

West's New Mexico Statutes Annotated

State Court Rules

14. Uniform Jury Instructions--Criminal

Chapter 31. Controlled Substances

Part A. Possession, Distribution and Possession with Intent to Distribute

NMRA, Crim. UJI 14-3102

UJI 14-3102. CONTROLLED SUBSTANCE; POSSESSION; ESSENTIAL ELEMENTS¹

Currentness

For you to find the defendant guilty of possession of _____² [as charged in Count _____]³, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant had _____² in his possession⁴;
2. The defendant knew it was _____² [or believed it to be _____²]⁵ [or believed it to be some drug or other substance the possession of which is regulated or prohibited by law];
3. This happened in New Mexico on or about the ___ day of _____, _____.

USE NOTES

Editors' Notes

COMMITTEE COMMENTARY

See Sections 30-31-23B(4) and 30-31-23B(5) NMSA 1978.

This instruction may be used for either the crime of possession of a narcotic drug from Schedule I or II or possession of any other controlled substance from Schedules I through IV. Knowledge of the defendant is an essential element of the crime. Therefore, if the evidence supports the theory that the defendant believed the substance to be other than that charged, the applicable alternative must be given. Note, however, that accurate knowledge of the identity of the controlled substance is not controlling; the crime is complete if the defendant believed he possessed *some* controlled substance.

In *People v. James*, 38 Ill.App.3d 594, 348 N.E.2d 295 (1976), appeal dismissed, 429 U.S. 1082, 97 S.Ct. 1087, 51 L.Ed.2d 528 (1977), the defendant appealed his conviction of selling LSD on the grounds that he believed the substance to be mescaline. The court affirmed the conviction and stated "If the accused knows he is delivering a controlled substance, he commits the criminal act specified..." See also *People v. Garringer*, 48 Cal.App.3d 827, 121 Cal.Rptr. 922 (1975) (it is no defense to the charge of possession of phenobarbital that the defendant believed he possessed secobarbital); *State v. Barr*, 237 N.W.2d 888 (N.D.1976); *United States v. Davis*, 501 F.2d 1344 (9th Cir.1974), and *United States v. Jewell*, 532 F.2d 697 (9th Cir.), cert. denied, 426 U.S. 951, 96 S.Ct. 3173, 49 L.Ed.2d 1188 (1976). Compare *United States v. Moser*, 509 F.2d

1089 (7th Cir.1975) (jury could infer that defendant knew drug was LSD even though defendant told buyer defendant was selling psilocybin and mescaline); but compare State v. Pedro, 83 N.M. 212, 490 P.2d 470 (Ct.App.1971) (defendant thought the bag of anhalonium [peyote] was “medicine,” and court found no evidence of intent to possess peyote).

Note that this crime requires only a general criminal intent. Therefore, Instruction 14-141 must be given.

This instruction requires the state to prove only that the defendant possessed a substance which is listed in one of the controlled substances schedules. See State v. Atencio, 85 N.M. 484, 513 P.2d 1266 (Ct.App.1973), cert. denied, 85 N.M. 483, 513 P.2d 1265 (1973). For example, heroin is a narcotic drug by statutory definition and proof that the defendant possessed heroin is sufficient without evidence that heroin is a narcotic drug. See State v. Romero, 86 N.M. 99, 519 P.2d 1180 (Ct.App.1974).

The amount of the substance is not relevant to the charge of possession of a controlled substance. See State v. Grijalva, 85 N.M. 127, 509 P.2d 894 (Ct.App.1973).

For additional discussion of the requirement of knowledge, and a discussion of exceptions and exemptions as a defense, see commentary to Instruction 14-3101.

Notes of Decisions (1)

Footnotes

- 1
This instruction is appropriate for possession cases other than possession of marijuana.
- 2
Identify the substance.
- 3
Insert the count number if more than one count is charged.
- 4
UJI 14-3130, the definition of possession in controlled substance cases, should be given if possession is in issue.
- 5
Use applicable alternative or alternatives if there is evidence that the defendant believed the substance to be some controlled substance other than that charged.

NMRA, Crim. UJI 14-3102, NM R CR UJI 14-3102

State court rules are current with amendments received through August 1, 2017.

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