

**WITNESS/INFORMANT BRIBERY**  
**(N.J.S.A. 2C:28-5d)**

The indictment charges defendant in Count \_\_\_\_\_ with [Witness] [Informant] (choose appropriate one) Bribery, in violation of a statute that reads as follows:

A person commits a [crime] if they directly or indirectly offer, confer or agree to confer upon a witness [informant]...any benefit in consideration of the witness doing any of the following:

- (1) Testifying or informing falsely;
- (2) Withholding any testimony, information, document, or thing;
- (3) Eluding legal process summoning the witness to testify or supply evidence;
- (4) Absenting themselves from any proceeding or investigation to which the witness has been legally summoned;

**OR**

- (5) Otherwise obstructing, delaying, preventing, or impeding an official proceeding or investigation.

In order for you to find defendant guilty of violating this statute, the State must prove beyond a reasonable doubt each and every one of the following elements:

- (1) that defendant directly or indirectly offered, conferred or agreed to confer a benefit upon a witness;
- (2) that defendant acted knowingly; and
- (3) that the defendant's offer/agreement was in consideration of the witness performing one of the following:
  - a) Testifying or informing falsely;
  - b) Withholding any testimony, information, document or thing;
  - c) Eluding legal process summoning the witness to testify or supply evidence;
  - d) Absenting themselves from any proceeding or investigation to which the witness has been legally summoned;

**OR**

- e) Otherwise obstructing, delaying, preventing or impeding an official proceeding or investigation.

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**(N.J.S.A. 2C:28-5d)**

The first element that the State must prove beyond a reasonable doubt is that defendant directly or indirectly offered, conferred or agreed to confer a benefit upon a witness. "Benefit" means any gain or advantage, or anything regarded by the beneficiary as gain or advantage, including an pecuniary benefit or a benefit to any other person or entity in whose welfare he is interested.

The second element that the State must prove beyond a reasonable doubt is that defendant acted knowingly. A person acts knowingly with respect to the nature of their conduct or the attendant circumstances if they are aware that their conduct is of that nature, or that such circumstances exist, or they are aware of a high probability of their existence. [A person acts knowingly with respect to a result of their conduct if they are aware that it is practically certain that their conduct will cause such a result].<sup>1</sup> "Knowingly," "with knowledge" or equivalent terms have the same meaning.

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 the defendant had a particular knowledge. 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.

A person acts purposely with respect to the nature of their conduct or a result thereof if it is their 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 they are aware of the existence of such circumstances or they believe or hope that they exist. That is they mean to do what they did. "With purpose," "designed," "with design," or equivalent terms have the same meaning. Purpose 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 they purposely did something. Their purpose may be gathered from their acts and conduct, from all that they said and did at the particular time and place, and from all the surrounding

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<sup>1</sup> In State v. Speth, 323 N.J. Super. 67, 87 (App. Div. 1999), the Court held that the "practically certain" portion of the definition of knowledge "is not an element of the offense and is incompatible with the crime of witness tampering, as it would put undue weight on whether or not defendant's attempt was likely to succeed."

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circumstances reflected in the testimony [and adduced at trial].

The third element that the State must prove beyond a reasonable doubt is that defendant's offer/agreement was given in exchange for the performance of one of the following:

- (1) Testifying or informing falsely;
- (2) Withholding any testimony, information, document or thing;
- (3) Eluding legal process summoning the witness to testify or supply evidence;  
or
- (4) Absenting themselves from any proceeding or investigation to which they had been legally summoned;

**OR**

- (4) Otherwise obstructing, delaying, preventing or impeding an official proceeding or investigation.

In short, with regard to the third element the State must prove beyond a reasonable doubt that defendant offered/agreed to give the witness a benefit if they did one of the actions.

If the State has failed to prove any one or more of the elements as I have described them to you beyond a reasonable doubt, you must find defendant not guilty of witness [informant] bribery. If the State has proven every element beyond a reasonable doubt, you must find defendant guilty of the crime of witness [informant] bribery.