

Confidential Relationship

A confidential relationship exists whenever one person places [his][her] trust and confidence in the integrity and fidelity of another, who voluntarily assumes the relationship. A confidential relationship is something similar to a business agency, professional relationship, or family tie that induces the trusting person to relax the care and vigilance [he][she] would ordinarily exercise.

A person who voluntarily assumes a confidential relationship becomes a trustee with respect to the affairs of the other person. The other person is the beneficiary of the confidential relationship.

Mullin v. Pendlay, 2022 ND 205, ¶ 12, 982 N.W.2d 330

Note: Additional instructions may be required to instruct the jury on the effect of a positive finding. See generally *Paulson v. Meinke*, 389 NW2d 798 (ND 1986); *Bourgeois v. Montana-Dakota Utils. Co.*, 466 NW2d 813 (ND 1991).

**Distributing a Controlled Substance
Death or Injury (Overdose)**

A person who willfully [delivers a controlled substance] [supplies another to [deliver] [consume] a controlled substance] is guilty of causing Death or Injury by Distributing a Controlled Substance if an individual [dies] [is injured] from overdosing after consuming a portion of that controlled substance.

ESSENTIAL ELEMENTS OF THE OFFENSE

The State's burden of proof is satisfied if the evidence shows beyond a reasonable doubt, the following essential elements:

- 1) On or about [month] [day] [year] in [County], North Dakota;
- 2) The Defendant, _____;
- 3) Willfully [delivered a controlled substance] [supplied another to [deliver] [consume] a controlled substance];
- 4) An individual [died] [was injured] from overdosing after consuming a portion of that controlled substance;
- 5) The Defendant [did not supply or administer a controlled substance as part of a medical procedure] [was not in a lawful position to dispense a medication prescription]; and
- 6) The Defendant is not immune from criminal prosecution.

DEFINITIONS

[Insert relevant definitions from NDCC 12.1-02-02, 19-03.1-22.6]

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NDCC 09-03.1-22.6(2), 09-03.1-22.6(4), 19-03.1-23.4

NOTE: Additional information about proof and defenses is included in NDCC 19-03.1-22.6.

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NDJI-CRIMINAL

K - 5.30

(2024 – reviewed, only title changed)

Other Acts or Offenses

For the purpose of showing [motive] [intent] [identity] [scheme or plan] [absence of mistake or accident] with respect to the offense charged, the Court received evidence of other acts or offenses committed by the Defendant. Before considering evidence of other acts or offenses for this purpose, you must first find beyond a reasonable doubt that the Defendant committed the acts constituting the offense charged.

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State v. Ramsey, 2005 ND 42, 692 NW2d 498

NOTE: Evidence of similar acts with third persons is excluded in a sex offense case. *State v. Flath*, 237 NW 792 (ND 1931).

Evidence of similar acts with third persons is received in embezzlement cases. *State v. Stevens*, 238 NW2d 251 (ND 1975); *State v. Gammons*, 256 NW 163 (ND 1934); *State v. Heaton*, 217 NW 531 (ND 1927).

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These acts are only to be considered by you as evidence – if at all – of opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. They are not to be considered as evidence of guilt on the charge NAME is facing.

Criminal Mischief

A person who willfully [tamper with tangible property of another person so as to endanger person or property] [damages tangible property of another person] [while engaging in a riot] is guilty of Criminal Mischief.

ESSENTIAL ELEMENTS OF OFFENSE

The State's burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:

1) On or about [month] [day] [year], in [County], North Dakota, the Defendant, _____, willfully [tampered with _____, tangible property of _____, so as to endanger persons or property] [damaged _____, tangible property of _____].

[2) The Defendant intentionally caused pecuniary loss in excess of ten thousand dollars.]

[3) The Defendant [intentionally caused pecuniary loss in excess of two thousand dollars] [damaged tangible property of another by means of an explosive or destructive device] [committed the offense while engaged in a riot].]

[4) The Defendant [recklessly caused pecuniary loss in excess of two thousand dollars] [intentionally caused pecuniary loss of one hundred dollars or more].]

DEFINITIONS

[Insert relevant definitions. NDCC 12.1-01-04, 12.1-02-02, 12.1-25-01]

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NDCC 12.1-21-05

NOTE: Paragraph 2 should be used if a class B felony is being charged; paragraph 3 should be used if a class C felony is being charged; paragraph 4 should be used if a class A misdemeanor is charged; otherwise the offense is a class B misdemeanor.

**[Manufacture] [Deliver] [Possess With Intent to Manufacture] [Possess
With Intent to Deliver] Controlled Substance While Possessing a Firearm**

A person who willfully [manufactures] [delivers] [possesses with intent to manufacture] [possesses with intent to deliver] a controlled substance and is in actual possession of a firearm at the time of the offense is guilty of [manufacturing] [delivering] [possessing with intent to manufacture] [possessing with intent to deliver] a controlled substance while possessing a firearm.

ESSENTIAL ELEMENTS OF THE OFFENSE

The State's burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:

- 1) On or about [month] [day] [year], in [County], North Dakota,
- 2) The Defendant, _____ ;
- 3) Willfully [manufactured] [delivered] [possessed with intent to manufacture] [possessed with intent to deliver] a controlled substance, _____ ; and
- 4) Had a firearm in [his] [her] actual possession at the time of the offense.

DEFINITIONS

[Insert relevant definitions. NDCC 12.1-02-02, 19-03.1-01]

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NDCC 19-03.1-23.1(1)(d)

NOTE: The degree of the offense depends on the designation of the offense under 19-03.1-23. See NDCC 19-03.1-23.1(2).

The definition for actual possession in K - 5.36(1) and (3) should be given with this instruction. See *In Interest of K.S.*, 500 NW2d 603, 606 (ND 1993).