

25.3 SALE, PURCHASE, DELIVERY, OR POSSESSION IN EXCESS OF TEN GRAMS OF A CONTROLLED SUBSTANCE

§ 893.13(1)(b), Fla. Stat.; § 893.13(2)(b), Fla. Stat.; and § 893.13(6)(c), Fla. Stat.

Certain drugs and chemical substances are by law known as “controlled substances.”
(Specific substance alleged) **is a controlled substance.**

To prove the crime of (crime charged), the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) [sold] [purchased] [delivered] [or] [possessed] [a certain substance] [a mixture] [a combination of substances].
2. The [substance] [mixture] [combination of substances] contained (specific substance alleged).
3. The [substance] [mixture] [combination of substances] weighed more than 10 grams.
4. (Defendant) had knowledge of the presence of the substance.

Definitions. Give as applicable.

Sell.

“Sell” means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

Deliver. § 893.02(6), Fla. Stat.

“Deliver” or “delivery” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Mixture. § 893.02(16), Fla. Stat.

“Mixture” means any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal.

Possession.

To prove (defendant) “possessed a substance,” the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.

Give if applicable.

Control can be exercised over a substance whether the substance is carried on a person, near a person, or in a completely separate location. Mere proximity to a substance does not establish that the person intentionally exercised control over the substance in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the substance or the present ability to direct its control by another.

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to (crime charged). You may but are not required to infer that (defendant) was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.

Give if applicable. See McMillon v. State, 813 So. 2d 56 (Fla. 2002).

You may but are not required to infer that a person who sells a controlled substance knows of its illicit nature.

If you are convinced beyond a reasonable doubt that (defendant) knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of (crime charged).

If you have a reasonable doubt on the question of whether (defendant) knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of (crime charged).

Lesser Included Offenses

SALE, PURCHASE, DELIVERY, OR POSSESSION IN EXCESS OF 10 GRAMS — 893.13(1)(b), (2)(b), and (6)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Sale, purchase, or delivery of controlled substance if sale, purchase, or delivery is charged		893.13(1)(a) and (2)(a)	25.2
*Possession of a controlled substance, if possession is charged		893.13(6)	25.7
	Attempt, except when delivery is charged	777.04(1)	5.1

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of Purchase or Delivery of a Controlled Substance. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

There is no crime of Attempted Delivery because the definition of “delivery” in § 893.03(6), Fla. Stat., includes the attempt to transfer from one person to another.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1997 [697 So. 2d 84], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and

2019.