

MANUFACTURING OF A CONTROLLED DANGEROUS SUBSTANCE¹

(2C:35-5)

Count _____ of the indictment charges the defendant as follows:

(Read Indictment)

The pertinent part of the statute (N.J.S.A. 2C:35-5) on which this indictment is based reads as follows:

Except as authorized by [statute], it shall be unlawful for any person knowingly or purposely ... to manufacture ... a controlled dangerous substance [or controlled substance analog].²

The various kinds of substances are defined in another part of our statute. (Insert appropriate CDS, e.g., heroin, cocaine, etc.) is a dangerous substance prohibited by the statute. (The defendant does not claim legal authorization, so the exceptions in the statute are not applicable in this case).

The statute, read together with the indictment, identifies the elements which the State must prove beyond a reasonable doubt to establish guilt of the defendant on this (count of the) indictment. They are as follows:

1. S_____ in evidence is (insert appropriate CDS or controlled substance analog).
2. That the defendant manufactured S_____ on the date alleged in the indictment.
3. That the defendant acted knowingly or purposefully in manufacturing S_____.

[when it is alleged that a controlled substance analog has been manufactured the following definition of controlled substance analog should be charged]:

¹ N.J.S.A. 2C:35-5 grades this offense for sentencing purposes by the type, quantity and purity of the CDS involved. In certain cases, the defendant is guilty of an offense regardless of the quantity and purity of the CDS manufactured. This charge is sufficient for such cases. However, in cases in which the quantity and/or purity of the CDS is an element of the offense, N.J.S.A. 2C:35-5c requires that this element be determined by the jury. In such a case, this charge would have to be supplemented to add this element. Please see the supplementary model charge concerning this.

² To be charged when the indictment alleges manufacture of a controlled substance analog.

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(In regard to the first element, a "controlled substance analog" is a substance which (1) has a chemical structure substantially similar to that of a controlled dangerous substance and (2) was specifically designed to produce an effect substantially similar to that of a controlled substance.³ In this case the indictment alleges that the defendant manufactured _____ which is an analog of the controlled dangerous substance _____. Thus, to establish this element the State must prove beyond a reasonable doubt that _____ has a substantially similar chemical structure to the controlled dangerous substance _____ and that was specifically designed to produce an effect substantially similar to the controlled dangerous substance _____.)

In regard to the second element, to "manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled dangerous substance (or controlled substance analog), either directly or by extraction from substances or natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or re-labeling of its contained, except that this term does not include the preparation of compounding of a controlled dangerous substance (or controlled substance) analog by an individual for (his/her) own use or the preparation, compounding, packaging, or labeling of a controlled dangerous substance: (1) by a practitioner as an incident to (his/her) administering or dispensing of a controlled dangerous substance or controlled substance analog in the course of (his/her) professional practice, or (2) by a practitioner (or under (his/her) supervision) for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.⁴

In this regard the term "practitioner" means a physician, dentist, veterinarian, scientific investigator, laboratory, pharmacy, hospital or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled dangerous substance (or controlled substance analog) in the course of professional practice or research in this State.⁵

In regard to the third element, the State must prove, as I have stated, that the defendant acted knowingly or purposefully in manufacturing S_____.

A person acts knowingly with respect to the nature of (his/ her) conduct or the attendant

³ N.J.S.A. 2C:35-2.

⁴ N.J.S.A. 2C:35-2.

⁵ N.J.S.A. 2C:35-2.

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.⁶

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.⁷

Remember that when we speak of knowingly and purposely were 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 are that:

1. S _____ in evidence is (insert appropriate CDS) (or a controlled substance analog).
2. That the defendant manufactured S _____ on the date alleged in the indictment.
3. That the defendant acted knowingly or purposefully in manufacturing S _____.

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.

⁶ N.J.S.A. 2C:2-2b(1).

⁷ N.J.S.A. 2C:2-2b(2).