

POSSESSION OF CERTAIN WEAPONS
(N.J.S.A. 2C:39-3e)

Count _____ of the indictment charges defendant with the offense of possession of a (weapon specified in charge). In pertinent part, the indictment alleges that:

**[READ COUNT OF INDICTMENT, OMITTING “WITHOUT ANY EXPLAINABLE
LAWFUL PURPOSE” LANGUAGE, IF ANY¹]**

The statute that defendant is accused of violating states that: “[a]ny person who knowingly has in his possession any gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckle, sandclub, slingshot, cestus or similar leather band studded with metal filings or razor blades imbedded in wood, ballistic knife . . . is guilty of a crime[.]”²

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

1. That (Exhibit S-____) (the object in question) is/was a (specified weapon);
and
2. That defendant knowingly possessed (Exhibit S-____) (the object in question).

The first element that the State must prove beyond a reasonable doubt is that (Exhibit S-____) (the object in question) is a (weapon specified in the charge).³

The second element that the State must prove beyond a reasonable doubt is that defendant knowingly possessed (Exhibit S-____) (the object in question) at the time and place alleged. Here, the State alleges (set forth allegations).

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with

¹ See generally, State v. Lee, 96 N.J. 156 (1984); State v. Blaine, 221 N.J. Super. 66 (App. Div. 1987) in which affirmative defense of explainable lawful purpose has been applied.

² The list of weapons specified in the text of N.J.S.A. 2C:39-3e (gravity knife, switchblade knife, dagger, etc.) is complete. Possession of a different type of knife or weapon even if dangerous or used unlawfully is not an offense under N.J.S.A. 2C:39-3e [but might be violative of other statutory provisions such as N.J.S.A. 2C:39-4d (possession of a weapon for an unlawful purpose) or N.J.S.A. 2C:39-5d (unlawful possession of a weapon).]

³ The weapons statute provides specific definitions for three of the weapons mentioned in N.J.S.A. 2C:39-3e. See N.J.S.A. 2C:39-1h for “gravity knife,” N.J.S.A. 2C:39-1p for “switchblade knife,” and N.J.S.A. 2C:39-1u for “ballistic knife.” A standard dictionary definition should be used for instructional purposes whenever an indictment alleges possession of another type of weapon (dagger, dirk, stiletto, etc.) prohibited by N.J.S.A. 2C:39-3e.

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respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause 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 inference from defendant’s 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 did a particular thing. 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 his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

Thus, the person must know or be aware that he/she possessed the item, here a (specified weapon). The State was not required to prove that, at the time that he/she knowingly possessed the (specified weapon), defendant also knew that it was a prohibited weapon.⁴

Defendant’s possession cannot merely be a passing control that is fleeting or uncertain in its nature. In other words, to “possess” within the meaning of the law, the defendant must knowingly procure or receive the item possessed 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.

When we speak of possession, we mean a conscious, knowing possession. The law recognizes two kinds of possession: actual possession and constructive possession.

A person is in actual possession of a particular article or thing when he/she knows what it is: that is, he/she has knowledge of its character and knowingly has it on his/her person at a given time. A person who, with knowledge of its character, knowingly has direct physical control over a thing, at a given time, is in actual possession of it.

Constructive possession means possession in which the person does not physically have the property, but he/she is aware of the presence of the property and is able to and has the intention to exercise control over it.

A person who, although not in actual possession, has knowledge of its character, knowingly has both the power and the intention at a given time to exercise control over a thing, either directly or through another person or persons, is then in constructive possession of it.

⁴ State v. Smith, 197 N.J. 325, 338 (2009).

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The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint; that is, if they knowingly share control over the article.⁵

**[CHARGE IF AFFIRMATIVE DEFENSE OF “EXPLAINABLE
LAWFUL PURPOSE” IS RAISED]⁶**

During this trial, evidence has been presented that would show that defendant may have had an explainable lawful purpose for his/her possession of (Exhibit S-___) (the weapon). Defendant maintains that [insert explainable lawful purpose asserted by defendant] and has proffered [insert testimony/evidence offered in support of that explanation]. It is for you the jurors to consider and weigh this evidence.

The burden of disproving or negating the explanation lies with the State. In order to find defendant guilty, the State must prove beyond a reasonable doubt that defendant’s possession of (Exhibit S-___) (the weapon) was without any explainable lawful purpose.⁷ If the State has proved beyond a reasonable doubt that defendant’s possession of (Exhibit S-___) (the weapon) was without any explainable lawful purpose, you must return a verdict of guilty. On the other hand, if you find that the State has failed to prove this beyond a reasonable doubt, you must return a verdict of not guilty.

[RESUME CHARGE IN ALL CASES:]

⁵ If the weapon was found in a vehicle, the jury should be instructed on the permissive inference of possession allowed by N.J.S.A. 2C:39-2a. See State v. Bolton, 230 N.J. Super. 476, 480-81 (App. Div. 1989) (construing the statutory presumption in N.J.S.A. 2C:39-2a to permit only an inference for the jury's consideration). See also N.J.R.E. 303 (“presumptions against the accused in criminal cases”).

⁶ See generally, State v. Lee, 96 N.J. 156 (1984); State v. Blaine, 221 N.J. Super. 66 (App. Div. 1987).

⁷ The prohibited weapons statute expressly exempts military personnel and law enforcement officers from the proscriptions of N.J.S.A. 2C:39-3e if possession of the prohibited weapon is authorized under law, regulations or military/law enforcement orders. See N.J.S.A. 2C:39-3g. The confiscation, seizure or other possession of a prohibited weapon by a law enforcement officer acting on his/her duty is also exempted, provided that the officer promptly notifies a superior of his possession of the prohibited weapon.

An additional exemption applies to the possession of a nightstick by a guard in the employ of a private security company, provided that (1) the guard possessed the nightstick when in the actual performance of his official duties; (2) the guard is licensed to carry a firearm; and (3) the guard has satisfactorily completed a training course in the use of a nightstick approved by the Police Training Commission. See N.J.S.A. 2C:39-3i. In matters where any of the above exemptions are asserted by the defense, instructions on these provisions, as applicable, should be given to the jury.

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To sum up, if the State has proven both elements of this crime beyond a reasonable doubt, **[CHARGE IF APPROPRIATE:]** [and has further proven beyond a reasonable doubt that defendant's possession of (Exhibit S-____) (the weapon) was without any explainable lawful purpose,] then you must find defendant guilty of possession of a prohibited weapon. On the other hand, if the State has failed to prove either element beyond a reasonable doubt, **[CHARGE IF APPROPRIATE:]** [or has failed to disprove the defense of explainable lawful purpose,] you must find him/her not guilty.