

204A.15 PATTERN OF CRIMINAL STREET GANG ACTIVITY. FELONY.

NOTE WELL: Use this instruction for offenses occurring before December 1, 2017. N.C. Gen. Stat. § 14-50.16 was repealed effective December 1, 2017.

The defendant has been charged with a pattern of criminal street gang activity.

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant was [employed by] [associated with] a criminal street gang. A criminal street gang is defined as any ongoing organization, association, or group of three or more persons, whether formal or informal that has as one of its primary activities the commission of one or more felony offenses, or delinquent acts that would be felonies if committed by an adult; (and) has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity; (and may have a common name, common identifying sign or symbol).

Second, that the defendant [committed] [attempted to commit] [[solicited] [coerced] [intimidated] another person] to commit an act or acts, with the specific intent that such act or acts were intended or committed for the purpose, or in furtherance, of the defendant's involvement in a criminal street gang.¹

And Third, that the defendant

- a) [[conducted] [participated in] a pattern of criminal street gang activity.]
- b) [[acquired] [maintained] [[an interest in] [control of]] [real] [personal] property through a pattern of criminal street gang

activity.]

A pattern of criminal street gang activity is defined as engaging in and having a conviction for at least two prior incidents of criminal street gang activity that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by common characteristics and are not isolated and unrelated incidents, provided that at least one of these offenses occurred after December 1, 2008, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal street gang activity.²

NOTE WELL: Because this statute contemplates convictions, these two convictions would not encompass adjudications of delinquent acts.

To prove a pattern of criminal street gang activity in this case, the State must prove the following beyond a reasonable doubt that:

- a) On (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] the felony of (*name felony*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States].
- b) And on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] the felony of (*name felony*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant was [employed by] [associated with] a

criminal street gang, the defendant [committed] [attempted to commit] [[solicited] [coerced] [intimidated] another person] to commit an act or acts, with the specific intent that such act or acts were intended or committed for the purpose, or in furtherance, of the defendant's involvement in a criminal street gang, that the defendant

- a) [[conducted] [participated in] a pattern of criminal street gang activity]
- b) [acquired] [maintained] [[an interest in] [control of]] [real] [personal] property through a pattern of criminal street gang activity], that is that:

- i) On (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] the felony of (*name felony*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States].

- ii) And on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] the felony of (*name felony*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States],

it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1 See G.S. 15-50.16(c). An act or acts are included if accompanied by the necessary means rea or criminal intent and would be chargeable by indictment under the following laws of this State: (1) any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act). (2) any offense under Chapter 14 of the General Statutes

Page 4 of 4

N.C.P.I.—Crim. 204A.15

PATTERN OF CRIMINAL STREET GANG ACTIVITY. FELONY.

GENERAL CRIMINAL VOLUME

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G.S. § 14-50.16

except Articles 9, 22A, 40, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

2 Any offenses committed by a defendant prior to indictment for an offense based upon a pattern of street gang activity shall not be used as the basis for any subsequent indictments for offenses involving a pattern of street gang activity. See G.S. 14-50.16(d).