

CONSPIRACY TO COMMIT RACKETEERING
(N.J.S.A. 2C:41-2(d))

Under the _____ count of the indictment the defendant(s) is (are) charged with the crime of conspiracy to commit racketeering.

Count ____ of the indictment alleges that the defendant(s) conspired to commit a violation of N.J.S.A. 2C:41-2 [SELECT CHARGED SECTION A, B, OR C]

N.J.S.A. 2C:41-2(d) provides in pertinent part:

It shall be unlawful for any person to conspire to [QUOTE CONDUCT CHARGED IN THE INDICTMENT].

Conspiracy is defined under our statutes as:

(SELECT APPROPRIATE SECTION)

- (1) Agreeing 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) Agreeing 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; or
- (3) Agreeing to conduct or to participate in the conduct of a charged enterprise's affairs through a pattern of racketeering.¹

A conspiracy to commit the crime of racketeering is a crime in itself separate and distinct from the crime of racketeering. 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 racketeering.

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;

¹ State v. Cagno, 211 N.J. 488 (2014).

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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.

OR

That the defendant agreed to participate in the conduct of a charged enterprise's affairs through a pattern of racketeering.

AND

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

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.

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 _____.

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 racketeering. However, to decide whether the State has proven the crime of conspiracy you must understand what constitutes the crime of racketeering.

**(IF NOT PREVIOUSLY STATED GIVE MODEL CHARGE
FOR THE UNDERLYING OFFENSE OF N.J.S.A. 2C:41-2a/b/c)**

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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 racketeering. 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 racketeering.

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.

OR

That the defendant agreed to participate in the conduct of a charged enterprise's affairs through a pattern of racketeering.

AND

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

(CHARGE IN ALL CASES)

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If you find that the State has proven each one of these elements beyond a reasonable doubt, then you must find defendant guilty.

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

If, after consideration of all the evidence you are convinced beyond a reasonable doubt that the State has proven each and every one of the 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)

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.