

CONSTRUCTIVE POSSESSION

Jury Instruction 4.16

Possession

[1] Possession may be actual or constructive. A person has actual possession when he has immediate and exclusive control over a thing. A person has constructive possession when he lacks actual possession of a thing but he has both the power and the intention to exercise control over a thing [either directly or through another person].

[2] If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession.

To sustain a conviction on the basis of constructive possession of a controlled substance, it must be shown that defendant, although not having personal, physical dominion, knows of the presence of the substance and has the intent and capability to maintain control and possession of it. Thus, defendant must be shown to have exclusive control of the area where the controlled substance was located.

People v. Roundtree, 135 Ill. App. 3d 1075, 1080, 482 N.E.2d 693, 698 (1985)

Actual possession is proved by testimony that the defendant exercised some form of dominion over the firearm, such as that he had it on his person, tried to conceal it, or was seen to discard it. Id. The State must prove the defendant exercised immediate and exclusive dominion or control over the firearm, but it is not required to show personal touching of the firearm.

People v. Daniels, 2025 IL App (1st) 230823, ¶ 19

Possession of a firearm may be actual or constructive. A person has actual possession when he has immediate and exclusive control over an item; actual possession does not require “present personal touching” of that item. *Id.* A person has constructive possession when he lacks actual possession but has the intent and capability to exercise control over the item

People v. Davis, 2023 IL App (1st) 231856, ¶ 22, 243 N.E.3d 877, 884

Because the firearm was not found on defendant's person, constructive possession, as opposed to actual possession, is at issue.

Possession may be actual or constructive and is often proved with circumstantial evidence. To prove constructive possession, the State must establish a defendant's knowledge and control of the contraband. “Knowledge may be inferred from the surrounding circumstances, such as the defendant's actions, declarations, or other conduct, which indicate that the defendant knew the contraband existed in the place where it was found.” To establish control, the State must prove that a defendant had “immediate and exclusive control” over the location where the contraband was recovered. Where control has been established, an inference of culpable knowledge can be drawn from the surrounding facts and circumstances.

People v. Mallett, 2023 IL App (1st) 220920, ¶ 64, 250 N.E.3d 949, 963, appeal denied, 226 N.E.3d 19 (Ill. 2024)
