LEADER OF A CHILD PORNOGRAPHY NETWORK
(N.J.S.A. 2C:24-4.1)

The indictment charges the defendant with being a leader of a child pornography network. That section of our statute reads in pertinent part:

> A person is a leader of a child pornography network if he knowingly conspires with others as an organizer, moderator, administrator, programmer, recruiter, or facilitator to engage in a scheme or course of conduct to establish or maintain an interconnected network through which files containing one or more items depicting the sexual exploitation or abuse of a child are in any way made available to or accessible among an organized group of users or participants.

In order to find the defendant guilty of this offense, the State must prove each of the following elements beyond a reasonable doubt:

(1) That the defendant conspired with others;

(2) That the conspiracy included a scheme or course of conduct to establish or maintain an interconnected network through which files containing one or more items depicting the sexual exploitation or abuse of a child are in any way made available to or accessible among an organized group of users or participants; and

(3) That he/she knowingly[1] was an organizer, moderator, administrator, programmer, recruiter, or facilitator.

The first element that the State must prove beyond a reasonable doubt is that the defendant conspired with others to engage in a scheme or course of conduct.

To conspire with others is to agree with such other person or persons that one or more persons in the group will engage in conduct that constitutes a crime with the purpose to promote or facilitate that crime. 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.

---

[1] Under a substantive conspiracy, to be guilty, a defendant has to conspire "with another person or persons" "with the purpose of promoting or facilitating" a crime. N.J.S.A. 2C:5-2. This statute, however, appears to incorporate a knowing mens rea into the crime of "conspiring" with others. An example of this might be a person who knowingly programs a file-sharing system for the items of child pornography without actually sending or receiving the items.

The second element that the State must prove beyond a reasonable doubt is that the course of conduct was to establish or maintain an interconnected network through which files containing one or more items depicting the sexual exploitation or abuse of a child are in any way made available to or accessible among an organized group of users or participants.

"Interconnected network" means a set of computer nodes, including but not limited to personal computers, mobile devices, and physical or virtual servers that are linked together to facilitate the transmission of data between users.[2]

"Item depicting the sexual exploitation or abuse of a child" means a photograph, film, video, an electronic, electromagnetic or digital recording, an image stored or maintained in a computer program or file or in a portion of a file, or any other reproduction or reconstruction, which: (a) depicts a child engaging in a prohibited sexual act or in the simulation of such an act; or (b) portrays a child in a sexually suggestive manner.[3]

The third element that the State has to prove beyond a reasonable doubt is that the defendant knowingly was an organizer, moderator, administrator, programmer, recruiter, or facilitator in the scheme or course of conduct. An "organizer," for example, is "a person who arranges, devises, or plans."[4]

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. "Knowing," "with knowledge or equivalent terms have the same meaning.[5]

Knowledge is a condition of the mind that cannot be seen and can only be determined by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary, members of the jury, that the State produce witnesses to testify that an accused said he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her

---

[2] N.J.S.A. 2C:24-4.1(e).
[3] See N.J.S.A. 2C:24-4(b)(1).
[4] State v. Alexander, 136 N.J. 563, 575 (1994).
[5] N.J.S.A. 2C:2-2(b)(2).

acts and his/her conduct, and from all he/she said and did at the particular time and place, and from all of the surrounding circumstances.

If you find that the State has proven every element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.

If you find that the State has proven every element of the offense beyond a reasonable doubt, then you must go on to determine the number of items involved in the offense for which you found the defendant guilty. The State must prove the number of items beyond a reasonable doubt.

Each item depicting the sexual exploitation or abuse of a child made available or accessible through a distribution network shall be considered a separate item. An item that is in the form of a photograph, picture, image, or visual description of a similar nature shall be considered to be one item. Each depiction that is in the form of a film, video, video-clip, movie, or visual depiction of a similar nature shall be considered to be ten (10) separate items.

You must indicate whether you find the number of items involved:

(1) Is less than 1,000;

(2) Is at least 1,000 but less than 100,000; or

(3) Is 100,000 or more.