

STRICT LIABILITY FOR DRUG INDUCED DEATHS
(N.J.S.A. 2C:35-9)

(Count _____ of) the indictment charges the defendant as follows:

(Read Indictment)

The pertinent part of the statute (N.J.S.A. 2C:35-9) on which this indictment is based reads as follows:

Any person who {manufactures} {distributes} or {dispenses} {methamphetamine}, {lysergic acid diethylamide}, {phencyclidine} or {any other controlled dangerous substance classified in Schedules I or II} or {any controlled substance analog thereof} is strictly liable for a death which results from the injection, inhalation, or ingestion of that substance and is guilty of a . . . crime.¹

This 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. The elements are that:

1. The defendant {manufactured}, {distributed} or {dispensed} {methamphetamine}, {lysergic acid diethylamide}, {phencyclidine} or {any . . . controlled dangerous substance classified in Schedules I or II} or {any controlled substance analog thereof};²
2. The defendant acted knowingly or purposefully in {manufacturing}, {dispensing} or {distributing} the {insert appropriate substance};
3. {Insert name of alleged victim} injected, inhaled, or ingested the {insert appropriate substance} {manufactured}, {distributed} or {dispensed} by the defendant;
4. {Insert name of alleged victim} died as a result of injecting, inhaling, or ingesting the

¹Based on the State's allegations, the appropriate act or acts and substance or substances should be selected.

²Again, based on the State's allegations, the appropriate act or acts and substance or substances should be selected.

{insert appropriate substance} {manufactured}, {distributed} or {dispensed} by the defendant. That is, the defendant's act of (manufacturing) (distributing) or (dispensing) the (insert appropriate substance) caused (the name of alleged victim)'s death.

{When it is alleged that a Schedule I or II controlled dangerous substance, other than those specifically identified in the statute, i.e. methamphetamine, L.S.D., or phencyclidine was involved, the following should be charged}³

With respect to the first element, the State, as I have said, must prove beyond a reasonable doubt that the defendant {manufactured}, {distributed} or {dispensed} a Schedule I or II controlled dangerous substance. Here, the State alleges the defendant {manufactured}, {distributed} or {dispensed} {insert appropriate substance, e.g. heroin, cocaine, etc.}. (Insert appropriate substance) is a Schedule I or II controlled dangerous substance.

{When it is alleged that a controlled substance analog was involved, the following definition of controlled substance analog should be charged}

A "controlled substance analog" is a substance that (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 dangerous substance.⁴

³Most indictments containing a drug induced death count will also include a count for the predicate offense of manufacturing or distributing the drug. Therefore, the jury may well have been instructed beforehand on the elements of manufacturing or distributing a CDS. Under these circumstances, it will probably be sufficient to direct the jury's attention to the previously given definition of these terms and to direct them to utilize that definition in deciding this count. See State v. Maldonado, 137 N.J. 536, 577 (1994) (trial court instructed jury: "You will rely upon the law that I have referred to before when I charged to you the law that applies to a distribution of cocaine", but then went on to "remind" the jury of the definition of distribution.) For the sake of completeness and because the court may wish to reinforce the definition of these terms, this model charge incorporates the full definition of the elements of manufacturing and distributing CDS.

⁴N.J.S.A. 2C:35-2.

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In this case, the indictment alleges that the defendant {manufactured}, {distributed} or {dispensed} _____ which is an analog of _____, which is a Schedule I or II controlled dangerous substance. Thus, to establish this part of the first element, the State must prove beyond a reasonable doubt that _____ has a substantially similar chemical structure to the dangerous substance _____, and that _____ was specifically designed to produce an effect substantially similar to the controlled dangerous substance _____, which is a Schedule I or II controlled dangerous substance.

**{If the indictment alleges the defendant
manufactured the CDS, charge the following
definition of manufacture}**

“Manufacture” means the production, preparation, propagation, compounding, conversion or processing of {insert appropriate substance} either directly or by extraction from substances of 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 container, except that this term does not include the preparation or 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.⁵

⁵N.J.S.A. 2C:35-2.

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.⁶

{If the indictment alleges that the defendant distributed the CDS charge the following definition of distribution.}⁷

With respect to the first element, to “distribute” means the transfer, actual, constructive or attempted, from one person to another of {insert appropriate substance}.⁸ It is not necessary that the drugs be transferred in exchange for payment or promise of payment of money or anything of value.⁹

In regard to the second element, the State must prove beyond a reasonable doubt that the defendant acted knowingly or purposefully in {manufacturing}, {distributing}, or {dispensing} the {insert appropriate substance}.

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 (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

⁶Ibid.

⁷See footnote 3, supra.

⁸This definition is taken from the definitions of “distribute” and “deliver” set forth in N.J.S.A. 2C:35-2.

⁹State v. Heitzman, 209 N.J. Super. 617, 621 (App. Div. 1986), aff’d 107 N.J. 603 (1987).

certain that (his/her) conduct will cause such a result. “Knowing”, “with knowledge” or equivalent terms have the same meaning.¹⁰

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) believes or hopes that they exist. “With purpose,” “designed”, “with design” or equivalent terms have the same meaning.¹¹

Remember that 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 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.

In regard to the third element, the State must prove beyond a reasonable doubt, as I have said, that {insert name of alleged victim} injected, inhaled, or ingested the {insert appropriate substance} {manufactured}, {distributed}, or {dispensed} by the defendant.

The fourth element is that {insert name of alleged victim} died as a result of injecting, inhaling, or ingesting the {insert appropriate substance} {manufactured}, {distributed}, or {dispensed} by the defendant. To prove this element, the State must prove that the defendant’s act of {manufacturing}, {distributing}, or {dispensing} the {insert appropriate substance} caused {insert name of alleged victim}’s death. In order for the State to prove this element, the State

¹⁰N.J.S.A. 2C:2-2b(2).

¹¹N.J.S.A. 2C:2-2b(1).

must prove, beyond a reasonable doubt, the following:

First, the State must prove that the injection, inhalation or ingestion of the {insert appropriate substance} is an antecedent, that is a preceding act, but for which the death would not have occurred; in other words, that the death would not have occurred without the injection, inhalation, or ingestion of the {insert appropriate substance}.

Second, the State must prove that the death was not too remote in its occurrence as to have a just bearing on defendant's liability, and,

Third, the State must prove that the death was not too dependent upon conduct¹² of another person which was unrelated to the {injection}, {inhalation}, {ingestion} of the {insert appropriate substance} or to its effect as to have a just bearing on the defendant's liability.

In determining whether the death was not too remote or not too dependent upon the conduct of another person, you should consider, among all other factors suggested by the evidence¹³, whether causes other than the {injection}, {ingestion}, {inhalation} of the {insert appropriate substance} contributed to the death, and if so, then the number and nature of such cause or causes.¹⁴ You should also consider how drug-induced deaths normally occur in comparison with how this death actually occurred,¹⁵ or, in other words, whether the State has proven beyond a reasonable doubt that the death did not occur in such an unusual manner that it would be unjust to find the defendant responsible for the death.¹⁶ You should also consider, if

¹²In Cannel, Criminal Code Annotated, at p. 681 (1996-1997 ed), N.J.S.A. 2C:35-9b2(b) is erroneously reproduced to read "too dependent upon control of another." (emphasis added). The correct term is conduct not control. See West, New Jersey Statutes Annotated, 2C:35-9b2(b) (1995), see also State v. Maldonado, supra, 137 N.J. at 544 and the 1987 legislative commentary to N.J.S.A. 2C:35-9, which is reprinted in Cannel, supra, at 683.

¹³State v. Maldonado, supra, at 570.

¹⁴Id. at 565.

¹⁵Id. at 570.

¹⁶Id. at 566.

you find them relevant, the length of time between defendant's act of {manufacturing}, {distributing}, {dispensing} the {insert appropriate substance} and the place of {insert name of decedent}'s death.

The fact that {insert alleged victim's name} contributed to (his/her) own death by (his/her) purposeful, knowing, reckless, or negligent injection, inhalation, or ingestion of the {appropriate substance}, or by (his/her) consenting to the administration of {insert appropriate substance} by another is not a defense to prosecution for this offense.¹⁷ Thus, {insert name of alleged victim}'s conduct of injecting, inhaling, or ingesting the {insert appropriate substance} or consenting to its administration by another does not make the death too remote or too dependent upon the conduct of another to have a just bearing on defendant's liability.¹⁸

{At this point in the charge the Court should explain the relationship of the remoteness issue to the facts of the case, if it has not already done so. If the State's and defendant's versions of the facts differ, the charge should include appropriate instructions with respect to each party's position}.¹⁹

In summary, in order for the State to prove the defendant's guilt under this (count of the) indictment, the State must prove four elements:

1. That the defendant {manufactured}, {distributed}, or {dispensed} {insert appropriate substance};

¹⁷N.J.S.A. 2C:35-9c

¹⁸See Cannel, Criminal Code Annotated, at pp. 682-684 (1996-1997 ed); note, however, that State v. Maldonado, supra, indicates in dictum that coerced or unknowing consumption of drugs may be exculpatory. 137 N.J. at 572, n.5.

¹⁹State v. Maldonado, supra, 137 N.J. at 576.

2. That the defendant did so knowingly or purposefully;
3. That {insert name of alleged victim} injected, inhaled, or ingested the {insert appropriate substance}, and
4. That {insert name of alleged victim} died as a result of injecting, inhaling, or ingesting the {insert appropriate substance} {manufactured}, {distributed}, or {dispensed} by the defendant. In other words, that the defendant's act of {manufacturing}, {distributing}, or {dispensing} the {insert appropriate substance} caused the victim's death; that is, but for {insert name of alleged victim}'s injection, inhalation, or ingestion of the {insert appropriate substance}, (he/she) would not have died, and the death was not too remote in its occurrence or too dependent upon the conduct of another person which was unrelated to the injection, inhalation or ingestion of the {insert appropriate substance} or its effect as to have a just bearing on the defendant's liability.

If you find that the State has proven all of these elements beyond a reasonable doubt then you must find the defendant guilty. On the other hand, if you find the State has failed to prove beyond a reasonable doubt any of these elements, then you must find the defendant not guilty.