

POSSESSION OF FIREWORKS

The defendant is charged with possession of fireworks. Section 39 of chapter 148 of our General Laws provides as follows:

**“Whoever shall have in his possession or under his control,
or whoever shall use or explode or cause to explode
any fireworks in violation of this section
shall be punished”**

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First: That the defendant (possessed) (had under his [her] control) (used) (exploded) (or) (caused to explode) an item;

Second: That the item meets the legal definition of “fireworks”; and

Third: That the defendant knew he (she) (possessed) (had under his [her] control) (used) (exploded) (or) (caused to explode) the fireworks.

Here the jury must be instructed on “Possession” (Instruction 3.220).

“Fireworks” are defined as any combustible or explosive composition or substance, or any combination of such compositions or substances, or

any other article which was prepared for the purpose of producing a visible or audible effect by combustion, explosion, detonation, or deflagration — which means to burn rapidly and give off intense heat and sparks — including (blank cartridges or toy cannons in which explosives are used) (the type of toy balloon which requires fire underneath to propel it) (firecrackers) (cherry bombs) (silver salutes) (M-80's)(torpedoes) (sky-rockets) (Roman candles) (sparklers) (rockets) (wheels) (colored fires) (fountains) (mines) (serpents) (other fireworks of like construction) (any fireworks containing any explosive or flammable compound) (or) (any tablets or other device containing any explosive substance).

The Commonwealth must prove beyond a reasonable doubt that the defendant knew he (she) (possessed) (had under his [her] control) (used) (exploded) (or) (caused to explode) these items, and that the defendant knew the items were fireworks.

Here the jury must be instructed on "Knowledge" (Instruction 3.140).