

DOG FIGHTING - (FIGHTING PARAPHRENALIA)
N.J.S.A. 2C:33-31a(7)

The indictment charges the defendant with dog fighting based on dog-fighting paraphernalia. The indictment reads as follows

(Read Indictment)

This conduct is prohibited by a statute providing:

A person is guilty of dog fighting if that person knowingly owns, possesses, buys, sells, transfers, or manufacturers dog fighting paraphernalia for the purpose of engaging in or otherwise promoting or facilitating the fighting or baiting of a dog.

To find the defendant guilty of dog fighting the State must prove beyond a reasonable doubt each of the following elements:

- (1) That the defendant knowingly [**Choose one or more, as appropriate:** owned, possessed, bought, sold, transferred, or manufactured] dog-fighting paraphernalia.

AND

- (2) That the defendant did so for the purpose of engaging in or otherwise promoting or facilitating the fighting or baiting of a dog.

The first element that the State must prove beyond a reasonable doubt is that defendant knowingly [**Choose one or more, as appropriate:** owned, possessed, bought, sold, transferred, or manufactured] dog-fighting paraphernalia.

“Dog-fighting paraphernalia” means equipment, products, implements, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, or condition of a dog for fighting, or in furtherance of dog fighting.¹

In determining whether an object is dog-fighting paraphernalia, you may consider the following: the proximity of the object in time and space to any violation of the dog-fighting statute; direct or circumstantial evidence of the intent of the person to deliver the object to any

¹ N.J.S.A. 2C:33-31(c).

person whom the person in possession of the object knows, or should reasonably know, intends to use the object to violate the dog-fighting statute; oral or written instructions concerning its use provided with, or found in the vicinity of, the object; descriptive materials accompanying the object which explain or depict its use; and any other relevant factors.²

[IF POSSESSION IS CHARGED, CHARGE AS FOLLOWS]

To “possess” an item under the law, one must have a knowing, intentional control of that item accompanied by a knowledge of its character. So, a person who possesses an item such as (_____ **IDENTIFY RELEVANT ITEM(S)**) must know or be aware that he/she possesses it, 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 the 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

² N.J.S.A. 2C:33-31(a)(7).

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 AS 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.

CONSTRUCTIVE POSSESSION³

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/her person but is aware that the item is present and is able to and has the

³ 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 the 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.

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.

[MERE PRESENCE – Read if Appropriate⁴]

Defendant's mere presence at or near a place where [contraband] is/are discovered is not in itself, without more, proof beyond a reasonable doubt that defendant was in constructive possession of [that contraband]. It is, however, a circumstance to be considered with the other evidence in determining whether the State has proven possession of the [contraband] beyond a reasonable doubt.

Where defendant is one of the persons found in the area where [contraband] is/are discovered, you may not conclude, without more, that the State has proven beyond a reasonable doubt that he/she had possession of the [contraband] unless there are other circumstance(s) tending to permit such an inference to be drawn.⁵ Such evidence can include, but is not limited to [choose as appropriate]: placement and accessibility of the [contraband]; defendant's access to and connection with the place where the [contraband] was/were found; his/her proximity to the place where the [contraband] was/were found; his/her demeanor when confronted by police after the [contraband] was/were found; whether defendant made any inculpatory statements after the [contraband] was/were found; whether defendant possessed other [contraband] on his/her person

⁴ State v. Randolph, 228 N.J. 566, 590-593 (2017).

⁵ State v. Jackson, 326 N.J. Super. 276, 280 (App. Div. 1999); See State v. Brown, 80 N.J. 587, 593 (1979) and State v. Sapp, 71 N.J. 476 (1976), rev'd on dissent 144 N.J. Super. 455, 460 (1975).

or property when the [contraband] was/were found; [any other evidence deemed part of the totality of circumstances].⁶

In summary, the State must prove more than defendant's mere presence at the time that the [contraband] was/were found. There must be other circumstance(s) tying defendant to the [contraband] in order for the State to prove constructive possession beyond a reasonable doubt.^{7]}

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 CHARGE]

A person acts knowingly with respect to the nature of their conduct or the attendant circumstances if they are aware that their 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 respect to a result of their conduct if they are 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.⁸

The second element that the State must prove beyond a reasonable doubt is that the defendant **[Choose one or more, as appropriate:** owned, possessed, bought, sold, transferred,

⁶ State v. Randolph, 228 N.J. at 590-593, citing State v. Palacio, 111 N.J. 543, 549-54 (1988) and State v. Shipp, 216 N.J. Super. 662, 664-66 (App. Div. 1987). See Palacio, Shipp, and State v. Montesano, 298 N.J. Super. 597, 615 (App. Div. 1997), certif. denied 150 N.J. 27 (1997), for circumstances more specifically related to presence in or near an automobile in which drugs are found.

⁷ State v. Whyte, 265 N.J. Super. 518, 523 (App. Div. 1992), aff'd o.b. 133 N.J. 481 (1993); Jackson, 326 N.J. Super. at 280.

⁸ N.J.S.A. 2C:2-2(b)(2).

or manufactured] the dog-fighting paraphernalia for the purpose of engaging in, or otherwise promoting or facilitating, the **[Choose as appropriate: fighting or baiting]** of a dog.

For purposes of this section, “bait” means to attack with violence, to provoke, or to harass a dog with one or more animals for the purpose of training the dog for, or to cause a dog to engage in, a fight with or among other dogs.⁹

A person acts purposely with respect to the nature of their conduct or a result thereof if it is their 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 they are aware of the existence of such circumstances, or they believe or hope that the circumstances exist. “With purpose,” “designed,” “with design,” or equivalent terms have the same meaning.¹⁰

Purpose and knowledge are conditions of the mind that cannot be seen and can only be determined by 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, members of the jury, that the State produce witnesses to testify that an accused said they had a certain state of mind when they 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 their acts and their conduct, and from all they said and did at the particular time and place, and from all of the surrounding circumstances.¹¹

If you find that the State did prove beyond a reasonable doubt all of the elements of the crime of dog fighting based on dog-fighting paraphernalia, then you must find the defendant guilty.

⁹ N.J.S.A. 2C:33-31(c).

¹⁰ N.J.S.A. 2C:2(b)(1).

¹¹ N.J.S.A. 2C:2-2.

If you find that the State has not proven beyond a reasonable doubt any element of the crime of dog fighting based on dog-fighting paraphernalia as I have defined that crime to you, then you must find the defendant not guilty.