

POSSESSION
(N.J.S.A. 2C:2-1)

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 knowingly as to a result of his/her conduct if he/she is aware that it is practically certain that the 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]**

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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 POSSESSION¹

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

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.

¹ In State v. Spivey, 179 N.J. 229 (2004), the New Jersey Supreme Court affirmed a conviction under N.J.S.A. 2C:39-4.1(a), Possession of a Firearm While Committing Certain Drug Offenses. There, the Court noted that the statute suggests a temporal and spatial link between possession of the firearm and the drugs. The Court held: “The evidence must permit the jury to infer that the firearm was accessible for use in the commission of the [drug] crime.” In the appropriate case, therefore, the possession charge may be supplemented by this language.