

**UNLAWFUL POSSESSION OF A WEAPON**  
**N.J.S.A. 2C:39-5(d)**

The defendant is charged with knowingly having in his/her possession a weapon.

**[READ COUNT OF INDICTMENT]**

That section of our statutes provides in pertinent part:

Any person who knowingly has in his possession any<sup>1</sup> other weapon under circumstances not manifestly appropriate for such lawful uses as it may have, is guilty of a crime. . . .

In order to convict the defendant of this crime, the State must prove the following elements beyond a reasonable doubt:

1. That S - \_\_\_\_\_ is a weapon (or that there was a weapon);
2. That the defendant possessed the weapon knowingly; and
3. That the defendant's possession of the weapon was under circumstances not manifestly appropriate for a lawful use.

The first element that the State must prove beyond a reasonable doubt is that S - \_\_\_\_\_ is a weapon [or that there was a weapon]. A weapon is anything readily capable of lethal use or of inflicting serious bodily injury.<sup>2</sup>

The second element that the State must prove beyond a reasonable doubt is that the weapon was knowingly possessed by the defendant at the time and place alleged. Here, the State alleges that defendant possessed the weapon at (set forth allegations).

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. "Knowing," "with knowledge," or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inference from defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State

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<sup>1</sup> This provision is inapplicable to possession of machine guns, handguns, rifles and shotguns. (See N.J.S.A. 2C:39-5(a) to 5(e)).

<sup>2</sup> See N.J.S.A. 2C:39-1(r).

produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

Thus, the person must know or be aware that he/she possesses the item, here a \_\_\_\_\_ and he/she must know what it is that he/she possesses or controls, in other words, that it is a (describe object possessed). This possession cannot merely be a passing control that is fleeting or uncertain in its nature. 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.

When we speak of possession, we mean a conscious, knowing possession. The law recognizes two kinds of possession: actual possession and constructive 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. 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 person does not physically have the property, but he/she is aware of the presence of the property and is able to and has the intention to exercise control over it.

A person who, although not in actual possession, has knowledge of its character, 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.

The law recognizes that possession may be 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 of a thing, possession is joint; that is, if they knowingly share control over the article. The third element that the State must prove beyond a reasonable doubt is that the defendant possessed S - \_\_\_\_\_ [or possessed the object] under circumstances not manifestly appropriate for such lawful uses as it may have. It is not necessary for the State to prove that the defendant formed an intent to use S - \_\_\_\_\_ [or the object] as a weapon.

It is, however, necessary for the State to prove that it 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 [CHOOSE APPROPRIATE] a likely threat of harm to others [AND/OR] a likely threat of damage to property.<sup>3</sup> You may consider factors such as the surrounding circumstances; size, shape and condition of the object, the nature of its concealment, the time, place and actions of the defendant when it was found in his/her possession to determine whether or not the object was manifestly appropriate for its lawful use.

**[WHERE SELF-DEFENSE IS ASSERTED AS JUSTIFICATION CHARGE AS APPROPRIATE]<sup>4</sup>**

**[RESUME CHARGE IN ALL CASES]**

If the State has proven each element beyond a reasonable doubt, then you must find defendant guilty. If, however, the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find defendant not guilty.

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<sup>3</sup> See State in re G.C., 179 N.J. 475, 483-84 (2004) (determining that statute applies to threats to person and property).

<sup>4</sup> Self-defense is a justification to a charge of violating N.J.S.A. 2C:39-5(d) in extraordinary circumstances. “[E]xtraordinary circumstances” include “those rare and momentary circumstances,” “in which a person makes spontaneous use of a weapon to repel immediate danger.” See State v. Oguta, 468 N.J. Super. 100, 110 (2021) (quoting State v. Harmon, 104 N.J. 189, 208-09 (1986); State v. Kelly, 118 N.J. 370, 385 (1990)).