Approved 6/20/97

DISARMING A LAW ENFORCEMENT OFFICER
N.J.S.A. 2C:12-11a. & b.

[This charge is to be used where the allegation is that the defendant attempted to exercise unlawful control over the firearm or other weapon]

The defendant is charged by County _____ of the indictment with committing the crime of disarming a law enforcement officer. The indictment is based on a New Jersey statute, the pertinent parts of which read as follows:

A person is guilty of a crime if (he/she) knowingly takes unlawful control over a firearm [or other weapon] in the possession of a law enforcement n[or corrections officer], when that officer is acting in the performance of (his/her) duties, and either is in uniform or exhibits evidence of (his/her) authority.

In order for you to find the defendant guilty of the crime of disarming a law enforcement officer, the State is required to prove each of the following elements beyond a reasonable doubt:

[Insert appropriate word or words]

(1) There was a firearm [or other weapon] in the possession of a law enforcement officer [or corrections officer].

(2) The defendant, knowingly took unlawful control over that firearm [or other weapon].

(3) The officer was acting in the performance of (his/her) duties, and was either in uniform or exhibited evidence of (his/her) authority.

The first element that the State must prove beyond a reasonable doubt was that there was a firearm [or other weapon] in the possession of a law enforcement officer[1] [or corrections officer[2].

The word "possess" as used in criminal statutes signified a knowing, intentional control over a designated thing, accompanies by a knowledge of its character. The possession of the firearm [or other weapon] by the law enforcement officer [or corrections officer] may be either actual possession or constructive possession.

A law enforcement officer [or corrections officer] is in actual possession of a firearm [or other weapon] 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.

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[1]For definition of "Law Enforcement Officer" see N.J.S.A. 2C:25-19c

[2]For definition of "Corrections Officer" see N.J.S.A. 2A:154-4

A law enforcement officer [or corrections officer] is in constructive possession of a firearm [or other weapon] even though (he/she) does not have the firearm [or other weapon] on (his/her) person at a given time, if (he/she) is aware of the presence of the firearm [or other weapon] and is able to exercise intention control or dominion over it.

A law enforcement office [or corrections officer], although not in actual possession, who has knowledge of the firearm [or the weapon], and the intention at a given time to exercise control over that firearm [or other weapon], either directly or through another person or persons, is then in constructive possession of the firearm [or other weapon].

A "firearm"[3] means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eights of an inch in diameter, with sufficient force to injure a person.

[Charge is applicable]

A "weapon"[4] means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all (1) firearms, even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can be readily assembled into a weapon; (3) gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings or razor blades imbedded, in wood; and (4) stun guns; and any weapon or other device which projects, releases, or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury though being vaporized or otherwise dispensed in the air.

The second element that the State must prove beyond a reasonable doubt is that the

[3] N.J.S.A. 2C:39-1f.

[4] N.J.S.A. 2C:39-1r.

defendant purposely[5] attempted to exercise unlawful control over that firearm [or the weapon].

A person exercises unlawful control over an item when (he/she) does anything to either take possession of that item, or remove from the possession of the person who has possession of it, without permission or authority.

In order to prove the defendant attempted to exercise unlawful control over the firearm [or weapon], the State must prove beyond a reasonable doubt that the defendant purposely attempted to exercise unlawful control over the firearm [or weapon].]

The State alleges that the defendant attempted to exercise unlawful control over that firearm [or other weapon] in the possession of a law enforcement [or corrections officer]. Therefore, the State must prove beyond a reasonable doubt that it was the specific purpose of the defendant to exercise unlawful control over the firearm [or weapon]. Although it is possible to commit the crime of taking unlawful control of a firearm or weapon from a law enforcement [or corrections officer] with knowledge, to be guilty of an attempt to exercise unlawful control of the firearm [or weapon], the defendant must act with purpose. In other words, the defendant must have the purpose to exercise unlawful control over the firearm [or weapon]].

A person acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is (his/her) conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if (he/she) is aware of the existence of such circumstances or (he/she) believes or hopes that they exist.

The indictment charges the defendant with purposely attempting to exercise unlawful control over the firearm [or weapon]. The State must prove that the defendant purposely did anything, under the circumstances as a reasonable person would likely believe them to be, to exercise control over the firearm [or weapon]. However, the step taken must strongly show the substantial[6] and not just a very remote preparator act, and must show that the accused had a firmness of criminal purpose.

The nature of the purpose with which the defendant acted toward the officer is a question of fact for you the jury to decide. Purpose is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated, for example,

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[5]N.J.S.A. 2C:2-2(B) (1)

[6]For alternative definitions of attempt, see N.J.S.A. 2C:5-1.

that (he/she) knew that his conduct would cause the disarming of the law enforcement officer or take unlawful control over the firearm (or weapon)]

It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances. Such things as the place where the acts occurred, the weapon involved, and all that was done or said by the defendant preceding, connected with, and immediately succeeding the events are among the circumstances to be considered.

In order to prove the defendant took unlawful control of the firearm [or weapon], the State need not prove that the firearm [or weapon]] was carried away from the officer or away from the place in which it was kept, but only that the defendant took unlawful control over it.

The third element the State must prove beyond a reasonable doubt is that the officer at the time was acting in the performance of (his/her) duties and was either in uniform or (he/she) exhibited evidence of (his/her) authority.

[Charge is crime charged is only the second degree offense. If the indictment charges the first degree crime, skip this paragraph and continue the charge.]

If you find the State has proved beyond a reasonable doubt all three of the elements as explained to you by the court, you must find the defendant guilt of disarming a law enforcement officer. However, if you find the State has failed to prove any one of the elements beyond a reasonable doubt, then you must find the defendant not guilty.

[Charge if appropriate]

A section of our statutes provides[7] that disarming a law enforcement officer is a crime of the second degree, except that it is a crime of the first degree if the defendant:

[Charge appropriate paragraph(s)]

1. Fires or discharges the firearm; **[or]**

2. Uses or threatens to use the firearm [or weapon] against the officer or any other person; **[or]**

3. The officer or another person suffers serious bodily injury.

The State must also prove to you beyond a reasonable doubt an additional element to

[7] N.J.S.A. 2C:12-11(b) (1) (2) & (3)

raise the degree of this crime.

[Charge appropriate paragraph(s)]

The additional element the State must prove beyond a reasonable doubt, is that in the course of committing the crime of disarming a law enforcement officer, the defendant knowingly fired or discharged the firearm. **[or]**

The additional element the State must prove is that the defendant knowingly used or threatened to use the firearm [or weapon] against the officer or any other person**. [or]**

The additional element the State must prove is that the officer or other person suffered serious bodily injury.

A person acts knowingly with respect to the nature of his conduct or 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 probably 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.

In order for you to determine whether the officer or other person suffered serious bodily injury as a result of the defendant's actions, you must understand what constitutes serious bodily injury.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.[8]

"Bodily injury"[9] means physical pain, illness or impairment of physical condition.

If you find the State has not proven beyond a reasonable doubt each element of disarming a law enforcement officer as I have defined that crime to you, you must find the defendant not guilty.

If you find the State has proved beyond a reasonable doubt that the defendant has committed the crime of disarming a law enforcement officer, but you have a reasonable doubt as to whether:

[Charge appropriate paragraph(s)]

1. The defendant fired or discharged the firearm: **[or]**

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[8] N.J.S.A. 2C:11-1b.

[9] N.J.S.A. 2C:11-1a.

2. The defendant used or threatened to use the firearm [or weapon] against the officer or any other person; **[or]**

3. The officer or other person suffered serious bodily injury; at the time of the commission of the crime of disarming of the law enforcement officer, then you find the defendant guilty of disarming a law enforcement officer in the second degree.

If you find the State has proved beyond a reasonable doubt that the defendant committed the crime of disarming a law enforcement officer and you also find that the State has proved beyond a reasonable doubt that:

[Charge appropriate paragraph(s)]

1. The defendant fired or discharged the firearm; **[or]**

2. The defendant used or threatened to use the firearm [or weapon] against the officer or any other person; **[or]**

3. The officer or other person suffered serious bodily injury; then you must find the defendant guilty of disarming a law enforcement in the first degree.