

N.C.P.I. —CRIM.216.48A FELONIOUS POSSESSION OF STOLEN GOODS—STOLEN PURSUANT TO A BREAKING OR ENTERING OR WORTH MORE THAN \$1,000 (INCLUDING NON-FELONIOUS POSSESSION). FELONY, MISDEMEANOR. G.S. 14-71.1, 14-72(B)(1) AND (2).

NOTE WELL: Use this instruction only when the indictment alleges that the property was stolen. Use N.C.P.I.—Crim. 216-49A when the indictment alleges that the property was embezzled, taken by false pretenses, taken in a manner constituting larceny by an employee or taken in any other felonious manner except larceny.

The defendant has been charged with felonious possession of stolen goods, which is possessing property which the defendant knew or had reasonable grounds to believe had been stolen [pursuant to a breaking or entering¹] (or) [was worth more than \$1,000].

For you to find the defendant guilty of this offense, the state must prove five things beyond a reasonable doubt:

First, that (describe property, e.g., "A color TV set") was stolen.² Property is stolen when it is taken and carried away without the owner's consent by someone who intends at the time to deprive the owner of its use permanently and knows that he is not entitled to take it.

Second, that this property was stolen [pursuant to a breaking or entering] (or) [(and) was worth more than \$1,000].

NOTE WELL: Summarize the elements of breaking or entering if applicable.

Third, that the defendant possessed the property. One has possession of property when one has both the power and intent to control its disposition or use.

NOTE WELL: When constructive possession is at issue or when a fuller definition of actual possession is desired, incorporate the relevant portions of N.C.P.I.—Crim. 104.41 at this point.

¹ Possession of goods is also a felony if they were stolen from the person, or pursuant to a burglary (G.S. 14-51), a breaking out of dwelling house burglary (G.S. 14-53), or a burglary with explosives (G.S. 14-57). In such cases, substitute the appropriate phrase here and elsewhere in this instruction.

² When the charge is possession, as opposed to receiving, it is not necessary for the State to prove that someone other than the defendant stole the property, as it is under a receiving charge.

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Fourth, that the defendant knew or had reasonable grounds to believe that the property [was stolen pursuant to a breaking or entering] (or) [valued at more than \$1,000 was stolen].³

And Fifth, that the defendant possessed it with a dishonest purpose.⁴ (Describe purpose, e.g., "Converting it to his own use" would be a dishonest purpose.)

If you find from the evidence beyond a reasonable doubt that (describe property) was stolen [pursuant to a breaking or entering] (or) [(and) was worth more than \$1,000] and that on or about the alleged date the defendant possessed this property knowing or having reasonable grounds to believe that the property [was stolen pursuant to a breaking or entering] (or) [valued at more than \$1000 was stolen], and that the defendant possessed it for a dishonest purpose, it would be your duty to return a verdict of guilty of felonious possession of stolen goods. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious possession of stolen goods, but must determine whether the defendant is guilty of non-felonious possession of stolen goods. Non-felonious possession of stolen goods differs from felonious possession only in that the State need not prove (either) that the property [was worth more than \$1,000] (or) [was stolen pursuant to a breaking or entering].

If you find from the evidence beyond a reasonable doubt that (describe property) was stolen, and that on or about the alleged date the defendant possessed this property and knew or had reasonable grounds to believe that it was stolen, and that the defendant possessed this property for a dishonest purpose, it would be your duty to return a verdict of guilty of non-felonious possession of stolen goods. If you do not so find or have a

³ In many instances the evidence will call for the trial judge to elect 216.47 or 216.48 which deal with goods worth more than \$1,000 and possession of property stolen pursuant to a breaking and entering respectively.

⁴ *S. v. Parker*, 316 N.C. 295, 305 (1986).

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reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

