

25.8 OBTAINING A CONTROLLED SUBSTANCE BY FRAUD, ETC.

§ 893.13(7)(a)9., 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 Obtaining a Controlled Substance by [Misrepresentation] [Fraud] [Forgery] [Deception] [Subterfuge], the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) [acquired or obtained] [attempted to acquire or obtain] possession of a certain substance.**
- 2. The substance was (specific substance alleged).**
- 3. (Defendant) [acquired or obtained] [attempted to acquire or obtain] the substance by [misrepresentation] [fraud] [forgery] [deception] [subterfuge].**

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 the crime of Obtaining a Controlled Substance by [Misrepresentation] [Fraud] [Forgery] [Deception] [Subterfuge].

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 Obtaining a Controlled Substance by [Misrepresentation] [Fraud] [Forgery] [Deception] [Subterfuge].

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 Obtaining a Controlled Substance by [Misrepresentation] [Fraud] [Forgery] [Deception] [Subterfuge].

Lesser Included Offenses

*No lesser included offenses have been identified for this offense.

Comments

*It is unclear if the courts will determine that a person charged with Obtaining a Controlled Substance by Fraud, etc. is necessarily charged with [Attempted] Possession of a Controlled Substance.

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 1989 [543 So. 2d 1205], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and 2019.