

POSSESSION OF A FIREARM WITH A PURPOSE TO USE IT UNLAWFULLY
AGAINST THE PERSON OR PROPERTY OF ANOTHER
(N.J.S.A. 2C:39-4a)

The _____ count of the Indictment charges the defendant, _____, with the crime of possession of a firearm with a purpose to use it unlawfully against the person or property of another. The statute on which this count of the Indictment is based reads in pertinent part:

“Any person who has in his possession any firearm with a purpose to use it unlawfully against the person or property of another is guilty of a crime.”

In order for you to find the defendant guilty of this charge, the State has the burden of proving beyond a reasonable doubt each of the following four elements of this crime:

1. Exhibit _____ is a firearm. (or, there was a firearm)
2. Defendant possessed the firearm.
3. Defendant possessed the firearm with the purpose to use it against the person or property of another.¹
4. Defendant's purpose was to use the firearm unlawfully.

The first element that the State must prove beyond a reasonable doubt is that exhibit _____ is a firearm (or, that there was a firearm).

A "firearm" means any handgun,² rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other

¹ The person/property distinction is not an element of the crime and need not be specifically determined by the jury verdict. State v. Camacho, 153 N.J. 54, 69, 72 (1998). The court, therefore should not inquire of the jury through a special interrogatory whether its verdict distinguishes between person or property. Ibid. Rather, the person/property distinction is relevant for sentencing purposes only, not for obtaining a conviction. Ibid. If the State elects to proceed on only one theory, either person or property, then the court should only instruct the jury on the theory elected throughout the charge. If both theories are alleged, then the court should include the phrase “against the person or property of another” throughout the charge.

² Handgun means any pistol, revolver or other firearm originally designed or manufactured to be fired by the use of a single hand. N.J.S.A. 2C:39-1k. The handgun need not be presently operable. State v. Gantt, 101 N.J. 573 (1986).

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noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

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

[Charge: Model Jury Charge on Possession. If possession is in a motor vehicle, also charge model jury charge on possession of a firearm, etc. in a motor vehicle. N.J.S.A. 2C:39-2]

The third element that the State must prove beyond a reasonable doubt is that defendant's purpose in possessing the firearm was to use it against the person or property of another. Purpose is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts.

In determining the defendant's purpose in possessing the firearm, you may consider that a person acts purposely with respect to the nature of (his/her) conduct or a result of (his/her) conduct if it is the person's conscious object to engage in conduct of that nature or to cause such a result. That is, a person acts purposely if (he/she) means to act in a certain way or to cause a certain result. A person acts purposely with respect to attendant circumstances if the person is aware of the existence of such circumstances or believes or hopes that they exist.

The defendant's purpose or conscious objective to use the firearm against another person or the property of another may be found to exist at any time (he/she) is in possession of the object and need not have been the defendant's original intent in possessing the object.³

The fourth element that the State must prove beyond a reasonable doubt is that the defendant had a purpose to use the firearm in a manner that was prohibited by law. I have

³ See, State v. Daniels, 231 N.J. Super. 555 (App. Div. 1989); State v. Harmon, 104 N.J. 189 (1986). Indeed, the State is not required to prove defendant's original purpose in possessing the firearm. State v. Diaz, 144 N.J. 628, 636 (1996); State v. Petties, 139 N.J. 310, 316 (1995). See State v. Villar, 150 N.J. 503, 512 (1997).

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already defined purpose for you. This element requires that you find that the State has proven beyond a reasonable doubt that the defendant possessed a firearm with the conscious objective, design or specific intent to use it against the person or property of another in an unlawful manner as charged in the indictment, and not for some other purpose.

In this case, the State contends that the defendant's unlawful purpose in possessing the firearm was _____

(Describe the unlawful purpose of defendant's possession of the weapon)⁴

You must not rely upon your own notions of the unlawfulness of some other undescribed purpose of the defendant; rather, you must consider whether the State has proven the specific unlawful purpose charged.⁵ The unlawful purpose alleged by the State may be inferred from all that was said or done and from all of the surrounding circumstances of this case.⁶ However, the State need not prove that defendant accomplished his unlawful purpose of using the firearm [or, if appropriate, specifically define the elements of the crime defendant allegedly intended to commit with the firearm].⁷

[Charge if applicable:] The defense on the other hand contends that _____.

[If the defendant raises the issue of protective purpose, charge the following paragraphs:]

I have already told you that the State must prove beyond a reasonable doubt that defendant had an unlawful purpose at the time in question. If you find that the defendant had a lawful purpose, for example, to use the firearm to protect (himself/herself) or another against the use of unlawful force, or to protect (his/her) property, or if you have a reasonable doubt as to the

⁴ State v. Petties, supra. See State v. Villar, supra, 150 N.J. at 511.

⁵ State v. Jenkins, 234 N.J. Super. 311, 316 (App. Div. 1989). See State v. Villar, supra.

⁶ State v. Petties, supra; State v. Diaz, supra, 144 N.J. at 636.

⁷ State v. Mello, 297 N.J. Super. 452, 464-67 (App. Div. 1997).

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defendant's purpose, then the State has failed to carry its burden of proof on this element beyond a reasonable doubt.⁸

I instruct you that for purposes of this offense, if defendant honestly believed that (he/she) needed to use a firearm to protect (himself/herself/another/property), the law does not require that this belief be reasonable. In other words, if defendant had an honest though unreasonable belief that (he/she) needed to use the weapon to protect (himself/herself/another), this negates the purposeful mental state required for this offense.

[Choose appropriate]

Later on in the charge, I will instruct you on the concept of self-defense/defense of another as it applies to the offense(s) of _____. The concept of self-defense/defense of another as it applies to those offenses is different than that of protective purpose that applies to this count of the indictment. When applied to that/those offense(s), self-defense requires defendant to have both an honest AND a reasonable belief in the need to use force.

OR

Earlier in the charge, I instructed you on the concept of self-defense as it applies to the offense(s) of _____. The concept of self-defense/defense of another as it applies to that/those offense(s) is different than that of protective purpose that applies to this count of the indictment. When applied to that/those offense(s), self-defense requires a defendant to have an honest AND a reasonable belief in the need to use force.⁹

[Charge in every case:]

If you are satisfied beyond a reasonable doubt that the State has proven each of the elements of this offense as I have defined them, then you must find defendant guilty. However, if you find that the State has failed to prove beyond a reasonable doubt any of the elements of this offense as I have defined them, then you must find defendant not guilty.

⁸ State v. Harmon, supra.

⁹ State v. Williams, 168 N.J. 323 (2001).