

INFERENCE OF PARTICIPATION IN THEFT ARISING FROM RECENT, EXCLUSIVE POSSESSION OF STOLEN PROPERTY¹

Note: The following charge should be included in the charge of the crime(s) to which it applies. It may be inserted after the portion of the charge which states the applicable definitions and before the listing of the elements of the crime(s).

Under our law, if the People prove beyond a reasonable doubt that the defendant was in exclusive possession of property recently stolen during a (specify the crime), and that there is no² innocent explanation for that possession, then you may, but are not required to, infer that the possession was guilty possession.

If you draw that inference, you must then decide whether or not the defendant's guilty possession was the result of his/her participation in the crime during which the property was stolen.

The terms "possess," "exclusive possession" and "recently stolen" have their own special meaning in our law. I will now give you the meaning of those terms.

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.³ EXCLUSIVE POSSESSION means possession had by one person alone, or by two or more persons who jointly possess the property exclusive of everyone else.⁴

Whether property has been RECENTLY STOLEN depends on such factors as: the nature of the property, whether it was stolen for retention or disposal, whether it was readily disposable, and the time period between the theft of the property and finding it in the possession of a person. For example, the longer the period between the crime and the time a person was in possession of the property, the less likely it is that any inference

may reasonably be drawn from the possession. On the other hand, the briefer the period between the crime and the possession, the more likely it is that an inference may reasonably be drawn from the possession.⁵

1. See *People v Galbo*, 218 N.Y. 283 (1916). This charge substitutes the terminology “no innocent explanation” for the *Galbo* “unexplained” or “falsely explained” terminology. The modification more appropriately conveys the criteria of the inference and lessens the implication of the privilege against compulsory self-incrimination.

2. If there was evidence putting forth an explanation for the possession, the court may here insert the word: believable.

3. See Penal Law § 10.00(8).

4. See *People v. Baskerville*, 60 N.Y.2d 374 (1983).

5. See *Id.*