

VANDALIZING RAILROAD CROSSING DEVICES
(N.J.S.A. 2C:33-14.1)

Count _____ of the indictment provides as follows:

[READ COUNT OF THE INDICTMENT]

This count charges the defendant with Vandalizing Railroad Crossing Devices in violation of a statute which provides as follows:

Any person who [purposely] [knowingly] [recklessly] [defaces] [damages] [obstructs] [removes] [impairs] the operation of any railroad crossing warning signal or protection device, including, but not limited to [safety gates] [electric bell] [electric sign] [or any other alarm or protection system authorized by the Commissioner of Transportation, which is required under the provisions of [the law]¹ [or any other railroad property or equipment, other than administrative buildings, offices or equipment] shall be guilty of a crime. . .

In order for the defendant to be found guilty of Vandalizing Railroad Crossing Devices, the State must prove beyond a reasonable doubt:

(1) That the defendant [defaced] [damaged] [obstructed] [removed] [impaired the operation of] any railroad crossing warning signal or protection device, including, but not limited to [safety gates] [electric bell] [electric sign] [or any other alarm or protection system authorized by the Commissioner of Transportation, which is required under the provisions of [the law]² [any railroad property or equipment, other than administrative buildings, offices or equipment]; and

(2) That the defendant acted purposely, knowingly or recklessly.

The first element the State must prove beyond a reasonable doubt is that the defendant [defaced] [damaged] [obstructed] [removed] [impaired the operation of] any railroad crossing, warning signal or protection device, including, but not limited to [safety gates] [electric bell] [electric sign] [or any other alarm or protection system authorized by the Commissioner of

¹ See N.J.S.A. 48:12-54 or N.J.S.A. 48:2-29.

² See N.J.S.A. 48:12-54 or N.J.S.A. 48:2-29.

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Transportation, which is required under the provisions of (the law)³] [any railroad property or equipment, other than administrative buildings, offices or equipment.]

The second element the State must prove beyond a reasonable doubt is that the defendant acted [purposely] [knowingly] [recklessly].

[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 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 believes or hopes that they exist. "With purpose," "designed," "with design," or equivalent terms have the same meaning.

Purpose is a condition of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's conduct, words or acts. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he/she had a particular purpose. His/Her state of mind is to be determined by you after you examine his/her conduct and actions, all that was said or done at that particular time and place, and

³ The statute cites N.J.S.A. 48:12-54 or N.J.S.A. 48:2-29. N.J.S.A. 48:12-54 provides as follows:

Protections at grade crossings; group signals

Every company operating on a fixed track or tracks, freight or passenger trains or cars, shall provide protection to pedestrians and the traveling public at every crossing of its tracks by any public road. Such protection may be in the form of safety gates, flagmen, electric bell, electric signs or other recognized system of alarm or protection approved by the Board of Public Utility Commissioners.

When several crossings lie so close together that an audible signal at one crossing may be sufficiently heard at others near it, such crossings may be protected by such device or signals as will sufficiently protect all crossings in the group.

When on any line or part thereof all traffic is discontinued for any part of the night, no crossing guards need be operated while traffic is so discontinued.

This section shall not apply to street car lines or tracks used principally for street car purposes.

The provisions of this section shall be construed to be mandatory and shall be operative without order or direction of the board.

N.J.S.A. 48:2-29 provides as follows:

Protection at Grade Crossings

Whenever it shall appear to the board that a public highway and a railroad or a street railway, or that a railroad and a street railway, cross one another at the same level and that conditions at such grade crossing make it necessary that gates be erected or that some other reasonable provision for the protection of the traveling public be adopted, the board may order the railroad or street railway company or both, to install such protective device or adopt such other reasonable provision for the protection of the traveling public at the crossing as in the discretion of the board shall be necessary.

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all the surrounding circumstances. It is within the power of the jury to find that the proof of purpose has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.]

OR

[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 a high probability of their existence. A person acts knowingly with respect 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.

Knowledge is a condition of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's conduct, words or acts. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he/she had a particular knowledge. His/Her state of mind is to be determined by you after you examine his/her conduct and actions, all that was said or done at that particular time and place, and all the surrounding circumstances. It is within the power of the jury to find that the proof of knowledge has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.]

OR

[A person acts recklessly with respect to the nature of his/her conduct or a result thereof when he/she consciously disregards a substantial and unjustifiable risk. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him/her, its disregard involves a gross deviation from the standard of

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conduct that a reasonable person would observe in the actor's situation.⁴

Recklessness is a state of mind which cannot be seen but can only be determined by drawing inferences from one's conduct, words or actions, and from all of the surrounding circumstances. It therefore is not necessary for the State to produce witnesses to testify that the defendant said he/she knew or believed that he/she was acting recklessly. His/Her state of mind is to be determined by you after you examine his/her conduct and actions, all that was said or done at that particular time and place, and all the surrounding circumstances. It is within the power of the jury to find that the proof of recklessness has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.]

If the State has failed to prove any of the elements beyond a reasonable doubt, you must find the defendant not guilty of Vandalizing Railroad Crossing Devices. If the State has proven every element beyond a reasonable doubt, you must find the defendant guilty of Vandalizing Railroad Crossing Devices.

GRADING

[CHOOSE APPROPRIATE]

If you find that the State has proven defendant guilty beyond a reasonable doubt of this offense, then you must determine whether or not the State has proven beyond a reasonable doubt that the defendant's [defacement] [damage] [obstruction] [removal] [impediment of] [the crossing warning signal] [the protection device] [the property] [the equipment] recklessly caused [death] [serious bodily injury] to another person.

A person acts recklessly with respect to the nature of his/her conduct or a result thereof when he/she consciously disregards a substantial and unjustifiable risk. The risk must be of such a nature

⁴ See N.J.S.A. 2C:2-2b(3).

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and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him/her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.⁵

Recklessness is a state of mind which cannot be seen but can only be determined by drawing inferences from one's conduct, words or actions, and from all of the surrounding circumstances. It therefore is not necessary for the State to produce witnesses to testify that the defendant said he/she knew or believed that he/she was acting recklessly. His/Her state of mind is to be determined by you after you examine his/her conduct and actions, all that was said or done at that particular time and place, and all the surrounding circumstances. It is within the power of the jury to find that the proof of recklessness has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.⁶ "Bodily injury" means physical pain, illness or any impairment of physical condition.⁷

If you find that the State has proven beyond a reasonable doubt that the defendant recklessly caused [death] [serious bodily injury] to another person, then you must find him/her guilty of this form of Vandalizing Railroad Crossing Devices. If, on the other hand, you find that the State has failed to prove this element beyond a reasonable doubt, you must find him/her not guilty of this form of Vandalizing Railroad Crossing Devices.

OR

⁵ See N.J.S.A. 2C:2-2b(3).

⁶ N.J.S.A. 2C:11-1b. While the cited statute limits this definition to chapters 11 through 15, the definition appears appropriate here.

⁷ N.J.S.A. 2C:11-1a. While the cited statute limits this definition to chapters 11 through 15, this definition

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If you find that the State has proven defendant guilty beyond a reasonable doubt of this offense, then you must determine whether or not the State has proven beyond a reasonable doubt that the defendant's [defacement] [damage] [obstruction] [removal] [impediment of] [the crossing warning signal] [the protection device] [the property] [the equipment] recklessly caused [bodily injury] [pecuniary loss of \$2000 or more].

A person acts recklessly with respect to the nature of his/her conduct or a result thereof when he/she consciously disregards a substantial and unjustifiable risk. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him/her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.⁸

Recklessness is a state of mind which cannot be seen but can only be determined by drawing inferences from one's conduct, words or actions, and from all of the surrounding circumstances. It therefore is not necessary for the State to produce witnesses to testify that the defendant said he/she knew or believed that he/she was acting recklessly. His/Her state of mind is to be determined by you after you examine his/her conduct and actions, all that was said or done at that particular time and place, and all the surrounding circumstances. It is within the power of the jury to find that the proof of recklessness has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.

"Bodily injury" means physical pain, illness or any impairment of physical condition.⁹

If you find that the State has proven beyond a reasonable doubt that the defendant recklessly caused [bodily injury to another person] [pecuniary loss of \$2000 or more], then you must find

appears appropriate here.

⁸ See N.J.S.A. 2C:2-2b(3).

⁹ N.J.S.A. 2C:11-1a. While the cited statute limits this definition to chapters 11 through 15, this definition appears appropriate here.

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him/her guilty of this form of Vandalizing Railroad Crossing Devices. If, on the other hand, you find that the State has failed to prove this element beyond a reasonable doubt, you must find him/her not guilty of this form of Vandalizing Railroad Crossing Devices.

[IF AN ACT OF GRAFFITI IS CHARGED]

If you find that the State has proven defendant guilty beyond a reasonable doubt of this offense, then you must determine whether or not the State has proven beyond a reasonable doubt that the defendant's action(s) involved an act of graffiti.

An "act of graffiti" means the drawing, painting or making of any mark or inscription on public or private real or personal property without the permission of the owner.

If you find that the State has proven beyond a reasonable doubt that the defendant's action(s) involved an act of graffiti, then you must find him/her guilty of this form of Vandalizing Railroad Crossing Devices. If, on the other hand, you find that the State has failed to prove this element beyond a reasonable doubt, you must find him/her not guilty of this form of Vandalizing Railroad Crossing Devices.¹⁰

¹⁰ The court should utilize a special verdict sheet to ask the jury the amount of the pecuniary damage caused by the act of graffiti.