

MAINTAINING A FORTIFIED PREMISES
(Violating Certain Sections of Chapter 35 in a Fortified Premises)
N.J.S.A. 2C:35-4.1c

Count _____ of the indictment charges the defendant with:

(Read Count of the Indictment)

That section of our statutes provides in pertinent part:

Any person who violates the part of our law [**choose as appropriate**: section 3, 4, 5, 6 or 7 of chapter 35] in a structure which he owns, leases, occupies or controls, and which has been fortified, is guilty of a crime.

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

- (1) The defendant violated [**choose as appropriate**: section 3, 4, 5, 6 or 7 of chapter 35];
- (2) The defendant violated [**choose as appropriate**: section 3, 4, 5, 6 or 7 of chapter 35] in a structure which he/she owns, leases, occupies, or controls;
- (3) The structure has been fortified; and
- (4) The defendant knew the structure has been fortified.¹

The first element the State must prove beyond a reasonable doubt is that defendant violated [**choose as appropriate**: section 3, 4, 5, 6 or 7] of chapter 35. I have already defined the elements of that offense to you in Count(s) _____.

The second element the State must prove beyond a reasonable doubt is that defendant violated [**choose as appropriate**: section 3, 4, 5, 6 or 7 of chapter 35] in a structure which he/she owns, leases, occupies, or controls.

A “structure” is defined as “any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not the person is actually present.”²

[Include all of the following definitions relevant in your case:

A defendant “occupies” a structure if he/she is a resident or tenant of the structure, if

¹ The statute does not include a specific mens rea, so it is knowingly. N.J.S.A. 2C:2-2c(3).

² N.J.S.A. 2C:35-4.1a(2).

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he/she dwells in the structure, or if he/she uses the structure for some amount of time.³

A defendant “controls” a structure if he/she has power over the structure or if he/she directs the actions within or functions of the structure.^{4]}

The third element the State must prove beyond a reasonable doubt is that the structure was fortified.

A structure has been “fortified” if steel doors, wooden planking, cross bars, alarm systems, dogs, lookouts, or any other means are employed to prevent, impede, delay or provide warning of the entry into a structure or any part of a structure by law enforcement officers.⁵

The fourth element the State must prove beyond a reasonable doubt is that the defendant acted “knowingly.” 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 if he/she is aware of a high probability of their existence. Knowledge is a condition of the mind that cannot be seen and that can often be determined only from 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 the 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 you find that the State has proven each of these elements beyond a reasonable doubt, then you must find the defendant guilty. If, however, the State has failed to prove any element beyond a reasonable doubt, then you must find the defendant not guilty.

³ “Occupy,” Merriam-Webster’s Collegiate Dictionary, 858 (11th ed. 2012).

⁴ “Control,” Merriam-Webster’s Collegiate Dictionary, 272 (11th ed. 2012).

⁵ N.J.S.A. 2C:35-4.1c.