

## TEMPORARY AND LAWFUL POSSESSION

Under our law, in certain circumstances, the possession of a weapon may be innocent and not criminal. Innocent possession of a weapon is possession that is temporary and not for an unlawful purpose.<sup>1</sup>

A person has innocent possession of a weapon when he or she comes into possession of the weapon in an excusable manner and maintains possession, or intends to maintain possession, of the weapon only long enough to dispose of it safely.<sup>2</sup>

There is no single factor that by itself determines whether there was innocent possession. In making that determination, you may consider any evidence which establishes that the defendant had knowing possession of a weapon, the manner in which the weapon came into the defendant's possession, the length of time the weapon remained in his/her possession, whether the defendant had an intent to use the weapon unlawfully or to safely dispose of it, the defendant's opportunity, if any, to turn the weapon over to the police or other appropriate authority, and whether and how the defendant disposed of the weapon.<sup>3</sup>

The defendant is not required to prove that his possession of the weapon was innocent. Rather, the People are required to prove beyond a reasonable doubt both that the defendant knowingly possessed the weapon and that such possession was not innocent.

**Note:**

*The following should be added to the list of elements of the pertinent offense:*

and #. That the defendant's possession was not innocent.

1. See *People v. Almodovar*, 62 N.Y.2d 126 (1984); *People v. Williams*, 50 N.Y.2d 1043 (1980).
2. See *People v. LaPella*, 272 N.Y. 81 (1936)
3. See *People v. Almodovar*, *supra*.