

**DEFRAUDING THE ADMINISTRATION OF A DRUG TEST**  
**(Possessing substance designed to defraud the administration of a drug test)**  
**(N.J.S.A. 2C:36-10e)**

Count \_\_\_\_\_ of the indictment charges the defendant with defrauding the administration of a drug test by possession of an instrument, product, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test.

**[Read appropriate count of indictment]**

The pertinent part of the applicable statute reads as follows:

Any person who knowingly possesses any instrument, product, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test is guilty of a crime....

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

1. that on (cite date in indictment) the defendant knowingly possessed the (describe item in indictment);
2. that said (describe item named in indictment) was an instrument, product, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test.

The first element the State must prove beyond a reasonable doubt is that on (cite date in indictment) the defendant knowingly possessed the (describe item in indictment).

To “possess” an item under the law, one must have a knowing, intentional control of that item accompanied by a knowledge of its character. So, a person who possesses an item such as (\_\_\_\_\_ **IDENTIFY RELEVANT ITEM(S)**) must know or be aware that he/she possesses it, and he/she must know what it is that he/she possesses or controls (**that it is \_\_\_\_\_**). [**WHERE APPLICABLE, charge: Possession cannot merely be a passing control, fleeting or uncertain in its nature.**] In other words, to “possess” an item, one must knowingly procure or receive an item 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.

The State must prove beyond a reasonable doubt that a possessor acted knowingly in possessing the item. 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

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knowingly as to a result of his/her conduct if he/she is aware that it is practically certain that conduct will cause such 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 inferences from conduct, words or acts. Therefore, it is not necessary for the State to produce witnesses to testify that a particular defendant stated, for example, that he/she acted with knowledge when he/she had control over a particular thing. It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances.

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.

Possession means a conscious, knowing possession, either actual or constructive.

**[CHARGE THOSE FOLLOWING PARAGRAPHS AS APPLY TO YOUR CASE]**

**ACTUAL POSSESSION**

A person is in actual possession of an item when he/she first, knows what it is: that is, he/she has knowledge of its character, and second, knowingly has it on his/her person at a given time.

**CONSTRUCTIVE POSSESSION**

Possession may be constructive instead of actual. As I just stated, a person who, with knowledge of its character, knowingly has direct physical control over an item at a given time is in actual possession of it.

Constructive possession means possession in which the possessor does not physically have the item on his or her person but is aware that the item is present and is able to and has the intention to exercise control over it. So, someone who has knowledge of the character of an item and knowingly has both the power and the intention at a given time to exercise control over it, either directly or through another person or persons, is then in constructive possession of that item.

**JOINT POSSESSION**

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Possession may be sole or joint. If one person alone has actual or constructive possession of an item, possession is sole. If two or more persons share actual or constructive knowing possession of an item, possession is joint.

The State must prove beyond a reasonable doubt that defendant acted knowingly in possessing any instrument, product, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test.

The second element the State must prove beyond a reasonable doubt is that said (describe item named in indictment) was an instrument, product, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test.

You must rely on the evidence presented to you with respect to the (name item referred to in indictment) to determine whether or not such item was any instrument, product, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test.

“To defraud the administration of a drug test”<sup>1</sup> means to submit a substance that purports to be from a person other than its actual source, or purports to have been excreted or collected at a time other than when it was actually excreted or collected, or to otherwise engage in conduct intended to produce a false or misleading outcome of a test for the presence of a chemical, drug, or controlled dangerous substance, or a metabolite of a drug or controlled dangerous substance, in the human body. It shall specifically include, but shall not be limited to, the furnishing of urine with the purpose that the urine be submitted for urinalysis as a true specimen of a person. In other words, the defendant submitted a substance other than the sample he/she was obligated to produce.

A person acts "with purpose" 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 "with purpose" with respect to attendant circumstances if he/she is aware of the existence of such circumstances as he/she believes or hopes they exist.

Like knowledge, purpose is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated for example: "I possessed the (name item referred to in indictment) for the purpose of defrauding the administration of a drug test." It is within the power of the jury to find that proof of purpose and

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<sup>1</sup> See N.J.S.A. 2C:36-10a.

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knowledge has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and circumstances surrounding the conduct under investigation.

Therefore, if you find that the State has proved beyond a reasonable doubt all of the elements of the crime that I have just recited to you, then you must find the defendant guilty as charged.

On the other hand, if you find that the State has failed to prove any one of the elements of the crime beyond a reasonable doubt, then you must find the defendant not guilty.