

Unlawful possession of ammunition¹

DFT is charged with unlawfully possessing ammunition on [DATE].

To prove DFT guilty of this offense, the Commonwealth must prove four [five] elements beyond a reasonable doubt:

1. DFT knowingly possessed an object;
2. The object met the legal definition of “ammunition”;
3. DFT knew that the object was ammunition;² and
4. DFT did not have a valid license to carry a firearm or a valid firearms identification (FID) card.³

[*<If there is evidence that DFT was exempt from the FID card requirement:>*

5. DFT did not qualify for a statutory exemption from the requirement to have a license to carry a firearm or an FID card to possess ammunition.⁴]

¹ G.L. c. 269, § 10(h)(1) states: “Whoever ... possesses ... ammunition without complying with the provisions of [G.L. c. 140, § 129C (FID card)] shall be punished.”

² “[K]nowledge that what one possesses is ammunition is an element of possession of ammunition.” *Commonwealth v. Mitchell*, 95 Mass. App. Ct. 406, 421 (2019), citing *Commonwealth v. Johnson*, 461 Mass. 44, 53 (2011).

³ In *Commonwealth v. Guardado*, 491 Mass. 666, 686–690 (2023), the SJC held that, in light of the Supreme Court’s recognition that the Second Amendment protects the right of an ordinary, law-abiding adult to carry a firearm in public, *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2122, 2134 (2022), the offense of unlawful ammunition possession requires the Commonwealth to prove lack of licensure. *Guardado*, 491 Mass. at 692–693.

A person may lawfully possess ammunition with either a license to carry a firearm or an FID card. See G.L. c. 269, § 10(a) (“No person having in effect a license to carry firearms for any purpose, issued under [G.L. c. 140, §§ 131 or 131F] shall be deemed to be in violation of [G.L. c. 269, § 10]”); G.L. c. 269, § 10(h)(1) (criminalizing possession of ammunition without an FID card). Therefore, the Commonwealth must prove that the defendant did not have a license to carry and also did not have an FID card.

⁴ Even after *Guardado*, exemptions to the FID requirement for certain persons and activities, under G.L. c. 140, § 129C, remain affirmative defenses. See *Guardado*, 491 Mass. at 685–686 (equating § 10(a)(4) exemptions for unlicensed firearms possession, under G.L. c. 140, §§ 129C

< If the judge has previously instructed on possession of a firearm, they may wish to edit the following instructions to minimize repetition.>

First, the Commonwealth must prove that DFT knowingly possessed the object in question. *< If a further instruction on knowledge is appropriate, the judge may use the language in the Supplemental Instruction on "knowingly" toward the end of the model instruction for firearm possession.*

> A person can possess an object by having direct physical control over it. For example, you possess whatever you have in your pocket. [*< If there is evidence of constructive possession:>* A person can also possess an object if the person:

- knows of the object;
- has the ability to exercise control over it, either directly or through another person; and
- has the intent to exercise control over it.

For example, under the law, you possess items that you keep in your dresser drawer at home.⁵]

You must determine whether DFT possessed the object in question from all of the facts and the reasonable inferences that you may draw from those facts. Merely being present near an object [*< add as appropriate:>* being associated with a person who controls an object or controls a place where an object is found, living in an apartment where an object is found, or being in a vehicle where an object is present] does not amount to possession. To find that someone possessed an object, you must find that the person knew of the object and had the ability and intent to exercise control over it.

and 131G, with affirmative defenses); *Commonwealth v. Harris*, 481 Mass. 767, 773 (2019) (treating exemption under G.L. c. 140, § 129C(h) for nonresidents traveling through Massachusetts with rifles, shotguns, and ammunition as affirmative defense).

⁵ If the case involves a firearm found in a dresser drawer, the judge should consider using a different example, to avoid an appearance of commenting on the evidence. Alternatives include "things kept in the glove compartment of your car or at a storage facility" or "I am in possession of my car keys, even though they are next door on my desk."

[<***Add if relevant:***> The possession does not have to be exclusive to one person. Someone can possess an item jointly with another person.⁶]

Second, the Commonwealth must prove that the object in question met the legal definition of ammunition. Ammunition is defined as cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun.⁷

Third, the Commonwealth must prove that DFT knew that the object was ammunition. When determining whether DFT knew that the object was ammunition, you may consider DFT's actions and words, all of the surrounding circumstances, and the reasonable inferences that you draw from the evidence. The Commonwealth does not have to prove that DFT knew the object met the legal definition of ammunition.

Fourth, the Commonwealth must prove that DFT did not have a valid license to carry a firearm or a firearm identification card at the time he possessed the ammunition.

[<***If there is evidence that defendant was exempt from licensing requirements, then add the following:***>

Fifth, the Commonwealth must prove that DFT did not qualify for a statutory exemption from the requirement to have a license to carry a firearm<**for possession in a home or office:** or an FID card.]

Supplemental Instruction on Ignorance of the Law

You have heard evidence that DFT did not know that they were required to have a license to carry or a firearm identification card before possessing ammunition. The Commonwealth does not have to prove that DFT knew that the law required them to have a license to carry or firearm

⁶ *Commonwealth v. Brzezinski*, 405 Mass. 401, 409 (1989).

⁷ G.L. c. 269, § 10(o).

identification card before possessing ammunition. For that reason, the evidence that DFT did not know of these requirements is not relevant to your deliberations and you should not discuss it at all during your deliberations.