

CONSPIRACY TO VIOLATE THE DRUG LAWS

(G.L. c. 94C, § 40)

[A conspiracy charge can only be tried along with the substantive offense if the defendant moves for joinder Mass. R. Crim. P. 9(e)]

The defendant is charged with conspiring to violate the controlled substance laws, namely, the (distribution) (manufacturing) (possession) of [substance]. I instruct you that (distributing) (manufacturing) (possessing) [substance] is a violation of the controlled substance laws.

In order to prove the defendant guilty of this offense, the Commonwealth must prove the following (three) things beyond a reasonable doubt:

***First:* That the defendant joined in an agreement or plan with one or more other persons;**

***Second:* That the purposes of the agreement or plan was to (distribute) (manufacture) (possess) [substance]; (and)**

***Third:* that the defendant joined the conspiracy knowing the plan was unlawful but intending to help carry it out.**

In order to prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant agreed with at least one other person to (distribute) (manufacture) (possess) [substance]. The crime is the agreement to (distribute) (manufacture) (possess) [substance]. It is not necessary that the conspirators formulated a formal agreement among themselves, or that they agreed on every detail of the conspiracy, or even that they met together. But the Commonwealth must prove that there was a joint plan among them.

In order to prove the second element, the Commonwealth must prove beyond a reasonable doubt that the purpose of the conspiracy was to (distribute) (manufacture) (possess) [substance].

[Distribution] The term “distribute” means to deliver something to another person. It is irrelevant whether any money or other compensation is involved. To distribute is to transfer of something to another.

[Manufacturing] The term “manufacture” means to (produce) (prepare) (propagate) (compound) (convert) (process) a controlled substance by extraction from substance of natural

origin or independently by means of chemical synthesis

including labeling or relabeling its container.

[Possession] What does it mean to “possess” something? A person “possesses” something if he (she) has direct physical control or custody of it at a given time. A person also “possesses” an object without physical custody if he (she) has knowledge of the object, the ability to exercise control over that object, either directly or through another person, and the intent to exercise control over the object.

In order to prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant joined the conspiracy knowing the plan was unlawful but intending to help carry it out. It does not matter whether the plan was successful or not, or whether any steps were taken to carry out the plan. But the Commonwealth must prove that the defendant knowingly intentionally and voluntarily joined in that plan.

It is not always possible to prove a conspiracy by direct evidence. The law allows you to consider both direct and circumstantial evidence to decide whether a conspiracy existed and whether the defendant was a participant in it. However, remember

that evidence that the defendant knew about the conspiracy or associated with conspirators is not alone sufficient to prove guilt.

You must decide based on all the evidence and any reasonable inferences you choose to draw from the evidence, whether there was a conspiracy and whether the defendant actually joined in the conspiracy as something that he (she) wished to bring about.