

IMITATION FIREARM IN EDUCATIONAL INSTITUTION/SCHOOL BUS¹
(N.J.S.A. 2C:39-5e(3))

The law requires that the court instruct the jury with respect to possible lesser included offenses, even if they are not contained in the indictment. Just because the court is instructing you concerning these offenses does not mean that the court has any opinion one way or another about whether the defendant committed these, or any, offenses. You should consider these offenses along with those for which the defendant is indicted. However, you are not to render a verdict on these offenses or answer the questions on the verdict sheet unless you find that the State has failed to meet its burden with regard to the offenses in the indictment.

The statute dealing with possession of an imitation firearm states in relevant part:

Any person who knowingly has in his possession any imitation firearm [**choose appropriate**] [in or upon any part of the buildings or grounds of any school, college, university or other educational institution] [while on any school bus], without the written authorization of the governing officer of the institution is guilty of an offense.

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

1. That [exhibit ____ is an imitation firearm] [there was an imitation firearm];
2. That defendant knowingly possessed the imitation firearm; and
3. That defendant knowingly possessed the imitation firearm [**choose appropriate**] and he/she knew the possession occurred [in or upon any part of the buildings or grounds of any school, college, university or other educational institution] [while on a school bus].
4. That the defendant possessed the imitation firearm [in or upon any part of the buildings or grounds of any school, college, university or other educational institution] [while on a school bus] without the written authorization of the governing officer of the institution.

The first element that the State must prove beyond a reasonable doubt is that [exhibit ____ is an imitation firearm] [there was an imitation firearm]. An imitation firearm means an object or device reasonably capable of being mistaken for a firearm.²

¹ This disorderly persons offense may be charged as a lesser included offense in some cases.

² N.J.S.A. 2C:39-1v.

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The second element that the State must prove beyond a reasonable doubt is that defendant knowingly possessed the imitation firearm. 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.

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 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.

The word “possess” means a knowing, intentional control of a designated thing, accompanied by a knowledge of its character. Thus, the person must know or be aware that he/she possesses the item (in this case an imitation firearm), and he/she must know what it is that he/she possesses or controls, in other words, that it is an imitation firearm.

This 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, either actual or constructive.

[CHOOSE APPROPRIATE]

ACTUAL 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.

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CONSTRUCTIVE POSSESSION

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 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.

The third element that the State must prove beyond a reasonable doubt is that the defendant possessed the imitation firearm and that he/she knew the possession occurred [**choose appropriate**] [in or upon any part of the buildings or grounds of any [school] [college] [university] [other educational institution] [while on a school bus]. I have already defined knowingly for you.³

The fourth element that the State must prove beyond a reasonable doubt is that defendant possessed the imitation firearm [in or upon any part of the buildings or grounds of any [school] [college] [university] [other educational institution] [while on a school bus] without written authorization of the governing officer of the institution.

[**CHARGE IF APPROPRIATE**] It is not a defense to the charge that defendant possessed a valid permit to carry the firearm or a valid firearms purchaser identification card.

[CHARGE IN ALL CASES]

If you find that the State has proven every element of the offense beyond a reasonable doubt, then you must find defendant guilty. If you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find defendant not guilty.

³ State v. Grate, 220 N.J. 317 (2015).