

POSSESSION OF AN IMITATION FIREARM FOR UNLAWFUL PURPOSE

(N.J.S.A. 2C:39-4(e))

The _____ count of the Indictment charges the defendant, _____, with the crime of possession of an imitation firearm under circumstances that would lead an observer to reasonably believe that it is possessed for an unlawful purpose. The statute on which this count of the Indictment is based reads in pertinent part:

Any person who has in his possession an imitation firearm under circumstances that would lead an observer to reasonably believe that it is possessed for an unlawful purpose 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 S- is an imitation firearm.
2. Defendant possessed S-, the alleged imitation firearm.
3. Defendant possessed the imitation firearm under circumstances that would lead an observer to reasonably believe that it is possessed for an unlawful purpose.
4. Defendant knew that an observer would reasonably believe that the imitation firearm was possessed for an unlawful purpose.

Under the first element of the offense, an “imitation firearm” means an object or device reasonably capable of being mistaken for a firearm.¹ A “firearm” means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature or a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other 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 of 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.²

The second element of the offense is possession.

¹ N.J.S.A. 2C:39-1(v).

² N.J.S.A. 2C:39-1(f).

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Charge: Model Jury Charge on possession.

The third element of the offense is that the defendant possessed the imitation firearm under circumstances that would lead an observer to reasonably believe that it is possessed for an unlawful purpose. You must determine whether under the circumstances an objective observer would reasonably believe that the imitation firearm was possessed for an unlawful purpose. I instruct you that a reasonable belief is different than actual knowledge. What is reasonable is not measured by what the defendant or victim thought was reasonable but rather by what an objective observer would find as reasonable. Thus, the reasonableness of the belief for which the imitation firearm was possessed is based on an objective standard--that is, by how an ordinary reasonable person with a detached viewpoint would view it.

Moreover, I instruct you that the belief must be that the imitation firearm was possessed for an unlawful purpose. Purpose is a condition of the mind which cannot be seen and can only be determined by inferences. You must not consider your own notions of unlawfulness of some other undescribed purpose of the defendant, but rather you must consider whether the State has proven the specific unlawful purpose charged.³ In this case, the State contends that it was reasonable to believe that the defendant's unlawful purpose in possessing the imitation firearm was _____ . 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.⁴

The fourth element of the offense is that the defendant must have known that an observer would reasonably believe that the imitation firearm was possessed for an unlawful purpose.⁵ A person acts knowingly if (he\she) is aware of the nature of (his\her) conduct or the existence of attendant circumstances or is aware of a high probability of their existence. A person acts knowingly with respect to a result of (his/her) conduct if a person is aware that it is practically certain that (his/her) conduct will cause such a result. One is said to act knowingly if one acts

³ State v. Jenkins, 234 N.J.Super. 311, 316 (App. Div. 1989).

⁴ State v. Petties, 139 N.J. 310 (1995).

⁵ N.J.S.A. 2C:39-4(e) advisory comments.

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with knowledge, if one acts consciously, if (he/she) comprehends (his/her) acts.⁶

When we speak of knowingly and purposely we are 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 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.

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

⁶ N.J.S.A. 2C:2-2(b) (2).