Revised 10/22/18

UNLAWFUL POSSESSION OF A RIFLE OR SHOTGUN
N.J.S.A. 2C:39-5(c)(1)

Defendant(s), _____, is charged in count _____ with unlawful possession of a (rifle)(shotgun). The pertinent language of the statute the defendant is charged with having violated reads as follows:

> Any person who knowingly has in his possession any (rifle)(shotgun) . . . without first having obtained a firearms purchaser identification card ... is guilty of a crime.

In order for the State to convict the defendant of this crime, the State must prove beyond a reasonable doubt these three essential elements:

1. S_____ is a (rifle)(shotgun); (Or there was a (rifle)(shotgun);
2. The defendant knowingly possessed the (rifle)(shotgun); and
3. The defendant did not have a valid firearms purchaser identification card.

The first element the State must prove beyond a reasonable doubt is that S____ is a (rifle)(shotgun) (or there was a (rifle)(shotgun)).

A rifle means "any firearm[1] designed to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger."[2]

[OR]

A shotgun means "any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shots or a single projectile for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition."[3]

A firearm means "a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances."

The second element the State must prove beyond a reasonable doubt is that the defendant

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[1] See State v. Harmon, 203 N.J. Super. 216, 228 (App. Div. 1985), rev'd on other grounds 104 N.J. 189 (1986) as to whether a particular device possessed or retained the characteristics of a firearm.

[2] N.J.S.A. 2C:39-1(m).

[3] N.J.S.A. 2C:39-1(n).

knowingly possessed the (rifle)(shotgun).

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. "Knowingly," "with knowledge" or equivalent terms have the same meaning. A person acts knowingly with respect to his/her conduct if he/she is aware that his/her conduct is of that nature. You must determine whether the defendant was aware of the nature of his/her conduct in this case. Since knowledge is a state of mind and cannot be seen and can only be determined by inference from conduct, words or acts, it can rarely be proved directly. Therefore, it is not necessary that witnesses be produced by the State to testify that a defendant said he/she knowingly did something. His/Her knowledge may be gathered from his/her acts and his/her conduct, and from all the surrounding circumstances reflected in the evidence you have heard and seen in this case. That is, you must be convinced beyond a reasonable doubt that the defendant in this case was aware that he/she had a (rifle)(shotgun) in his/her possession.

The word "possess" as used in criminal statutes signifies a knowing, intentional control of a designated thing, accompanied by a knowledge of its character.

Thus, the person must know or be aware that he/she possesses the item in this case a (rifle)(shotgun), and he/she must know what it is that he/she possesses or controls that it is a (rifle)(shotgun).

[Where applicable charge the following: this possession cannot merely be a passing control that is fleeting or uncertain in its nature.[4]] In other words, to "possess" within the meaning of the law, the defendant must knowingly procure or receive the item possessed or be aware of his/her control thereof for a sufficient period of time to have been able to relinquish his/her control if he/she chose to do so.

A person may possess a (rifle)(shotgun) even though it was not physically on his/her person at the time of the arrest, if he/she had in fact, at some time prior to his/her arrest, control over it.

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[4] If issue of temporary possession see N.J.S.A. 2C:39-5(g)(1)(2).

UNLAWFUL POSSESSION OF A RIFLE OR SHOTGUN
N.J.S.A. 2C:39-5(c)(1)

Possession means a conscious, knowing possession, either actual or constructive.

[CHARGE THOSE FOLLOWING PARAGRAPHS AS THEY APPLY TO YOUR CASE]

ACTUAL POSSESSION

A person is in actual possession of a particular article or thing when he/she knows what it is: that is, he/she has knowledge of its character and knowingly has it on his/her person at a given time.

CONSTRUCTIVE POSSESSION

Possession may be constructive instead of actual. As I just stated, a person who, with knowledge of its character, knowingly has direct physical control over a thing, at a given time, is in actual possession of it.

Constructive possession means possession in which the possessor does not physically have the item on his or her person but is aware that the item is present and is able to and has the intention to exercise control over it. So, someone who has knowledge of the character of an item and knowingly has both the power and the intention at a given time to exercise control over it, either directly or through another person or persons, is then in constructive possession of that item.

[MERE PRESENCE – Read if Appropriate[5]]

Defendant's mere presence at or near a place where [contraband] is/are discovered is not in itself, without more, proof beyond a reasonable doubt that defendant was in constructive possession of [that contraband]. It is, however, a circumstance to be considered with the other evidence in determining whether the State has proven possession of the [contraband] beyond a reasonable doubt.

Where defendant is one of the persons found in the area where [contraband] is/are discovered, you may not conclude, without more, that the State has proven beyond a reasonable doubt that he/she had possession of the [contraband] unless there are other circumstance(s) tending to permit such an inference to be drawn.[6] Such evidence can include, but is not limited to [choose as appropriate]: placement and accessibility of the [contraband]; defendant's access to

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[5] State v. Randolph, 228 N.J. 566, 590-93 (2017).

[6] State v. Jackson, 326 N.J. Super. 276, 280 (App. Div. 1999); See State v. Brown, 80 N.J. 587, 593 (1979) and State v. Sapp, 71 N.J. 476 (1976), rev'g on dissent 144 N.J. Super. 455, 460 (1975).

and connection with the place where the [contraband] was/were found; his/her proximity to the place where the [contraband] was/were found; his/her demeanor when confronted by police after the [contraband] was/were found; whether defendant made any inculpatory statements after the [contraband] was/were found; whether defendant possessed other [contraband] on his/her person or property when the [contraband] was/were found; [any other evidence deemed part of the totality of circumstances].[7]

In summary, the State must prove more than defendant's mere presence at the time that the [contraband] was/were found. There must be other circumstance(s) tying defendant to the [contraband] in order for the State to prove constructive possession beyond a reasonable doubt.[8]

JOINT POSSESSION

Possession may be sole or joint. If one person alone has actual or constructive possession of an item, possession is sole. If two or more persons share actual or constructive possession of an item, possession is joint.

The third element that the State must prove beyond a reasonable doubt is the defendant did not have a valid firearms purchaser identification card. If you find that the defendant knowingly possessed the (rifle)(shotgun), and that there is no evidence that defendant had a valid firearm purchaser identification card, then you may infer,[9] if you think it appropriate to do so based upon the facts presented, that defendant had no such firearms purchaser identification card. Note, however, that as with all other elements, the State bears the burden of showing beyond a reasonable doubt the lack of a valid firearms identification card, and you may apply the inference only if you feel it appropriate to do so under all the facts and circumstances.

If you find that the State has failed to prove any one of the elements of the crime beyond a reasonable doubt, your verdict must be "not guilty."

If, on the other hand, you find that the State has proven all of the elements of the crime

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[7] State v. Randolph, 228 N.J. at 590-93, citing State v. Palacio, 111 N.J. 543, 549-54 (1988) and State v. Shipp, 216 N.J. Super. 662, 664-66 (App. Div. 1987). See Palacio, Shipp, and State v. Montesano, 298 N.J. Super. 597, 615 (App. Div. 1997), certif. denied 150 N.J. 27 (1997), for circumstances more specifically related to presence in or near an automobile in which drugs are found.

[8] State v. Whyte, 265 N.J. Super. 518, 523 (App. Div. 1992), aff'd o.b. 133 N.J. 481 (1993); Jackson, 326 N.J. Super. at 280.

[9] See N.J.S.A. 2C:39-2(b). If issue is possession of a firearm by multiple occupants of a vehicle, see N.J.S.A. 2C:39-2(a). See also State v. Ingram, 98 N.J. 489, 497-500 (1985).

beyond a reasonable doubt all of the elements, your verdict must be "guilty."