

26.7 RICO — CONDUCT OF OR PARTICIPATION IN AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY

§ 895.03(3), Fla. Stat.

To prove the crime of Unlawfully [Conducting] [Participating in] an Enterprise Through a Pattern or Racketeering Activity, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) was [employed by] [associated with] an enterprise.
2. (Defendant) [conducted] [participated in], directly or indirectly, such enterprise by engaging in at least two of the following incidents. *Read incidents of racketeering activity alleged in information.*
3. Of those incidents in which (defendant) was engaged, at least two of them had the same or similar [intent] [results] [accomplices] [victims] [methods of commission] or were interrelated by distinguishing characteristics and were not isolated incidents.

Define the crimes alleged to be incidents of racketeering activity.

§ 895.02(7), Fla. Stat. Give if there is no express stipulation regarding dates.

In order to find (defendant) guilty of Unlawfully [Conducting] [Participating in] an Enterprise Through a Pattern or Racketeering Activity, you must also find the State proved beyond a reasonable doubt that:

1. at least one of the predicate incidents alleged occurred after October 1, 1977;
and
2. the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

Give if applicable. § 895.02(5), Fla. Stat.

“Enterprise” means any [individual*], [sole proprietorship**], partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities.

Gross v. State, 765 So. 2d 39 (Fla. 2000).

An “enterprise” is an ongoing organization, formal or informal, that functions both as a continuing unit and has a common purpose of engaging in a course of conduct.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

*In *State v. Nishi*, 521 So. 2d 252 (Fla. 3d DCA 1988), the Third District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person cannot be employed or associated with himself.

**In *State v. Bowen*, 413 So. 2d 798 (Fla. 1st DCA 1982), the First District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person can be employed or associated with his own sole proprietorship. However, the Second District Court of Appeal disagreed in *Masonoff v. State*, 546 So. 2d 72 (Fla. 2d DCA 1989).

A criminal gang, as defined in § 874.03, Fla. Stat., constitutes an enterprise.

This instruction was adopted in 1989 and amended in 2003 and 2019.