

PUBLICATION OF PLANS OR INSTRUCTIONS FOR
BURGLAR'S TOOLS
(N.J.S.A. 2C:5-5b)

[Count _____ of] [T]he indictment charges defendant with publishing plans or instructions dealing with the manufacturing of burglar's tools. That section of our statutes provides that:

Any person who publishes plans or instructions dealing with the manufacture or use of any engine, machine, tool or implement adapted, designed, or commonly used for committing or facilitating the offense of _____,¹ with the purpose that such publication be used committing or facilitating that offense, is guilty of an offense.

In order for defendant to be found guilty of this offense, the State must prove each of the following elements beyond a reasonable doubt:

- (1) that the defendant published plans or instructions dealing with an engine, machine, tool or implement adapted, designed, or commonly used for committing or facilitating the offense of _____;
- (2) that his/her purpose in publishing such plans or instructions was that they be used or employed to commit or facilitate that offense.²

The first element that the State must prove beyond a reasonable doubt is that defendant published plans or instructions dealing with an engine, machine, tool or implement adapted, designed, or commonly used for committing or facilitating the offense of _____. Publish means to make the plans or instructions available to others. The State alleges that the plans or instructions were for [identify name or type of burglar's tool(s) described in the plans or instructions].

The engine, machine, tool or implement that defendant is charged with publishing the plans or instructions for must be specially or specifically designed or adapted or commonly used for commission or facilitation of this offense and not merely be something designed or adapted

¹ Specify here, and at every other relevant point in the charge, the "offense in chapter 20 of this Title or offenses involving forcible entry into premises" for which defendant is charged with publishing plans or instructions.

² State v. Gertrude, 309 N.J. Super. 354, 358 (App. Div. 1998).

**PUBLICATION OF PLANS OR INSTRUCTIONS
FOR BURGLAR'S TOOLS
N.J.S.A. 2C:5-5b**

or commonly used for some other purpose that can be or is used for committing or facilitating this offense.³

The elements of the offense of _____ are [see appropriate Model Jury Charge] OR [I have already defined for you (OR I will define for you) the elements of the offense of _____ in the instructions regarding count _____ of the indictment].

The second element that the State must prove beyond a reasonable doubt is that defendant's purpose was that the plans or instructions for the engine, machine, tool or implement that he/she published would be used for committing or facilitating the offense of _____. 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.

Purpose is a condition of the mind that cannot be seen and that can be determined only by inferences from 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 produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. 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 defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances.

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

CHARGE IF APPROPRIATE:

³ See Cannel, Criminal Code Annotated, Comments 2. (second paragraph) and 4. to N.J.S.A. 2C:5-5 ("[T]he linkage of the manufacture of implements with the publishing of plans suggests that the higher penalty was intended for those persons who produce a specialized implement. Such persons pose a greater danger to the public").

**PUBLICATION OF PLANS OR INSTRUCTIONS
FOR BURGLAR'S TOOLS**
N.J.S.A. 2C:5-5b

POSSESSION OF PLANS OR INSTRUCTIONS FOR BURGLAR'S TOOLS
(lesser included offense)

As part of his/her denial of guilt to this charge, defendant asserts that he/she did not publish the plans or instructions for the burglar's tools, but merely possessed them without having any role or part in their publication. It is the State's burden to prove beyond a reasonable doubt that defendant published the plans or instructions rather than merely possessed them.

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 _____), and he/she must know what it is that he/she possesses or controls (namely, plans or instructions for burglar's tools).

[Where applicable charge the following: 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. (Define "knowing" N.J.S.A. 2C:2-2 and any other definition relevant to the item allegedly possessed.)

A person may possess _____ (an item) 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, had control over it.

When we speak of possession, we mean a conscious, knowing possession. The law recognizes two kinds of possession: they are actual possession and constructive possession.

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.

**PUBLICATION OF PLANS OR INSTRUCTIONS
FOR BURGLAR'S TOOLS**
N.J.S.A. 2C:5-5b

CONSTRUCTIVE POSSESSION

Constructive possession means possession in which the person does not physically have the property, but though not physically on one's person, 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.

JOINT POSSESSION

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.

If the State has failed to prove each element of this offense beyond a reasonable doubt, then you must find the defendant not guilty. If the State has proven each element of this offense beyond a reasonable doubt, then you must find defendant guilty of publishing plans or instructions for burglar's tools. If the State has not proven beyond a reasonable doubt that defendant published rather than possessed the plans or instructions, but has proven all of the other elements beyond a reasonable doubt, then you must find the defendant guilty of possession of plans or instructions for burglar's tools.