

DISTRIBUTION OF A CONTROLLED DANGEROUS SUBSTANCE¹

(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 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, eg. heroin, cocaine, etc.) is a dangerous substance prohibited by the 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 element 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. That the defendant distributed S_____ date alleged in the indictment.
3. That the defendant acted knowingly or purposefully in distributing S_____.

[When it is alleged that a controlled substance analog has been distributed 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 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

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 distribution of a controlled substance analog.

³ N.J.S.A. 2C:35-2.

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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, to "distribute" means the transfer, actual, constructive or attempted,⁴ from one person to another of a controlled dangerous substance (or controlled substance analog). It is not necessary that the drugs be transferred in exchange for payment or promise of payment of money or anything of value.⁵

In regard to the third element, the State must prove, as I have stated, that the defendant acted knowingly or purposefully in distributing S_____.

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. "Knowing," "with knowledge" or equivalent terms have the same meaning.⁶

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.⁷

Remember that when we speak of knowingly and purposely we are speaking of 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

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

⁶ N.J.S.A. 2C:2-2b(1).

⁷ N.J.S.A. 2C:2-2b(2).

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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 three elements of this offense are that:

1. S_____ in evidence is (insert appropriate CDS) (or a controlled substance analog).
2. That the defendant distributed S_____ alleged in the indictment.
3. That the defendant acted knowingly or purposefully in distributing S_____.

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.