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Criminal Law—Possession of Dangerous Weapons

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would seem to fall directly within the area that the section was designed to cover, and thus the broad interpretation given to the term "benevolent organization" by the Court of Appeals appears to be correct.

Possession of Dangerous Weapons

Convictions under section 1897 of the Penal Code for unlawful possession of firearms have been sustained where the possession was constructive as well as actual.¹⁴ *Possession*, as used in this section, has been construed to mean that which places the weapon within the accused's immediate control and reach and available for use if he so desires.¹⁵ It must also be a knowing and voluntary possession.¹⁶ Examples of how far the courts have gone in finding possession include the finding of a loaded pistol in the glove compartment of defendant's car¹⁷ and the finding of one lying on the back ledge of the auto.¹⁸

In the instant case,¹⁹ defendant was convicted of, *inter alia*, unlawful possession of a pistol which had been stolen and which was found in the luggage compartment of his wife's car, to which he had access. Defendant's claim was that he had recently purchased the pistol. The Court of Appeals held that since the pistol was not in the possession of its lawful owner, someone was guilty of unlawful possession, thereby establishing the crime by independent evidence. This fact, when coupled with the fact the defendant had access to the compartment where the gun was found, and his statement that he bought it were deemed sufficient to convict him of the crime. It further held that the trial court could have found that the weapon was within the immediate control and reach of the accused, available for unlawful use if he so desired.

This expansion of the concept of *possession* seems only a logical extension of prior law. Under the facts of the case, it would seem that any other decision would be contrary to all principles of reason and logic.

14. N. Y. PENAL LAW §1897(4). Any person . . . who shall have in his possession . . . any pistol, revolver or other firearm . . . without a written license therefor . . . shall be guilty of a misdemeanor, and if he has been previously convicted of any crime, he shall be guilty of a felony.

15. *People v. City Prison*, 154 App. Div. 413, 139 N. Y. Supp. 277 (1st Dep't 1913).

16. *People v. Persce*, 204 N. Y. 397, 97 N. E. 877 (1912).

17. *People v. Russo*, 278 App. Div. 98, 103 N. Y. S. 2d 603 (1st Dep't), *aff'd*, 303 N. Y. 673, 102 N. E. 2d 834 (1951); *People v. Evergood*, 74 N. Y. S. 2d 12 (Mag. Ct. 1947).

18. *People v. Russo*, 278 App. Div. 98, 103 N. Y. S. 2d 603 (1st Dep't), *aff'd*, 303 N. Y. 673, 102 N. E. 2d 834 (1951).

19. *People v. Spillman*, 309 N. Y. 295, 130 N. E. 2d 625 (1955). The court also dismissed a conviction for possession of burglar's tools, deciding that rubber gloves and a claw hammer, in and of themselves, are not burglar's instruments.