

UNAUTHORIZED PRACTICE OF IMMIGRATION LAW
(N.J.S.A. 2C:21-31c)

Count ____ of the indictment charges the defendant with the offense of unlawfully retaining possession of an immigration-related document. The statute upon which this charge is based reads as follows:

Any person who knowingly retains possession of another person's immigration-related document for more than a reasonable time after the person who owns the document has submitted a written request for the document's return is guilty of a crime.

In order for you to find the defendant guilty of this crime, the State must prove beyond a reasonable doubt that:

- (1) the defendant possessed an "immigration-related document" of another person;
- (2) that the owner of the immigration-related document submitted a written request for the document's return; and
- (3) that the defendant knowingly retained possession of the "immigration-related document" for more than a reasonable time after the owner's written request for the document's return was made.

The first element which the State must prove beyond a reasonable doubt is that the defendant possessed an immigration-related document owned by another person. An "immigration-related document" means any birth certificate or marriage certificate, or any document issued by the government of the United States, any foreign country, any state, or any other public entity relating to a person's immigration or naturalization status.¹

The word "possess" as used in the criminal statutes signifies a knowing, intentional control of a designated thing, accompanied by a knowledge of its character. Thus, the person must know or be aware that he/she possesses or controls (that it is a _____).

This possession cannot merely be a passing control that is fleeting or uncertain in its nature. In other words, to "possess" within the meaning of the law, the defendant must knowingly procure or receive the item possessed or be aware of his/her control thereof for a

¹ N.J.S.A. 2C:21-31a(3).

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sufficient period of time to have been able to relinquish control if he/she chose to do so.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result.

Knowledge is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary, members of the jury, that the State produce witnesses to testify that an accused said he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and his/her conduct, and from all he/she said and did at the particular time and place, and from all of the surrounding circumstances.

A person may possess _____ (an item) even though it was not physically on his/her person at the time of the arrest if the person had in fact, at some time prior to his/her arrest, had control over it.

When we speak of possession, we mean a conscious, knowing possession. The law recognizes two kinds of possession: they are actual and constructive possession.

ACTUAL POSSESSION

A person is in actual possession of a particular article or thing when he/she knows what it is, that is, the person has knowledge of its character and knowingly has it on his/her person at a given time.

CONSTRUCTIVE POSSESSION

The law recognizes that possession may be constructive instead of actual. A person who, with knowledge of its character, knowingly has direct physical control over a thing, at a given time, is in actual possession of it. Constructive possession means possession in which the person does not physically have the property, but although not physically on one's person, he/she is

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aware of the presence of the property and is able to and has the intention to exercise control over it. A person who, although not in actual possession, has knowledge of its character, knowingly has both the power and the intention at a given time to exercise control over a thing, either directly or through another person or persons, is then in constructive possession of it.

JOINT POSSESSION

The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint; that is, if they knowingly share control over the article.

The second element which the State must prove beyond a reasonable doubt is that the person who owned the immigration-related document submitted a written request for the document's return.

The third element which the State must prove beyond a reasonable doubt is that the defendant knowingly retained possession of the immigration-related document for more than a reasonable time after the person who owned the document had submitted the written request for the document's return. I have already defined the term "knowing" for you. There is no fixed time period which determines what is a "reasonable time." In determining whether or not the defendant retained the immigration-related document for more than a reasonable time, you should consider the totality of the circumstances.

If you find that the State has proven every element of the crime beyond a reasonable doubt, then you must find the defendant guilty. If you find that the State has not proven every element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.