

The word “possess” means to exercise authority, dominion, or control over something. It is not necessarily the same as legal ownership. Proof of ownership is not required in order to establish possession.

The law recognizes different kinds of “possession.” It may be actual or constructive. Possession is considered to be “actual” when a person knowingly has direct physical control or authority over something at a given time. Possession is called “constructive” when a person, although not in actual possession, knowingly has both the power and intention at a given time to exercise dominion or control over something, whether directly or through another person.

Possession may also be sole or joint. If one person alone has actual or constructive possession of an object, then that person is said to have sole possession of that object. If two or more persons share either actual or constructive possession of an object, then those persons are said to have joint possession of that object.

It is sufficient if you find that Mr. Gouse possessed the firearm voluntarily and not by accident or mistake and that Mr. Gouse knew he possessed the firearm. I caution you, however, that mere proximity to a firearm or mere association with another person who exercises control over a firearm is insufficient to support a finding of possession.

Method of Assessing Evidence

Now that you know what it is that the government must prove and the standard of proof to be applied, the next question is how do you determine whether the government has proved these things beyond a reasonable doubt?

Obviously, you must make your determination solely from the evidence properly before you and from all reasonable and legitimate inferences to be drawn from that evidence.

The evidence that is properly before you consists of:

1. The testimony of the witnesses; and
2. The exhibits that I have admitted into evidence.

From that evidence, you may draw whatever conclusions are reasonable under the circumstances.

The evidence that is properly before you does not include:

1. Comments or statements by the attorneys;
2. Documents, photographs or other items which may have been referred to but have not been admitted into evidence; or
3. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.

Witnesses - Credibility - General Factors

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each.

In making that determination, there are a number of factors that you may consider:

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witness testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.
2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.