

POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE
WITH INTENT TO DISTRIBUTE¹
(N.J.S.A. 2C:35-5)

Count _____ of the indictment charges the defendant as follows:

(Read Indictment)

The pertinent part of the statute (N.J.S.A. 2C:35-5) on which this indictment is based reads as follows:

Except as authorized by (statute), it shall be unlawful for any person knowingly or purposely ... to possess or have under his control with intent to ... distribute a controlled dangerous substance (or controlled substance analog).²

The various kinds of substances are defined in another part of our statute. (Insert appropriate CDS, e.g., heroin, cocaine, etc.) is a dangerous substance prohibited by statute. (The defendant does not claim legal authorization, so the exceptions in the statute are not applicable in this case.)

The statute, read together with the indictment, identifies the elements which the State must prove beyond a reasonable doubt to establish guilt of the defendant on this (count of the) indictment. They are as follows:

1. S_____ in evidence is (insert appropriate CDS or controlled substance analog).
2. The defendant possessed, or had under his/her control, S_____ in evidence.
3. The defendant, when he/she possessed or had under his/her control S_____ in evidence, had the intent to distribute S_____ in evidence.
4. That the defendant acted knowingly or purposefully in possessing or having under his/her control with intent to distribute S_____ in evidence.

[When it is alleged that a controlled substance analog was possessed with intent to distribute the following definition of controlled substance analog should be charged]

In regard to the first element, a "controlled substance analog" is a substance which (1) has

¹ N.J.S.A. 2C:35-5 grades this offense for sentencing purposes by the type, quantity and purity of the CDS involved. In certain cases, the defendant is guilty of an offense regardless of the quantity and purity of the CDS distributed. This charge is sufficient for such cases. However, in cases in which the quantity and/or purity of the CDS is an element of the offense, N.J.S.A. 2C:35-5c requires that this element be determined by the jury. In such a case, this charge would have to be supplemented to add this element. Please see the supplementary model charge concerning this.

² To be charged when the indictment alleges possession with intent to distribute a controlled substance analog.

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a chemical structure substantially similar to that of a controlled dangerous substance and (2) was specifically designed to produce an effect substantially similar to that of a controlled substance.³ In this case the indictment alleges that the defendant distributed _____ which is an analog of the controlled dangerous substance _____. Thus, to establish this element the State must prove beyond a reasonable doubt that _____ has a substantially similar chemical structure to the controlled dangerous substance _____ and that _____ was specifically designed to produce an effect substantially similar to the controlled dangerous substance_____.

In regard to the second element, that the defendant had under his/her control or possessed S_____ in evidence, "possess" means (charge definition of possession).

In regard to the third element, that the defendant had the intent to distribute S_____ in evidence, "distribute" means the transfer, actual, constructive or attempted,⁴ from one person to another of a controlled dangerous substance (or controlled substance analog). The intent must refer to the defendant's purpose to distribute S_____ in evidence (the controlled dangerous substance or controlled substance analog) and not merely to possess the item(s).⁵ It is not necessary that the drugs be transferred in exchange for payment or promise of payment of money or anything of value.⁶

"Intent" means a purpose to do something, a resolution to do a particular act or accomplish a certain thing. Intent is a state of mind, and it is very rare that intent is proven by witnesses who can testify that an accused said he/she had a certain intent when he/she engaged in a particular act. The intention may be gathered from a person's acts, conduct, from all the person said and did at the particular time and place, and from all of the surrounding circumstances.

You may consider any evidence as to the quantity, purity, and packaging⁷ of S _____ together with all the other evidence in the case to aid you in your determination of the element of intent to distribute.

In regard to the fourth element, the State must prove, as I have stated, that the defendant acted knowingly or purposefully in having under his/her control or possessing S_____ with intent to distribute.

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

³ N.J.S.A. 2C:35-2.

⁴ This definition is taken from the definitions of "distribute" and "deliver" set forth in N.J.S.A. 2C:35-2.

⁵ State v. Gregory, 220 N.J. 413, 417, 421 (2015).

⁶ State v. Heitzman, 209 N.J. Super. 617, 621 (App. Div. 1986), aff'd 107 N.J. 603 (1987).

⁷ See State v. Perez, 218 N.J. Super. 478, 482-486 (App. Div. 1987).

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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.⁸

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.⁹

The terms "knowingly" and "purposefully," like intent, refer to conditions of the mind that cannot be seen. It is not necessary for the State to prove the existence of such mental states by direct evidence such as a statement by the defendant that he/she had particular knowledge or a particular purpose. Knowledge and purpose as separate propositions of proof do not commonly exist. They must ordinarily be discovered as other mental states are from circumstantial evidence; that is, by reference to the defendant's conduct, words or acts and all the surrounding circumstances.

To reiterate, the four elements of this offense are that:

1. S_____ in evidence is (insert appropriate CDS or controlled substance analog).
2. The defendant possessed, or had under his/her control, S_____ in evidence.
3. The defendant had the intent to distribute S_____ in evidence.
4. That the defendant acted knowingly or purposely in possessing or having under his/her control with intent to distribute S_____ in evidence.

If you find that the State has proven all these elements beyond a reasonable doubt, then you must return a verdict of guilty. On the other hand, if you find that the State has failed to prove any one of these elements beyond a reasonable doubt, then you must return a verdict of not guilty.

⁸ N.J.S.A. 2C:2-2b(1).

⁹ N.J.S.A. 2C:2-2b(2).