

26.8 CONSPIRACY TO ENGAGE IN PATTERN OF RACKETEERING ACTIVITY

§ 895.03(4), Fla. Stat.

A “conspiracy” is a combination or agreement of two or more persons to join together to attempt to accomplish an offense which would be in violation of the law. It is a kind of “partnership in criminal purposes” in which each member becomes the agent of every other member.

The evidence in the case need not show that the alleged members of the conspiracy entered into any express or formal agreement or that they directly discussed between themselves the details of the scheme and its purpose or the precise ways in which the purpose was to be accomplished. Neither must it be proved that all of the persons charged to have been members of the conspiracy were such nor that the alleged conspirators actually succeeded in accomplishing their unlawful objectives nor that any alleged member of the conspiracy did any act in furtherance of the conspiracy.

What the evidence in the case must show beyond a reasonable doubt before you may find the defendant guilty of conspiring to violate the Racketeer Influenced and Corrupt Organization (RICO) Act is:

1. Two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, namely to engage in a “pattern of racketeering activity” as charged in the information; and
2. The defendant knowingly and willfully became a member of such conspiracy; and
3. At the time the defendant joined such conspiracy, [he] [she] did so with the specific intent either to personally engage in at least two incidents of racketeering, as alleged in the information, or [he] [she] specifically intended to otherwise participate in the affairs of the “enterprise” with the knowledge and intent that other members of the conspiracy would engage in at least two incidents of racketeering, as alleged in the information, as part of a “pattern of racketeering activity.”

A person may become a member of a conspiracy without full knowledge of all of the details of the unlawful scheme or the names and identities of all of the other alleged conspirators. So, if a defendant has an understanding of the unlawful nature of a plan and knowingly and willfully joins in that plan on one occasion, that is sufficient to convict [him] [her] for conspiracy, even though [he] [she] did not participate before and even though [he] [she] played only a minor part.

Of course, mere presence at the scene of a transaction or event or the mere fact that certain persons may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy. Also, a person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of a conspiracy does not thereby become a conspirator.

Affirmative Defense. Give only if applicable. § 777.04(5)(c), Fla. Stat. Carroll v. State, 680 So. 2d 1065 (Fla. 3d DCA 1996). Harriman v. State, 174 So. 3d 1044 (Fla. 1st DCA 2015).

It is a defense to the charge of Conspiracy to Engage in a Pattern of Racketeering Activity that (defendant), after conspiring with one or more persons to engage in a pattern of racketeering

activity, persuaded such person not to do so, or otherwise prevented commission of the pattern of racketeering activity, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose.

Renunciation is not complete and voluntary where the crime that was conspired to was not completed because of unanticipated difficulties, unexpected resistance, a decision to postpone the crime to another time, or circumstances known by the defendant that increased the probability of being apprehended.

If you find that the defendant proved by a preponderance of the evidence that [he] [she] persuaded (person alleged) not to commit the pattern of racketeering activity, or otherwise prevented commission of the pattern of racketeering activity, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] not guilty of Conspiracy to Engage in a Pattern of Racketeering Activity.

If the defendant failed to prove by a preponderance of the evidence that [he] [she] persuaded (person alleged) not to engage in a pattern of racketeering activity, or that [he] [she] did not otherwise prevent commission of the pattern of racketeering activity under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] guilty of Conspiracy to Engage in a Pattern of Racketeering Activity, if all the elements of the charge have been proven beyond a reasonable doubt.

§ 895.02(7), Fla. Stat.

“Pattern of racketeering activity” means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after October 1, 1977, and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

§ 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.