

**[WEAPON OTHER THAN A FIREARM]
UNLAWFUL POSSESSION OF WEAPON
WHILE COMMITTING CERTAIN DRUG CRIMES
(N.J.S.A. 2C:39-4.1c)**

[Defendant] is charged with possessing a weapon under circumstances not manifestly appropriate for such lawful uses as the weapon may have while in the course of committing, attempting to commit, or conspiring to commit a violation of certain laws.¹ This charge is based on a statute which reads:

Any person who has in his possession any weapon under circumstances not manifestly appropriate for such lawful uses as the weapon may have, while in the course of committing, attempting to commit, or conspiring to commit a violation of [certain drug crimes] is guilty of a crime ...

For you to find [defendant] guilty of this charge, the State must prove beyond a reasonable doubt the following elements:

1. That there was a weapon.
2. That [defendant] possessed the weapon.
3. That he/she possessed the weapon under circumstances not manifestly appropriate for a lawful use.
4. That, at that time, [defendant] was in the course of committing, attempting to commit, or conspiring to commit, _____ [the specific drug offense charged].

The first element requires that the State prove beyond a reasonable doubt that there was a weapon. A "weapon" is anything readily capable of lethal use or of inflicting serious bodily injury. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

¹ The citations contained within N.J.S.A. 2C:39-4.1 are: N.J.S.A. 2C:35-3; N.J.S.A. 2C:35-4; N.J.S.A. 2C:35-5; N.J.S.A. 2C:35-5.2; N.J.S.A. 2C:35-5.3; N.J.S.A. 2C:35-6; N.J.S.A. 2C:35-7; N.J.S.A. 2C:35-7.1 or N.J.S.A. 2C:35-11.

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Many objects have innocent uses. For example, ordinarily, a knife is neither a weapon nor is its possession against the law. An otherwise harmless object such as a baseball bat, however, could inflict serious bodily harm if used to strike another person. If the State establishes beyond a reasonable doubt that the object is capable of being used to inflict serious bodily injury, it may be considered a weapon.

The second element that the State must prove beyond a reasonable doubt is that [defendant] possessed the weapon. The word possess as used in criminal statutes signifies a knowing, intentional control of a designated thing, accompanied by a knowledge of its character. Therefore, [defendant] must have known or have been aware that he/she possessed the weapon, and he/she must have known that what he/she possessed was a weapon. The possession cannot merely be a passing control, fleeting or uncertain in its nature. So, to possess within the meaning of the law, [defendant] must have knowingly procured or received the weapon or must have been aware of his/her control of it for a sufficient period of time to have been able to relinquish control if he/she chose to do so. 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 the high probability of their existence. A person acts knowingly as 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.

Possession means a conscious, knowing possession. Someone may possess an object even though it was not physically on his/her person at the time if he/she had in fact at some time prior to his/her arrest control over it.

Possession may be either actual or constructive. A person is in actual possession of an item if 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. Alternatively, possession may be constructive, instead of actual. Constructive possession is possession in which the person does not physically have the property, but although the property is not physically on his/her person, he/she is aware of the presence of the property and is able to and has the intention to exercise control over it. So, a person who, although

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not in actual possession, has knowledge of its character, and knowingly has both the power and the intention at a given time to exercise control over a thing, either directly or through another person or persons, is then in constructive possession of it.

Similarly, possession can be either sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, they possess the thing jointly if they knowingly share control over it.

[If possession is in a motor vehicle: charge Model Jury Charge on Possession of Weapon, etc., in Motor Vehicle, per N.J.S.A. 2C:39-2]

“Knowingly” refers to a condition of the mind. It cannot be seen. Often, it can be determined only by inferences drawn from a defendant’s conduct, words or acts as presented in the evidence you have heard and seen. So, it is not necessary that the State produce a witness or witnesses to testify that an accused said, for example, that he/she acted knowingly when he/she engaged in the conduct with which he/she is charged. You may find that proof of “knowingly” has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and the circumstances surrounding the conduct under investigation as you have heard from the evidence.

The third element that the State must prove beyond a reasonable doubt is that [defendant] possessed the weapon under circumstances not manifestly appropriate for such lawful uses as the weapon may have. It is not necessary for the State to prove that [defendant] had formed an intent to use [the object] as a weapon. It is, however, necessary for the State to prove that [the object] was possessed under such circumstances that a reasonable person would recognize that it was likely to be used as a weapon; in other words, under circumstances where it posed a likely threat of harm to others. You may consider such factors as the surrounding circumstances, the size, shape, and condition of the object, the nature of its concealment, the time and place involved, and the actions of [defendant] to determine whether or not the possession of the object was under circumstances not manifestly appropriate for its lawful use.

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The fourth element is that [defendant] must be shown, beyond a reasonable doubt, to have been in the course of committing, attempting to commit, or conspiring to commit the crime of _____ at the time that he/she possessed the weapon under circumstances not manifestly appropriate for its lawful use.

The term “in the course of committing” means that, at the time [defendant] possessed the weapon, he/she was also committing a drug crime, namely _____.

**[IF APPLICABLE, USE MODEL CHARGE FOR ATTEMPT,
CONSPIRACY, OR BOTH]**

If the State has proven each element of this offense beyond a reasonable doubt, you must find [defendant] guilty of this crime. However, if the State has failed to prove beyond a reasonable doubt any of the elements of this offense, you must find him/her not guilty.