

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

The _____ count of the Indictment charges the defendant, _____, with the crime of possession of a weapon 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 weapon . . . 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:

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

The first element that the State must prove beyond a reasonable doubt is that exhibit _____ is a weapon (or, that there was a weapon). A "weapon" is anything readily capable of lethal use or of inflicting serious bodily injury.² "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.³

It is possible that _____ [the weapon alleged] is not normally considered a weapon. If, however, the State establishes beyond a reasonable doubt that the object is capable of being used to inflict serious bodily injury or death, it may be considered a

¹ The person/property distinction is not an element of the crime and need not be specifically determined by the jury verdict. See *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.*

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 "the person or property of another" throughout the charge.

² N.J.S.A. 2C:39-1r. If the weapon alleged falls within one of the enumerated items listed in the definition of a weapon pursuant to N.J.S.A. 2C:39-1r, then the court should so advise the jury of this statutory definition of the object as a weapon.

³ N.J.S.A. 2C:11-1b.

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weapon.

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

[Charge: Model Jury Charge on Possession. If possession is in a motor vehicle, also charge Model Jury Charge on possession of weapon, 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 object was to use it as a weapon against the person or the 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 weapon, 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 weapon against the person or 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 purpose in possessing the object.⁴

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

An object may be possessed for an innocent or lawful purpose. However, an innocent or lawful purpose or possession of the weapon (or item) may change and become unlawful and a

⁴ See, State v. Daniels, 231 N.J. Super. 55 (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 weapon. State v. Villar, 150 N.J. 503, 512 (1997) (citing State v. Diaz, 144 N.J. 628, 636 (1996)).

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violation of this statute.⁵ The State need not prove defendant's original purpose in possessing the weapon; the State need only prove beyond a reasonable doubt that defendant's purpose at the specified time he/she possessed it was to use it unlawfully against the person or property of another.⁶

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

[Describe the unlawful purpose of defendant's possession of the weapon.⁷].

You must not rely upon your own notions of the unlawfulness of some other undescribed purpose of defendant; rather, you must consider whether the State has proven the specific unlawful purpose charged.⁸ 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.⁹ However, the State need not prove that defendant accomplished his unlawful purpose of using the weapon [or, if appropriate, specifically define the elements of the crime defendant allegedly intended to commit with the weapon].¹⁰

[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 (name weapon) 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 defendant's purpose, then the State has failed to carry its burden of proof on this element beyond a reasonable doubt.¹¹

I instruct you that for purposes of this offense, if defendant honestly believed that he/she

⁵ State v. Villar, 150 N.J. 503, 511-12 (1997).

⁶ State v. Villar, *ibid.*

⁷ State v. Villar, *supra*, 150 N.J. at 511; State v. Petties, 139 N.J. 310 (1995).

⁸ State v. Villar, *supra*, 150 N.J. at 511; State v. Jenkins, 234 N.J. Super. 311, 316 (App. Div. 1989).

⁹ State v. Petties, *supra*.

¹⁰ See, State v. Mello, 297 N.J. Super. 452, 464-67 (App. Div. 1997).

¹¹ State v. Harmon, *supra*.

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needed to use a (name weapon) 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.¹²

[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.

¹² State v. Williams, 168 N.J. 323 (2001).