

UNLAWFUL POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE
(BATH SALTS)
(N.J.S.A. 2C:35-10.3a)¹

Count _____ of the indictment charges the defendant as follows:

(Read Indictment)

The pertinent part of the statute on which this indictment is based reads as follows:

It is a crime for any person, knowingly [or purposely²], to obtain, or to possess, substances containing: **[insert appropriate bath salt chemical here, either:** 4-methylmethcathinone (mephedrone, 4-MMC); 3,4-methylenedioxypyrovalerone (MDPV); 3,4-methylenedioxymethcathinone (methylone, MDMC), 4-methoxymethcathinone (methedrone, bk-PMMA, PMMC); 3-fluoromethcathinone (3-FMC); or 4-fluoromethcathinone (flephedrone, 4-FMC)].³

In order for you to find defendant guilty of the charge, the State must prove the following elements beyond a reasonable doubt:

1. That S _____ in evidence contains **[insert appropriate CDS (bath salt) here]**; and
2. That the defendant knowingly obtained or knowingly possessed S _____.⁴

The first element that the State must prove beyond a reasonable doubt is that S _____ contains **[insert appropriate CDS (bath salt) here]**.

The second element that the State must prove beyond a reasonable doubt is that defendant obtained or possessed S _____. To "obtain" means to acquire, to get, to procure.

To "possess" an item under the law, one must have a knowing, intentional control of that item accompanied by knowledge of its character. So, a person who possesses an item such as

¹ N.J.S.A. 2C:35-10.3a grades this offense for sentencing purposes by the quantity of the CDS (bath salt) involved. Because the quantity of the CDS (bath salt) is an element of the offense, N.J.S.A. 2C:35-10.3a.b. and c. require that this element be determined by the jury. Accordingly, this charge may need to be supplemented to add this element. Please see the Supplemental model charge to Bath Salts Offenses concerning this required element of quantity.

² Although the text of N.J.S.A. 2C:35-10.3a states that it is a crime for any person to "knowingly or purposely, to obtain, or to possess" the enumerated substances, the Supreme Court Committee on Model Criminal Jury Charges (Committee) notes that the definition of possession, N.J.S.A. 2C:2-1c, requires a knowing state of mind.

³ If the issue of authorization is raised as an affirmative defense, see N.J.S.A. 2C:35-18.

⁴ Although the text of N.J.S.A. 2C:35-10.3a states that it is a crime for any person to "knowingly or purposely, to obtain, or to possess" the enumerated substances, the Committee notes that the definition of possession, N.J.S.A. 2C:2-1c, requires a knowing state of mind.

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(_____ **IDENTIFY RELEVANT ITEM(S)**) must know or be aware that he/she possesses it/them, 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 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 WHICH 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.

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CONSTRUCTIVE POSSESSION⁵

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.

[RESUME MAIN CHARGE]

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

Remember that when we speak of knowingly we are speaking of a condition of the mind that cannot be seen. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he/she had particular knowledge. Knowledge as a separate proposition of proof does not commonly exist. It must ordinarily be

⁵ 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 that 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.

⁶ N.J.S.A. 2C:2-2b(1).

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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 two elements of this offense that the State must prove beyond a reasonable doubt are:

1. That S _____ in evidence contains **[insert name of appropriate CDS (bath salt) here]**; and
2. That the defendant knowingly obtained or knowingly possessed S _____.

If you find that the State has proven all of these elements beyond a reasonable doubt, then you must return a verdict of guilty. If you find that the State has failed to prove any of these elements beyond a reasonable doubt, then you must return a verdict of not guilty.