

DISTRIBUTION¹ OF A CONTROLLED DANGEROUS SUBSTANCE
(BATH SALTS)²
(N.J.S.A. 2C:35-5.3a)

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 purposely to ... distribute or dispense ... 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]**;
2. That the defendant distributed [or dispensed] S _____ ; and
3. That the defendant acted knowingly or purposefully in distributing [or dispensing] S _____.

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

In regard to the second element, the State alleges that defendant distributed [or dispensed] S ____ in evidence.

To "distribute" means the transfer, actual, constructive or attempted,⁴ from one person to another of a controlled dangerous substance. It is not necessary that the drugs be transferred in

¹ This instruction is also to be used for dispensing of CDS-Bath Salts.

² N.J.S.A. 2C:35-5.3a 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:35-5.3a.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.

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

⁴ This definition is taken from the definitions of "distribute" and "deliver" set forth in N.J.S.A. 2C:35-2.

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exchange for payment or promise of payment of money or anything of value.⁵

[Charge when applicable: “Dispensing” means to deliver a controlled dangerous substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.⁶]

In regard to the third element, the State must prove that the defendant acted knowingly or purposefully in distributing [or dispensing] S_____.

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.⁷

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. "With purpose," "designed," "with design" or equivalent terms have the same meaning.⁸

Remember that when we speak of knowingly and purposely we are speaking of conditions of the mind that cannot be seen. It is not necessary for the State to prove the existence of such mental states by direct evidence such as a statement by the defendant that he/she had particular knowledge or a particular purpose. Knowledge and purpose as separate propositions of proof do not commonly exist. They must ordinarily be 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 three elements of this offense that the State must prove beyond a reasonable doubt are:

1. That S_____ in evidence contains **[insert appropriate CDS (bath salt) here];**
2. That the defendant distributed [or dispensed] S_____ ; and
3. That the defendant acted knowingly or purposefully in distributing [or dispensing] S_____.

⁵ State v. Heitzman, 209 N.J. Super. 617, 621 (App. Div. 1986), aff'd, 107 N.J. 603 (1987).

⁶ This definition is taken from the definition of “dispense” set forth in N.J.S.A. 2C:35-2.

⁷ N.J.S.A. 2C:2-2b(1).

⁸ N.J.S.A. 2C:2-2b(2).

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If you find that the State has proven all these elements beyond a reasonable doubt, then you must return a verdict of guilty. On the other hand, 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.