

POSSESSION OF GAMBLING RECORDS - BOOKMAKING
(N.J.S.A. 2C:37-3a(1))

Count _____ of the indictment charges defendant with committing the offense of possession of gambling records used in bookmaking. In pertinent part, the indictment alleges that:

(Read material part of Count _____ to jury)

The statute that defendant is accused of violating states that: A [defendant] is guilty of possession of gambling records when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise.¹

In order to convict defendant of this offense, you must be satisfied that the State has proved beyond a reasonable doubt each of the following elements:

1. That defendant knowingly possessed a particular writing, paper, instrument or article;²
2. That [S-_____/the writing, paper, etc.] is of a kind commonly used in a bookmaking scheme or enterprise; and
3. That defendant possessed [S-_____/the writing, paper, etc.] with knowledge of its contents.

The first element that the State must prove beyond a reasonable doubt is that defendant knowingly possessed [S-_____/a particular writing, paper, instrument or article.] A defendant acts "knowingly" with respect to the nature of his/her conduct or the attendant circumstances if defendant is aware that his/her conduct is of that nature, or that such circumstances exist, or defendant is aware of a high probability of their existence. A defendant acts knowingly with

¹ N.J.S.A. 2C:37-3a(1). Types of paper once common to bookmaking operations like flash paper and water soluble paper are specifically mentioned in the statute's text and should be incorporated into the definition of the offense where factually applicable.

² If the writing, paper, instrument or article in question has been admitted in evidence, refer to same by its exhibit number, e.g., S-24.

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respect to his/her conduct if defendant is aware that it is practically certain that his/her conduct will cause such a result. The term "with knowledge" has the same meaning.³

You should understand that 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 defendant stated, for example, that he/she acted with knowledge when he/she did 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. The place where the acts occurred and all that was done or said by defendant preceding, connected with, and immediately succeeding the events in question are among the circumstances to be considered.

As used in the statute, the term possession means: **[Utilize model jury charge for actual/constructive/joint possession, as applicable]**

The second element that the State must prove beyond a reasonable doubt is that [S- ___/the writing, paper, etc.] is of a kind commonly used in a bookmaking scheme or enterprise. The term "bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public [based] upon the outcome of future contingent events as a business.⁴

The third element that the State must prove beyond a reasonable doubt is that defendant possessed [S- ___/the writing, paper, etc.] with knowledge of its contents. Regarding this third element, you must bear in mind that the requirement that defendant have knowledge of the exhibit's/writing's content is a requirement separate and distinct from that of the first element which requires that defendant's possession of the writing itself be knowing. In other words, conviction for possession of bookmaking records requires that (1) defendant possess a writing knowingly and (2) that defendant know that the writing that he/she possesses is of a kind commonly used in a bookmaking operation or scheme. In order to sustain its burden of proof, however, it is not necessary for the State to prove the existence of an actual particular bookmaking scheme or enterprise.

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³ N.J.S.A. 2C:2-2b(2).

⁴ N.J.S.A. 2C:37-1(g).

[STATUTORY DEFENSE – CHARGE AS APPLICABLE]

Defendant contends that he/she is not guilty of possession of bookmaking records because [S-___/ the writing/paper, etc.] allegedly possessed by defendant constituted, reflected or represented bets of defendant himself/herself in a number not exceeding ten. Under the statute, this is a defense to the charge of possession of bookmaking records.⁵

Defendant must prove this defense by clear and convincing evidence. This is to be distinguished from the State's burden of proving defendant's guilt beyond a reasonable doubt. Clear and convincing evidence is that which produces in your mind a firm belief or conviction as to the truth of the fact sought to be established and is evidence so clear, direct, weighty and convincing as to enable you to come to a clear conviction, without hesitancy, of the truth of the matter in issue.⁶ Defendant need not prove that [S-____/the writing/paper, etc.] represent his/her personal bets in a number not exceeding ten beyond a reasonable doubt, but rather, the evidence admitted in support of this defense should produce in your mind a firm belief that defendant's contention is true. In other words, the law does not require absolute certainty, but reasonable certainty that it is true. If you find by clear and convincing evidence that [S-___/ the writing/paper, etc.] represent defendant's personal bets in a number not exceeding ten, he/she must be found not guilty of Count ____.

* * * * *

[STATUTORY DEFENSE – CHARGE AS APPLICABLE]

Defendant contends that he/she is not guilty because defendant did not use or intend to use [S-___/the writing, paper, instrument or article allegedly possessed by defendant] in the operation or promotion of a bookmaking scheme or enterprise. I have used the phrase "intend to use." Intending to do something means the purpose to do something, a resolution to do a particular act or accomplish a certain thing. Intent is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. If the defendant neither used nor intended to use [S-___/the writing, paper, instrument or article allegedly

⁵ See N.J.S.A. 2C:37-3b(1)

⁶ See In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 339 (App. Div. 1981), mod. o.g. and aff'd 90 N.J. 361 (1982), cert. den. sub nom. Perlman v. Attorney General of New Jersey, 459 U.S. 1081 (1982).

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possessed by him/her] in the operation or promotion of a bookmaking scheme or enterprise, this is a defense to the charge of possession of bookmaking records.⁷ The defendant must prove this defense by clear and convincing evidence. **[Continue with instruction regarding clear and convincing as set forth above]**

* * * * *

If you find that the State has failed to prove beyond a reasonable doubt any of the elements of the offense, you must find defendant not guilty. But if you determine that the State has proved each of the elements of possession of bookmaking records beyond a reasonable doubt, you must find defendant guilty of that offense.

* * * * *

If you conclude that defendant is guilty of possession of bookmaking records, you must then determine whether the State has proved beyond a reasonable doubt that the bookmaking records possessed by defendant constitute, reflect or represent more than five bets totaling more than \$1,000.⁸

YES _____ NO _____

⁷ See N.J.S.A. 2C:37-3b(2).

⁸ Possession of bookmaking records that constitute, reflect or represent more than five bets totaling more than \$1,000 is a third degree offense. Otherwise, possession of bookmaking records is a disorderly person's offense. See N.J.S.A. 2C:37-3c(1).