

KENNETH VERCAMMEN & ASSOCIATES, PC
ATTORNEY AT LAW

2053 Woodbridge Ave.
Edison, NJ 08817
(Phone) 732-572-0500
(Fax) 732-572-0030

website: www.njlaws.com

D

CONSTRUCTIVE POSSESSION OF DRUGS IN A CRIMINAL CASE

"For this offense the state must prove three material elements. First, it must be proved that the item is a controlled dangerous substance. Second, it must be proved that defendant either obtained or possessed the substance. Third it must be proved that defendant acted knowingly or intentionally." 33 N.J. Practice §521 p.475.

The state must prove that the defendant acted knowingly or intentionally. The state must prove that defendant knew the nature and character of the item, and it must prove that James's purpose in possessing the substance was to distribute it. 33 N.J. Practice §520 p.471 (1982).

Possession is the intentional control of an item accompanied by an awareness of its character. Constructive possession is when the defendant is aware of the substance and has an intention to exercise control over the substance. State v. Brown, 67 N.J. Super. 450, 455, 171 A. 2d 15, 18 (App. Div. 1961).

Joint possession is when people knowingly share control over the article. State v. Rajnai, 132 N.J. Super. 530, 536, 334 A. 2d 364, 367 (App. Div. 1975).

It is an offense to knowingly or intentionally obtain or possess a controlled dangerous substance. N.J.S.A. 24:21-20a. "The state must prove knowledge or intent on the part of the defendant. Knowledge means that the defendant was aware of the existence of the object and was aware of its character. Intent means it was the defendant's purpose to obtain or possess the item while being aware of its character. State v. McMenamin, 133 N.J. Super. 521, 524, 337 A. 2d 630, 631 (App. Div. 1975); State v. Brown, 67 N.J. Super. 450, 455, 171 A. 2d 15, 18 (App. Div. 1961).

Mere presence in a premises with other persons where controlled dangerous substances are found is not sufficient to justify an inference that a particular defendant was in sole or joint possession of the substance. State v. Sapp, 71 N.J. 476, 477, 366 A. 2d 334, 335 (1976),

overruled on other grounds by *State v. Brown*, 80 N.J. 587, 404 A. 2d 1111 (1979).

The state must prove that the defendant was aware of the character of the substance to prove that the defendant acted with knowledge. *State v. Reed*, 34 N.J. 554, 557, 170 A. 2d 419, 421 (1961); *State v. Rajnai*, 132 N.J. Super. 530, 536, 334 A. 2d 364, 367 (App. Div. 1975).