

258.17 POSSESSION OF CATALYTIC CONVERTER REMOVED FROM A MOTOR VEHICLE. FELONY.

The defendant has been charged with unlawful possession of a catalytic converter removed from a motor vehicle.

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

First, that the defendant possessed a catalytic converter that has been removed from a motor vehicle. A person possesses an item when the person is aware of its presence, and has (either by [himself] [herself] or together with others) both the power and intent to control the disposition or use of that item.

*NOTE WELL: If constructive possession of the catalytic converter is an issue, or if an amplified definition of actual possession is needed, the trial judge should refer to N.C.P.I.-Crim 104.41 for further instructions.*

And Second, that the defendant acted knowingly.

*NOTE WELL: N.C.G.S. § 14-164.1 provides three exceptions where a defendant may lawfully possess a catalytic converter removed from a motor vehicle. **If the defendant presents evidence of one or more of these exceptions (1)-(3) below, the trial judge should instruct on the relevant subdivision(s) below with regard to the defendant's evidence before proceeding to the final mandate.** See e.g., *State v. Carey ("Carey II")*, 273 N.C. App. 593, 849 S.E.2d 111 (2020) (holding that, where the evidence supported an instruction that the defendant was in lawful possession of a weapon of mass destruction as a contractor for the military, such evidence was "exculpatory, and not an underlying element of the offense," under N.C.G.S. § 288.8(b), and the trial court committed plain error by not instructing the jury on this defense).*

*If the defendant does not present evidence of any of the exceptions (1)-(3) below, then the trial judge would skip the parenthetical below and go directly to the final mandate.*

(There is evidence in this case tending to show that the defendant could legally possess a catalytic converter that has been removed from a motor vehicle. The

burden of proving that is on the defendant. It need not be proved beyond a reasonable doubt, but only to your satisfaction. The defendant would not be guilty of possession of a catalytic converter removed from a motor vehicle if the defendant proves to your satisfaction that the defendant was, at the time of the possession:

- 1) [an employee of a company] [an agent of a company] [an individual] acting in their official duties for a [motor vehicle dealer] [motor vehicle repair shop] [secondary metals recycler] [salvage yard] that is licensed, permitted, or registered pursuant to State law;
- 2) an individual who possesses vehicle registration documentation indicating that the catalytic converter in the individual's possession is from a vehicle registered in that individual's name and [is replaced] [will be replaced] with another legally obtained catalytic converter; or
- 3) an individual who possesses a catalytic converter lawfully received from an individual in subdivision (2) of this section, proof of vehicle ownership, and a copy of the most recent vehicle registration documentation for the vehicle from which the catalytic converter was removed.

The defendant's assertion that the defendant was in legal possession of a catalytic converter removed from a motor vehicle for [this] [these] reason(s) is a denial that the defendant committed any crime. The burden remains on the State to prove the defendant's guilt beyond a reasonable doubt.

If the defendant has proven to your satisfaction that the defendant at the time of the alleged defense was:

- 1) [an employee of a company] [an agent of a company] [an individual] acting in their official duties for a [motor vehicle dealer] [motor vehicle repair shop] [secondary metals recycler] [salvage yard] that is licensed, permitted, or registered pursuant to State law;
- 2) an individual who possesses vehicle registration documentation indicating that the catalytic converter in the individual's possession is from a vehicle

registered in that individual's name and [is replaced] [will be replaced] with another legally obtained catalytic converter; or

- 3) an individual who possesses a catalytic converter lawfully received from an individual in subdivision (2) of this section, proof of vehicle ownership, and a copy of the most recent vehicle registration documentation for the vehicle from which the catalytic converter was removed,

you will not consider this case further, and it would be your duty to return a verdict of not guilty. However, if you do not so find then you must decide if the defendant is guilty of possession of a catalytic converter removed from a motor vehicle.)

FINAL MANDATE:

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly possessed a catalytic converter that has been removed from a motor vehicle (and none of the above defenses apply), it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

