commission of the crime of (Identify substantive offense).

A person acts purposely with respect to the nature of his/her conduct or a result thereof, if it is his/her 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/she is aware of the existence of such circumstances or he/she believes or hopes that they exist.

**(CHARGE THE FOLLOWING FOR CRIMES OF THE THIRD
AND FOURTH DEGREE)⁹**

- (3) That the defendant or a person with whom he/she conspired did an overt act in pursuance of the conspiracy. An overt act is any act in pursuance of the conspiracy.¹⁰

In order to find a defendant guilty of the crime of conspiracy, the State does not have to prove that he/she actually committed the crime of (Identify substantive offense). However, to decide whether the State has proven the crime of conspiracy you must understand what constitutes the crime of _____.

**(IF NOT PREVIOUSLY STATED GIVE MODEL CHARGE
FOR THE UNDERLYING OFFENSE)**

⁹ See State v. Carbone, 10 N.J. 329 (1952).

¹⁰ Under N.J.S.A. 2C:2-1(b) an omission may under certain circumstances constitute an act.

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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/she conspired with also conspired with others to commit the same crime, the defendant is guilty of conspiring with the others. He/She 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/she or a person with whom he/she was conspiring would commit the crime of _____. For him/her to be found guilty of conspiracy, the State has to prove beyond a reasonable doubt that when he/she agreed it was his/her 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/she 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/she 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)

I have already explained that to find the defendant guilty of conspiracy you have to be convinced beyond a reasonable doubt that he/she agreed with somebody in the manner and with the purpose I described. In addition, for this type of conspiracy, one of the conspirators must

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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).¹¹

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.¹²

In summary, the State must prove the following elements:

- (1) That the defendant agreed with another person or 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 another person or persons in the planning or commission of a crime or of an attempt or solicitation to commit a crime.

- (2) That defendant's purpose was to promote or facilitate the commission of the crime of _____.

(CHARGE THIRD ELEMENT BELOW - ONLY FOR CRIMES OF THE THIRD AND FOURTH DEGREE)

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

If, after consideration of all the evidence you are convinced beyond a reasonable doubt that the State has proven all of these elements, then you must find the defendant guilty of the crime of conspiracy. On the other hand, if you find that the State has failed to prove to your satisfaction beyond a reasonable doubt any one or more of these elements, then you must find the defendant not guilty of the crime of conspiracy.

[CHARGE THE FOLLOWING PARAGRAPH WHEN APPROPRIATE]

¹¹ If attempt or conspiracy has already been charged to the jury go to "[Resumption of Main Charge]."

¹² Where appropriate charge Conspiracy-Renunciation (N.J.S.A. 2C:5-2e) - See Model Charge.

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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.

[RESUMPTION OF MAIN CHARGE]

The second element that the State must prove beyond a reasonable doubt is that the **(defendant)** knew that the conduct constituting the **SPECIFY OFFENSE** would cause an individual or group of individuals to be intimidated because of **[CHOOSE APPROPRIATE CATEGORY]** the victim’s race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity. To “intimidate” means to put another person in fear. **[CHARGE IF APPROPRIATE]:** When the actual victim is one other than the intended victim, it is immaterial that the actual victim was not the intended victim.¹³

[IF THE CATEGORY INCLUDES “DISABILITY”, ADD]

“Disability” means physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental psychological, or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. “Disability” shall also mean AIDS or HIV infection.¹⁴

[IF THE CATEGORY INCLUDES “GENDER IDENTITY OR EXPRESSION,” ADD]

“Gender identity or expression” means having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person’s assigned sex at birth.¹⁵

¹³ See N.J.S.A. 2C:2-3d.

¹⁴ See State v. Dixon, 396 N.J. Super. 329 (App. Div. 2007). See also N.J.S.A. 10:5-5q.

¹⁵ See N.J.S.A. 2C:16-1g.

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

Knowingly refers to a condition of the mind. It cannot be seen. Often, it can be determined only 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 knowingly in intimidating the victim because of the victim's **[REPEAT CATEGORY CHOSEN ABOVE]**. It is within your power to find that proof of a state of mind has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances. **(Defendant's)** conduct and everything done or said by him/her preceding, connected with, and immediately succeeding the commission of the underlying crime are among the circumstances to be considered.

An inference is a deduction of fact which may be drawn logically and reasonably from another fact or group of facts established by the evidence. Whether or not any inference should be drawn is for you to decide, using your own common sense, knowledge, and everyday experience, after you consider whether it is probable, logical, and reasonable to draw such an inference. As judge of the facts, you decide whether the facts and circumstances reflected in the evidence support any inference; you are always free to draw, or to reject, any inference.

If you decide to draw an inference as to the knowledge with which **(defendant)** may have acted, weigh it in connection with all other evidence that you have seen and heard. Drawing an inference does not change the burden of proof imposed upon the State; the State must prove each element of each offense beyond a reasonable doubt.

It is not a defense to this charge that the defendant was mistaken as to the race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity of the victim.

If the State has proven each of these elements beyond a reasonable doubt, you must find **(defendant)** guilty. On the other hand, if the State has failed to prove any of these elements beyond a reasonable doubt, you must find **(defendant)** not guilty.