

FRAUDULENT DISPOSAL OF PERSONAL PROPERTY ON WHICH THERE IS A SECURITY INTEREST. MISDEMEANOR. G.S. 14-114.

The defendant has been charged with fraudulent disposal of personal property on which there is a security interest.¹

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

First, that the defendant executed a security agreement² on (describe property)³ for a lawful purpose. ((Describe purpose) would be a lawful purpose.⁴)

Second, that while this security agreement was in force the defendant disposed of (any of) the property embraced in the security agreement.

¹The statute also prohibits buying such property with knowledge of the security interest and prohibits assisting aiding or abetting the unlawful disposition of such property.

²"Security agreement" is defined in G.S. 25-9-102(76) as an "agreement that creates or provides for a security interest." "Security interest" is defined in G.S. 25-1-201(37) as "an interest in personal property or fixtures which secures payment or performance of an obligation" and rules for determining what is a "security interest" are given. These definitions from Chapter 25(UCC) would probably be applicable since G.S. 14-114 was amended after enactment of Chapter 25(UCC) to reflect UCC terminology.

³G.S. 12-3(6) declares that "personal property" shall include "moneys, goods, chattels, choses in action and evidences of debt, including all things capable of ownership, not descendible to heirs at law."

⁴If the purpose is disputed state what would not be a lawful purpose.

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And Third, that the defendant did this with the intent⁵ to defeat the rights of the secured party.⁶

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant, after executing a security agreement on (*describe property*) for a lawful purpose, which agreement was still in force, disposed of (any of) the property with the intent to defeat the rights of the secured party, it would be your duty to return a verdict of guilty. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

⁵G.S. 14-114(b) states that intent to commit this crime "may be presumed from proof of possession of the property embraced in the security agreement and further proof that the officer charged with the execution of process cannot after due diligence, find such property under process directed to him for its seizure, for satisfaction of the security agreement." This presumption (inference) is rebuttable by evidence that the property has through no fault of the defendant, been stolen, lost, damaged beyond repair, or otherwise disposed of by the defendant without the intent to defeat the rights of the secured party. If the quoted language is used, the words "you may infer" should be used in place of "may be presumed."

⁶No presumption of intent to defraud arises where the disposition leaves sufficient property secured to cover the debt. S. v. Manning, 107 N.C. 910. Likewise where defendant disposed of property to pay a prior lien, S. v. Ellington, 98 N.C. 749 (1887) as interpreted in S. v. Holmes, 120 N.C. 573 (1897), nor where disposition was otherwise justifiable as, for instance, selling perishable property to prevent loss, S. v. Holmes, supra, nor where defendant honestly believed he had a set off against the debt sufficient to extinguish it. S. v. Surles, 117 N.C. 720 (1895).