

1417 MOLOTOV COCKTAILS¹ (FIREBOMBS): POSSESSION² — § 943.06**Statutory Definition of the Crime**

Section 943.06 of the Criminal Code of Wisconsin is violated by one who possesses a firebomb.³

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant possessed an object.

"Possessed" means that the defendant knowingly⁴ had the object under (his) (her) actual physical control.⁵

2. The object was a firebomb.

"Firebomb" means a breakable container containing a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less, having a wick or similar device capable of being ignited. The term "firebomb" does not mean a device commercially manufactured primarily for the purpose of illumination.⁶

Deciding About Knowledge

You cannot look into a person's mind to find knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1417 was originally published in 1974 and revised in 1987 and 1995. This revision was approved by the Committee in December 2007.

1. The statutory title for this offense uses the term "molotov cocktail," though that term is not used elsewhere in the statute. The American Heritage Dictionary provides the following definition:

Molotov cocktail: A makeshift bomb made of a breakable container filled with flammable liquid and provided with a usually rag wick that is lighted just before being hurled.

It is named after Vyacheslav Mikhailovich Molotov (1890 - 1986), a Soviet politician who was head of the Council of People's commissars (1930-41) and foreign minister (1939-49 and 1953-56).

2. Section 943.06(2) applies to whoever "possesses, manufactures, sells, offers for sale, gives or transfers a firebomb." This instruction is drafted for a case involving "possession." Wis JI-Criminal 1418 is drafted for cases involving the other alternatives.

3. Subsection (3) of § 943.06 provides an exception for authorized possession of a firebomb by a member of the armed services, a fireman, or a law enforcement officer.

4. Generally, § 943.06 appears to be a "strict liability" statute, and the presence or absence of criminal intent or knowledge on the part of the defendant is immaterial. See Wis JI-Criminal 1418, note 2. Inherent in the legal definition of "possession," however, is the element of knowing or conscious possession. See Schwartz v. State, 192 Wis. 414, 418, 212 N.W. 664 (1927); Doscher v. State, 194 Wis. 67, 69, 214 N.W. 359 (1927). Knowing or conscious possession is accordingly included as an element that must be alleged and proved by the state, notwithstanding the "strict liability" interpretation given § 943.06 in Wis JI-Criminal 1418.

5. The definition of "possess" is that found in Wis JI-Criminal 920 and requires "actual physical control." That instruction also contains the following optional paragraphs for use where the object is not in the physical possession of the defendant or where possession is shared with another:

[An item is (also) in a person's possession if it is in an area over which the person has control and the person intends to exercise control over the item.]

[It is not required that a person own an item in order to possess it. What is required is that the person exercise control over the item.]

[Possession may be shared with another person. If a person exercises control over an item, that item is in his possession, even though another person may also have similar control.]

See the Comment to Wis JI-Criminal 920 for a discussion of various issues relating to "possession" in criminal cases, including so-called constructive possession.

6. This is the definition provided in § 943.06(1).