

PHYSICAL AND CONSTRUCTIVE POSSESSION

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.

Thus a person may possess property in either of two ways:

First, the person may have physical possession of it by holding it in his or her hand or by carrying it in or on his or her body or person.

Second, the person may exercise dominion or control over property not in his or her physical possession. A person who exercises dominion or control over property not in his or her physical possession is said to have that property in his or her “constructive possession.”

Under our law, a person has tangible property in his or her constructive possession when that person exercises a level of control over the area in which the property is found, or over the person from whom the property is seized, sufficient to give him or her the ability to use or dispose of the property.¹

[NOTE: Add where appropriate:

Additionally, the law recognizes the possibility that two or more individuals can jointly have property in their constructive possession. Two or more persons have property in their joint constructive possession when they each exercise dominion or control over the property by a sufficient level of control over the area in which the property is found or over the person from whom the property is seized to give each of them the ability to use or dispose of the property.]²

¹See *People v Manini*, 79 NY2d 561, 573 (1992).

²See *People v. Tirado*, 38 NY2d 955 (1976).