Approved 9/8/08

TERRORISM
(N.J.S.A. 2C:38-2)

The defendant is charged with the crime of terrorism, in that he/she is alleged to have (**summarize appropriate portions of indictment)**.

This charge is based upon a statute which provides that:

> A person commits a crime of terrorism if he commits or attempts, conspires or threatens to commit any crime enumerated in the statute which includes the crime alleged in the indictment, more specifically the crime of_____ [refer to the appropriate crime in N.J.S.A. 2C:38-2(c)][1] with the purpose [**choose appropriate section(s) of N.J.S.A. 2C:38-2(a)(1) thru (4)].**[2]
>
> (1) to promote an act of terror;

OR

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[1] N.J.S.A. 2C:38-2(c) provides as follows:

The crimes encompassed by this section are: murder pursuant to N.J.S. 2C:11-3; aggravated manslaughter or manslaughter pursuant to N.J.S. 2C:11-4; vehicular homicide pursuant to N.J.S. 2C:11-5; aggravated assault pursuant to subsection b. of N.J.S. 2C:12-1; disarming a law enforcement officer pursuant to section 1 of P.L. 1996, c. 14 (C. 2C:12-11); kidnapping pursuant to N.J.S. 2C:13-1; criminal restraint pursuant to N.J.S. 2C:13-2; robbery pursuant to N.J.S. 2C:15-1; carjacking pursuant to section 1 of P.L.1993, c.221 (C. 2C:15-2); aggravated arson or arson pursuant to N.J.S. 2C:17-1; causing or risking widespread injury or damage pursuant to N.J.S. 2C:17-2; damage to nuclear plant with the purpose to cause or threat to cause release of radiation pursuant to section 1 of P.L. 1983, c. 480 (C. 2C:17-7); damage to nuclear plant resulting in death by radiation pursuant to section 2 of P.L. 1983, c. 480 (C. 2C:17-8); damage to nuclear plant resulting in injury by radiation pursuant to section 3 of P.L. 1983, c. 480 (C. 2C:17-9); producing or possessing chemical weapons, biological agents or nuclear or radiological devices pursuant to section 3 of P.L. 2002, c. 26 (C. 2C:38-3); burglary pursuant to N.J.S. 2C:18-2; possession of prohibited weapons and devices pursuant to N.J.S. 2C:39-3; possession of weapons for unlawful purposes pursuant to N.J.S. 2C:39-4; unlawful possession of weapons pursuant to N.J.S. 2C:39-5; weapons training for illegal activities pursuant to section 1 of P.L. 1983, c. 229 (C. 2C:39-14); racketeering pursuant to N.J.S. 2C:41-1 et seq.; and any other crime involving a risk of death or serious bodily injury to any person.

[2] The relevant sections of N.J.S.A. 2C:38-2(a)(1) through (4) reads as follows:

§ **2C:38-2.** Crime of terrorism; definitions

a. A person is guilty of the crime of terrorism if he commits or attempts, conspires or threatens to commit any crime enumerated in subsection c. of this section with the purpose:

(1) to promote an act of terror; or

(2) to terrorize five or more persons; or

(3) to influence the policy or affect the conduct of government by terror; or

(4) to cause by an act of terror the impairment or interruption of public communications, public transportation, public or private buildings, common carriers, public utilities or other public services.

(2) to terrorize five or more persons;

OR

(3) to influence the policy or affect the conduct of government by terror;

OR

(4) to cause by an act of terror the impairment or interruption of public communications, public transportation, public or private buildings, common carriers, public utilities or other public services.

For you to find the defendant guilty, the State must prove each of the essential elements of the offense beyond a reasonable doubt. Those elements are:

(1) that the defendant [knowingly committed], [purposely attempted] or [purposely conspired] or [purposely threatened] to commit the crime of [identify enumerated predicate crime alleged in indictment, see list fn 1]; and

(2) that the defendant's purpose in committing, attempting or conspiring or threatening to commit that crime was to [**choose appropriate subsections of N.J.S.A. 2C:38-2a(1) to (4))]**[2]**.**

The first element the State must prove beyond a reasonable doubt is that the defendant acted [knowingly to commit the crime of (identify crime)]; [purposely attempted to commit the crime of (identify crime)]; [purposely conspired with another to commit the crime of (identify crime)]; [purposely threatened to commit the crime of (identify crime)].

IF CHARGED WITH COMMITTING A PREDICATE CRIME

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" **or** "with knowledge" **or** equivalent terms are the same

meaning.[3]

IF CHARGED WITH ATTEMPTING OR CONSPIRING OR THREATENING TO COMMIT A PREDICATE 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 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.[4]

READ IN ALL CASES

[Purpose] [knowledge] is/are condition(s) of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's conduct, words or acts and all the surrounding circumstances. 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 had a particular [purpose] [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.

I will now discuss with you the essential elements of the crime which defendant has been charged with [committing] [attempting to commit] [engaging in a conspiracy to commit] or [threatening to commit]. **[Discuss the enumerated crime listed in the indictment by using the model jury charge for that crime. In addition, if the indictment charges an "attempt" or "conspiracy" to commit a predicate crime, those charges should be melded into the charge].**

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[3] N.J.S.A. 2C:2-2(b)(2).
[4] N.J.S.A. 2C:2-2(b)(1).

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Where the indictment charges the defendant with "threatening" to commit a predicate crime, the following should be read to the jury:

> I have just provided you instructions to familiarize you, generally, with the elements of proof for the underlying identified crime of _____ [**identity enumerated predicate crime alleged in the indictment.** See fn. 1.] However, the State under this indictment does not have to prove the defendant committed the underlying crime of _____. The State must prove only that he/she threatened to commit it. In order to find defendant guilty of this element, you must find the threat was conveyed by the defendant and the words and conduct of the defendant must be of a nature that would convey menace or fear of the commission of the underlying crime to an ordinary person(s) under the circumstances.[5] It is not a violation of this statute if the threat expresses mere fleeting anger. Again, the words and conduct must be of such a nature that it would lead a reasonable person to believe there was a genuine threat to commit the underlying crime.

The second element of the offense that the State must prove beyond a reasonable doubt is that the defendant acted with the purpose

[CHOOSE APPROPRIATE SECTION OF N.J.S.A. 2C:38-2(a)(1) thru (4)]

(1) to promote an act of terror;

OR

(2) to terrorize five or more persons;

OR

(3) to influence the policy or affect the conduct of government by terror;

OR

(4) to cause by an act of terror the impairment or interruption of public communications, public transportation, public or private buildings, common carriers, public utilities or other public services.

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[5] See State v. Milano; 167 N.J. Super. 318 (Law Div. 1979), aff'd, 172, N.J. Super 361 (App. Div. 1980) on Terroristic Threats charge under N.J.S.A. 2C:12-3.

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Let me now provide you with the definitions of some of the terms I just recited **[CHOOSE BASED ON SECTION OF N.J.S.A. 2C:38-2(a)(1) thru (4) RECITED IN PREVIOUS PARAGRAPH]**:

(1) "To promote an act of terror."[6] "Terror" means to convey the menace or fear of death or serious bodily injury.[7] "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.[8]

OR

(2) "To terrorize five or more persons."[9] "Terrorize" means to convey the menace of fear of death or serious bodily injury by words or actions. "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.[10]

OR

(3) "To influence the policy or affect the conduct of government by terror."[11] "Terror" means to convey the menace or fear of death or serious bodily injury.[12] "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.[13] Government means the United States, any state, county, municipality, or other political unit, or any department, agency or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government.

OR

(4) "To cause by an act of terror the impairment or interruption of public communications, public transportation, public or private buildings, common carriers, public utilities or other public services."[14] "Terror" means to convey the menace or

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6 N.J.S.A. 2C:38-2a(1).
7 N.J.S.A. 2C:38-2d.
8 N.J.S.A. 2C:11-1b.
9 N.J.S.A. 2C:38-2a(2).
10 N.J.S.A. 2C:11-1b.
11 N.J.S.A. 2C:38-2a(3).
12 N.J.S.A. 2C:38-2d.
13 N.J.S.A. 2C:11-1b.
14 N.J.S.A. 2C:38-2a(4).

> fear of death or serious bodily injury.[15] "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.[16]

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 he/she believes or hopes that they exist. Someone acts purposely if he/she acts with design, with a purpose, with a particular objective in mind, if he/she really means to do what he/she does. "With purpose," "designed," "with design," or equivalent terms have the same meaning.[17]

Purpose and knowledge are conditions of the mind which 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 that the State produce witnesses to testify that an accused said that 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 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.

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15 N.J.S.A. 2C:38-2d.
16 N.J.S.A. 2C:11-1b.
17 N.J.S.A. 2C:2-2(b)(1).

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If after considering all of the evidence you conclude that the State has proven each of these elements beyond a reasonable doubt, then you must find defendant guilty. On the other hand, if you find that the State has failed to prove any of these elements beyond a reasonable doubt, then your verdict must be not guilty.

DEATH CAUSED BY ACT OF TERRORISM [WHERE APPLICABLE]

If you find the defendant guilty of the crime of terrorism, you must go on to decide whether the State has proven that the crime of terrorism that defendant committed resulted in death(s).[18] **[A description of the victim(s) killed as a result of the alleged terrorism should be provided here].**

If the State has proven each of the elements of terrorism and you further conclude that the State has proven beyond a reasonable doubt that the crime of terrorism resulted in the death of (a) person(s), then your verdict must be guilty of terrorism that resulted in death.

If the State has proven each of the elements of terrorism beyond a reasonable doubt, but you conclude that the State has not proven beyond a reasonable doubt that the crime of terrorism resulted in death, then your verdict must be guilty of terrorism only. As I said previously, if the State has failed to prove any element of the crime of terrorism, beyond a reasonable doubt, your verdict must be not guilty.

[18] If the issue arises from the evidence, the jury should be charged on the issue of causation within the meaning of N.J.S.A. 2C:2-3.