

CAUSING OR FACILITATING ESCAPE
(N.J.S.A. 2C:29-5c)

Count ___ of the indictment charges the defendant with causing or facilitating escape in violation of a statute which provides as follows:

Any person who knowingly causes or facilitates an escape commits an offense.

The indictment alleges that:

(Read relevant part of Count __ to the jury)

In order for the defendant to be found guilty of knowingly [causing][facilitating] an escape, the State must prove each of the following elements beyond a reasonable doubt:

1. That the defendant [caused]¹[facilitated] an escape by another;
2. That the defendant acted knowingly.

The first element the State must prove beyond a reasonable doubt is that the defendant [caused][facilitated] an escape by another. [A person is considered to have caused an escape when the escape would not have occurred but for the person's conduct and the escape was within his/her contemplation at the time he/she acted.] [A person is considered to have facilitated an escape when by his/her conduct he/she made it easier for another to escape or assisted or helped in the escape.] An escape is defined as (a removal of one's self from official detention) (a failure to return to official detention following temporary leave granted for a specific purpose or limited period) without lawful authority. "Official detention" means [arrest] [detention in any facility for custody of (persons under charge or conviction of a crime or offense)(persons committed pursuant to chapter 4 of this Title),² (persons alleged or found to be delinquent)] [detention for extradition or deportation] [any

¹ See State v. Martin, 119 N.J. 2 (1990).

² See N.J.S.A. 2C:4-1 to 2C:4-11. These provisions concern, inter alia, the insanity defense, evidence of mental

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other detention for law enforcement purposes.]³

The second element the State must prove beyond a reasonable doubt is that the defendant acted knowingly. 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.⁴

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. 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.

IF LEGAL IRREGULARITY IS RAISED, CHARGE EITHER SECTION A OR SECTION B:

SECTION A⁵

The defendant contends that his/her intent in [causing][facilitating] the charged escape was

disease or defect, competency to stand trial and commitment upon a finding that a defendant is not guilty by reason of insanity.

³ N.J.S.A. 2C:29-5(a). "Official detention" does not, however, include supervision of probation or parole, or constraint incidental to release on bail. Id.

⁴ See N.J.S.A. 2C:2-2b(2).

⁵ Legal irregularity or lack of jurisdiction is not available as a defense when the escape is from a prison or other

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not illegal. You are advised that legal irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, is not a defense when the escape is from a prison⁶ or other custodial facility or from detention pursuant to commitment by official proceedings.⁷

Defendant maintains that the facility from which he/she [caused][facilitated] the escape [was not a prison] [was not a custodial facility] [did not constitute detention pursuant to commitment by official proceedings]. Conversely, the State maintains that the facility at issue [was a prison] [was a custodial facility] [did constitute detention pursuant to commitment by official proceedings].

The burden of proof is on the State to disprove the defense beyond a reasonable doubt.

In order for you to determine whether the State has met this burden, you must decide whether the State has proven beyond a reasonable doubt that the escape the defendant is charged with [causing] [facilitating] was from [a prison] [a custodial facility] [detention pursuant to commitment by official proceedings]. If the State has failed to prove this fact beyond a reasonable doubt, you must find the defendant not guilty.

SECTION B⁸

The defendant contends that his/her intent in [causing] [facilitating] the charged escape was not illegal. Where a defendant is accused of [causing] [facilitating] another's escape from

custodial facility or from detention pursuant to commitment by official proceedings. N.J.S.A. 2C:29-5(d).

⁶ For the purposes of a charge under this statute, a "prison" may include state prison, county jails or correctional centers, municipal jails, juvenile detention facilities or reformatories, and the Adult Diagnostic and Treatment Center. This list of possible prisons is illustrative only, and not meant to be exhaustive.

⁷ Detention pursuant to official proceedings can include an arrest, an investigatory detention or a motor vehicle stop. See State v. Moultrie, 357 N.J. Super. 547 (App. Div. 2003). This list is not meant to be exhaustive.

⁸ Legal irregularity or lack of jurisdiction may be available as a defense when the escape is from a detention that is not a prison, another custodial facility or detention pursuant to commitment by official proceedings. N.J.S.A. 2C:29-

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[confinement] [arrest] [detention], legal irregularity in bringing about or maintaining [confinement] [arrest] [detention], or lack of jurisdiction of the committing or detaining authority is a defense, but only if [the escape involved no substantial risk of harm to the person or property of anyone other than the escapee] [the detaining authority did not act in good faith under color of law]. In other words, even where the detaining authority has not followed proper procedures, or has acted unlawfully or improperly in effecting confinement, still there is no defense unless [the escape was conducted in a manner that involves no substantial risk of harm to the person or property of anyone else] [the detaining authority failed to act in good faith under color of law]. Thus, simply put, the law provides that [causing] [facilitating] an escape from illegal [confinement] [arrest] [detention] is not criminal [where it involves no substantial risk of harm to another] [even if it involves a substantial risk of harm to another, where there has been [confinement] [arrest] [detention] by an authority who knows there is not a basis for the arrest].

The burden of proof is on the State to disprove the defense beyond a reasonable doubt.⁹

In order for you to determine whether the State has met this burden, you must decide whether the State has disproved, beyond a reasonable doubt that [the escape involved no substantial risk of harm to the person or property of anyone other than the escapee] [the detaining authority did not act in good faith under color of law]. If the State has failed to disprove this fact beyond a reasonable doubt, you must find the defendant not guilty.

5(d).

⁹ See State v. Moultrie, 357 N.J. Super. 547, 554-555 (App. Div. 2003). To bring this defense into play there must be some evidence, however slight, that the officer did not act in good faith under color of law. Id. at 559. Quoting the Criminal Law Revision Commission Commentary, the Moultrie court states that this involves "clear cases of abusive arrest by officers who know there is no basis for the arrest." Id. More than just an absence of probable cause is needed. Id.

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[CHARGE IN ALL CASES]

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 the defendant not guilty of the crime of [causing] [facilitating] an escape. If the State has proven each element beyond a reasonable doubt, you must find the defendant guilty of the crime of causing or facilitating an escape. [Where appropriate, remind the jury that the State must disprove legal irregularity beyond a reasonable doubt].

[GRADING]

If you find that the State has proven defendant guilty beyond a reasonable doubt of this crime, then you must determine whether or not the State has proven beyond reasonable doubt that the defendant employed [force] [a threat] [a deadly weapon] [a dangerous instrumentality] in the course of causing or facilitating the escape.

["Force" means any degree of physical power or strength used against another person, even though it entails no pain or bodily harm and leaves no mark.]¹⁰

[A "deadly weapon" is any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury.]¹¹

[A "dangerous instrumentality" is an instrument, substance or condition so inherently

¹⁰ See generally State v. Brannon, 178 N.J. 500 (2004).

¹¹ This definition of deadly weapon is set forth at N.J.S.A. 2C:11-1(c). While N.J.S.A. 2C:11-1 limits the definition to "chapters 11 through 15," it seems appropriate to use this definition here.

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dangerous that it may cause serious bodily injury or death without human use or interference.]¹²

If you find that the State has proven beyond reasonable doubt that the defendant employed [force] [a threat] [a deadly weapon] [a dangerous instrumentality] in the course of causing or facilitating the escape, then you must find him/her guilty of this form of causing or facilitating an escape. 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 causing or facilitating an escape.

¹² Black's Law Dictionary (7th ed. 1999).