Firearms - Defining Possession

_____ Alternatively, if you find that the defendant did not have physical possession of the firearm, but that he had both the power to exercise control over the firearm and the intention to exercise control over the firearm, you may find that the government has proven possession.

Possession of a firearm, however, cannot be found solely on the ground that the defendant was near or close to the weapon. Indeed, the mere presence of the defendant where a weapon may have been found does not, without more, establish that the defendant possessed the weapon. Likewise, mere knowledge by the defendant that a weapon was present does not, without more, establish that the defendant possessed the weapon. Nor can possession be found solely because the defendant associated with another person who did possess the firearm. These factors may, however, be considered by you, in connection with all of the evidence, in making your decision whether the defendant possessed the firearm.

Based on Sand, Instruction 35-48 and instructions given in *United States v. Lloyd*, Crim. No. AMD-97-0247 (D. Md.) (Maletz, J.) and *United States v. Lee*, Crim. No. 99-0389 (D. Md.) (Garbis, J.); *see also United States v. Blue*, 957 F.2d 106 (4th Cir. 1992).