

104.41 ACTUAL - CONSTRUCTIVE POSSESSION.

Possession of a(n) [substance] [article] may be either actual or constructive. A person has actual possession of a(n) [substance] [article] if the person has it on the person, is aware of its presence, and (either alone or together with others), has both the power and intent to control its disposition or use.

A person has constructive possession of a(n) [substance] [article] if the person does not have it on the person but is aware of its presence, and has (either alone or together with others), both the power and intent to control its disposition or use. A person's awareness of the presence of the [substance] [article] and the person's power and intent to control its disposition or use may be shown by direct evidence or may be inferred from the circumstances.¹

NOTE WELL: Use the following paragraph to charge on constructive possession of a substance or article found in close physical proximity to the defendant.

[If you find beyond a reasonable doubt that a(n) [substance] [article] was found in close physical proximity to the defendant, that would be a circumstance from which, together with other circumstances, you may infer that the defendant was aware of the presence of the [substance] [article] and had the power and intent to control its disposition or use. However, the defendant's physical proximity, if any, to the [substance] [article] does not by itself permit an inference that the defendant was aware of its presence or had the power or intent to control its disposition or use. Such an inference may be drawn only from this and other circumstances which you find from the evidence beyond a reasonable doubt.]

NOTE WELL: Use the following paragraph to charge on constructive possession of a substance or article on

premises or in a place, e.g., a vehicle, not in close physical proximity to the defendant.

[If you find beyond a reasonable doubt that a(n) [substance] [article] was found [in] [on] [at] certain [premises] [place] and that the defendant exercised control over [those premises] [that place] whether or not the defendant owned [them] [it], this would be a circumstance from which you may infer that the defendant was aware of the presence of the [substance] [article] and had the power and intent to control its disposition or use.]

1. Where the doctrine of constructive possession involving exclusive or nonexclusive control is involved, see *State v. Thorpe*, 326 N.C. 451 (1990), *State v. Davis*, 325 N.C. 693 (1989), *State v. Brown*, 310 N.C. 563 (1984), and *State v. Harvey*, 281 N.C. 1 (1972).