

ACTUAL OR CONSTRUCTIVE POSSESSION

A person who, although not in actual possession, knowingly has the power and intent at a given time to exercise dominion or control over an object, either directly or through another person or persons, is then in constructive possession of it.

[More than one person can be in possession of an object if each knows of its presence and has the power and intent to control it.

[In the situation where the object is found in a place (such as a room or car) occupied by more than one person, you may not infer power and intent to exercise control over the object based solely on joint occupancy. Mere control over the place in which the object is found is not sufficient to establish constructive possession. Instead, in this situation, the government must prove some connection between the particular defendant and the object demonstrating the power and intent to exercise control over the object.]

Comment

“Constructive possession is established when a person, though lacking such physical custody, still has the power and intent to exercise control over the object.” *Henderson v. United States*, 135 S. Ct. 1780, 1784 (2015). In *United States v. Little*, 829 F.3d 1177, 1182 (10th Cir. 2016), the Tenth Circuit recognized that both the power and intent to exercise dominion or control over the object are essential. Prior to that, the Tenth Circuit considered constructive possession in a variety of circumstances. *United States v. Valadez-Gallegos*, 162 F.3d 1256, 1262 (10th Cir. 1998) (in joint occupancy case, government must show connection “individually linking the defendant to the contraband”); *United States v. McKissick*, 204 F.3d 1282, 1291 (10th Cir. 2000) (control of premises alone is insufficient); *United States v. Adkins*, 196 F.3d 1112, 1114-16 (10th Cir. 1999) (discussing “fleeting possession” instruction); see *United States v. Avery*, 295 F.3d 1158, 1177-81 (10th Cir. 2002) (discussing possession in various situations).