

Possess—Carry—Use

Summary of Substantive Differences Between Terms

	Possess (Includes Actual and Constructive Possession)	Carry	Use
Definitions	<p>“Actual possession” is physical custody of an object. “Constructive possession” is when a person, though lacking physical custody, still has the power and intent to exercise control over the object. <i>U.S. v. Scott</i>, 424 F.3d 421 (4th Cir. 2005); <i>Henderson v. U.S.</i>, 135 S.Ct. 1780 (2015).</p>	<p><u>Carrying</u> a firearm in the commission of a felony requires that the firearm both (1) be within easy reach or in defendant’s car and (2) have the potential of facilitating the commission of the underlying felony. <i>United States v. Pineda-Ortuno</i>, 952 F.2d 98 (5th Cir. 1992); <i>State v. Carter</i>, 156 VT. 437 (1991)</p>	<p><u>Use</u> means an <i>active employment</i> of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate offense. <i>Bailey v. U.S.</i>, 516 U.S. 137 (1995)</p>
Firearm in bag in trunk, substantial amount of unlawful drugs in front seat for transaction	Yes, defendant has dominion and control over firearm	Likely yes, firearm has potential to facilitate the drug transaction	No, defendant did not actively employ firearm. <i>Bailey</i> , 516 U.S. at 151.
Firearm in bag in trunk while defendant commits DUI	Yes, defendant has dominion and control over firearm	No, firearm has no connection to DUI	No, defendant did not actively employ firearm