

MAINTAINING A FORTIFIED PREMISES
(Defendant Fortifies or Maintains in a Fortified Condition)
N.J.S.A. 2C:35-4.1c

Count _____ of the indictment charges the defendant with:

(Read Count of the Indictment)

That section of our statutes provides in pertinent part:

Any person who fortifies or maintains in a fortified condition a structure for the manufacture, distribution, dispensing or possession or control with intent to manufacture, distribute or dispense, controlled dangerous substances [or controlled dangerous substance analogs¹] is guilty of a crime.

In order for defendant to be convicted of this offense, the State must prove the following elements beyond a reasonable doubt:

- (1) the defendant knowingly² fortified a structure, or maintained a structure in a fortified condition; and
- (2) the defendant fortified or maintained a fortified structure knowing it was to be used for the manufacture, distribution, dispensing, or possession with intent to manufacture, distribute, or dispense a controlled dangerous substance [or a controlled dangerous substance analog].

The first element the State must prove beyond a reasonable doubt is that the defendant knowingly fortified a structure, or maintained a structure in a fortified condition.

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 if he/she is aware of a high probability of their existence. Knowledge is a condition of the mind that cannot be seen and that can often be determined only from 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 that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she 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 the defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all

¹ See N.J.S.A. 2C:35-2 ("The term, wherever it appears in any law or administrative regulation of this State, shall include controlled substance analogs.").

MAINTAINING A FORTIFIED PREMISES
(Defendant Fortifies or Maintains in a Fortified Condition)
N.J.S.A. 2C:35-4.1c

surrounding circumstances.

A “structure” is defined as “any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not the person is actually present.”³

A structure has been “fortified” if steel doors, wooden planking, cross bars, alarm systems, dogs, lookouts, or any other means are employed to prevent, impede, delay or provide warning of the entry into a structure or any part of a structure by law enforcement officers.⁴

A fortification is “maintained” if it remains on property or in a structure while the property or structure is owned, occupied, controlled or used by the defendant. “Maintaining” a fortified structure means to keep it up or to carry it on, to keep it in continuance, as in to keep it in a certain state, as of repair. More than mere possession of a structure is required.⁵ There must be evidence of continuity in the use of the structure,⁶ but there is no specific time limit.

[Include all of the following definitions relevant in your case:

A defendant “occupies” a structure if he/she is a resident or tenant of the structure, if he/she dwells in the structure, or if he/she uses the structure for some amount of time.⁷

A defendant “controls” a structure if he/she has power over the structure or if he/she directs the actions within or functions of the structure.⁸]

[If defendant argues mere possession, add the following: “Maintaining” does not include simply passing through, or being nearby, a fortified structure.]

The second element the State must prove beyond a reasonable doubt is the defendant fortified or maintained a fortified structure the manufacture, distribution, dispensing, or possession with intent to manufacture, distribute, or dispense a controlled dangerous substance [or a controlled dangerous substance analog].

[Include all of the following definitions relevant in your case:

“Manufacture” means the production, preparation, propagation, compounding,

² The statute does not include a specific mens rea, so it is knowingly. N.J.S.A. 2C:2-2c(3).

³ N.J.S.A. 2C:35-4.1a(2).

⁴ N.J.S.A. 2C:35-4.1c.

⁵ State v. Walker, 385 N.J. Super. 388, 404-05 (App. Div.), certif. denied, 187 N.J. 83 (2006).

⁶ This portion of the definition comes from the Model Charge for “Maintaining or Operating a Controlled Dangerous Substance Production Facility, N.J.S.A. 2C:35-4” (rev. 12/11/00).

⁷ “Occupy,” Merriam-Webster’s Collegiate Dictionary, 858 (11th ed. 2012).

⁸ “Control,” Merriam-Webster’s Collegiate Dictionary, 272 (11th ed. 2012).

MAINTAINING A FORTIFIED PREMISES
(Defendant Fortifies or Maintains in a Fortified Condition)
N.J.S.A. 2C:35-4.1c

conversion or processing of a controlled dangerous substance or controlled substance analog, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or re-labeling of its container.⁹

“Distribution” means to deliver other than by administering or dispensing a controlled dangerous substance or controlled substance analog.¹⁰ It is not necessary that the controlled dangerous substances be transferred in exchange for payment or promise of payment of money or anything of value.¹¹

“Dispense” means to deliver a controlled dangerous substance or controlled substance analog 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.¹²

“Possession with intent to manufacture, distribute, or dispense” means the defendant had under his/her control or possessed a controlled dangerous substance, and that he/she did so with the intent to manufacture, distribute, or dispense it. [**Charge definition of possession, if necessary.**] “Intent” means a purpose to do something, a resolution to do a particular act or accomplish a certain thing. Intent is a state of mind, and it is very rare that intent is proven by witnesses who can testify that an accused said he/she had a certain intent when he/she engaged in a particular act. The intention may be gathered from a person's acts, conduct, from all the person said and did at the particular time and place, and from all of the surrounding circumstances. You may consider any evidence as to the quantity, purity, and packaging¹³ of the controlled dangerous substance together with all the other evidence in the case to aid you in your determination of whether the controlled dangerous substance was possessed with the intent to manufacture, distribute, or dispense it.¹⁴

The various kinds of “controlled dangerous substances” are defined in another part of our statute. (**Insert appropriate CDS, e.g., cocaine, heroin, etc.**) is a dangerous substance

⁹ N.J.S.A. 2C:35-2.

¹⁰ N.J.S.A. 2C:35-2.

¹¹ State v. Heitzman, 209 N.J. Super. 617, 621 (App. Div. 1986), aff'd 107 N.J. 603 (1987).

¹² N.J.S.A. 2C:35-2.

¹³ See State v. Perez, 218 N.J. Super. 478, 482-86 (App. Div. 1987).

¹⁴ This paragraph is derived from the model charge for “Possession of a Controlled Dangerous

MAINTAINING A FORTIFIED PREMISES
(Defendant Fortifies or Maintains in a Fortified Condition)
N.J.S.A. 2C:35-4.1c

prohibited by statute.¹⁵

“Controlled dangerous substance analog” means a controlled dangerous substance or controlled substance analog which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.^{16]}

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

Substance with Intent to Distribute, N.J.S.A. 2C:35-5” (rev. 1/14/08).

¹⁵ Ibid.

¹⁶ N.J.S.A. 2C:35-2.