

25.5 BRINGING A CONTROLLED SUBSTANCE INTO THE STATE

§ 893.13(5), 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 Bringing a Controlled Substance Into the State, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) brought a substance into Florida.**
- 2. The substance was (specific substance alleged).**
- 3. (Defendant) had knowledge of the presence of the 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 Bringing a Controlled Substance Into the State. 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.

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.

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 Bringing a Controlled Substance Into the State.

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 Bringing a Controlled Substance Into the State.

Lesser Included Offenses

BRINGING A CONTROLLED SUBSTANCE INTO THE STATE — 893.13(5)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*None			
	Attempt	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 Bringing a Controlled Substance into the State. 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).

Starting in 2014, the Legislature passed laws pertaining to “medical cannabis” or “low-THC cannabis,” which is excluded from the definition of “cannabis” in § 893.02(3), Fla. Stat.; is defined in § 381.986(1), Fla. Stat.; and must be manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with § 381.986, Fla. Stat. A special instruction will be necessary in cases where a defendant relies on a cannabis-related prescription defense.

This instruction was adopted in 1981 and amended in 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.