

254A.11 POSSESSION¹ OF A FIREARM OR WEAPON OF MASS DEATH AND
DESTRUCTION BY A FELON. FELONY.

NOTE WELL: Prior offenses which cause disenfranchisement under N.C. Gen. Stat. § 14-415.1(b) include felony convictions in North Carolina and also convictions of substantially similar offenses under the laws of any other state or of the United States which are punishable where committed by imprisonment for a term exceeding one year.

NOTE WELL: Effective February 1, 2011, this section does not apply to a person whose firearms rights have been restored under N.C. Gen. Stat. § 14-415.4 pursuant to the judicial procedure described therein, unless the person is convicted of a subsequent felony after the petition to restore the person's firearms rights is granted. Also effective February 1, 2011, this section does not apply if the felony conviction is a violation under the laws of North Carolina, another state, or the United States that pertains to crimes involving antitrust violations, unfair trade practices, or restraints of trade.

The defendant has been charged with [possessing] [owning] [purchasing] [[having within defendant's [custody] [care] [control]] a [firearm]² [weapon of mass death and destruction]³ after having been convicted⁴ of a felony.

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

First, that on (*name date*) in (*name court*) the defendant [was convicted of] [pled guilty to] the felony of (*name felony*) that was committed on (*name date*) in violation of the laws of the [State of North Carolina] [State of (*name other state*)] [United States].

And Second, that after (*name date* from the first element as alleged in the indictment)⁵, the defendant [possessed]⁶ [owned] [purchased] [[had

within defendant's [custody] [care] [control]] a [firearm] [weapon of mass death and destruction]⁷.

If you find from the evidence beyond a reasonable doubt that the defendant [was convicted of] [pled guilty to] the felony of (*name felony*) that was committed on (*name date*) in violation of the laws of the [State of North Carolina] [State of (*name other state*)] [United States], and that the defendant, after (*name date* from the first element alleged in the indictment), [possessed] [owned] [purchased] [[had within defendant's [custody] [care] [control]]] a [firearm] [weapon of mass death and destruction], 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 both of these things, it would be your duty to return a verdict of not guilty.

1. The statute also covers purchasing, owning, or having a firearm or such weapon in his custody, care or control.

2. A firearm is any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or any firearm muffler or firearm silencer. This statute does not apply to an antique firearm as defined in N.C. Gen. Stat. § 14-409.11.

3. The term "weapon of mass death and destruction" includes:

(1) Any explosive or incendiary:

- a. Bomb; or
- b. Grenade; or
- c. Rocket having a propellant charge of more than four ounces; or
- d. Missile having an explosive or incendiary charge of more than one-quarter ounce; or
- e. Mine; or
- f. Device similar to any of the devices described above; or

(2) Any type of weapon (other than a shotgun or a shotgun shell of a type particularly suitable for sporting purposes) which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; or

(3) Any firearm capable of fully automatic fire, any shotgun with a barrel or barrels of less than 18 inches in length or an overall length of less than 26 inches, any rifle with a barrel or barrels of less than 16 inches in length or an overall length of less than 26 inches, any muffler or silencer for any firearm, whether or not such firearm is included within this definition. For the purposes of this section,

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rifle is defined as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; or

- (4) Any combination of parts either designed or intended for use in converting any device into any weapon described above and from which a weapon of mass death and destruction may readily be assembled.

See *State v. Carey*, 373 N.C. 445, (2020), holding that courts are not required to engage in a fact-intensive examination of the extent to which any particular weapon is capable of causing mass death and destruction. In *Carey*, the Court held that any “explosive or incendiary grenade” is a weapon of mass death and destruction for the purposes of prohibition set out in N.C.G.S. § 14-288.8(a). *State v. Carey*, 838 S.E. 2d 367 (2020).

4. The term “conviction” is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is permissible, without regard to the plea entered or to the sentence imposed. See N.C. Gen. Stat. § 14-415.1(b).

5. See *State v. Howard*, 243 N.C. App. 828, 780 S.E.2d 599 (2015).

6. The meaning of “possession” is explained in N.C.P.I.—Crim 104.41. The trial judge should refer to this instruction for a definition of actual possession, and also when constructive possession is an issue.

7. The North Carolina Supreme Court has recognized that in narrow and extraordinary circumstances, justification may be available as a defense to a charge under N.C.G.S. § 14-415.1. See *State v. Mercer*, 373 N.C. 459, 838 S.E. 2d 359. See also, *United States v. Deleveaux*, 205 F.3d 1292, 1297 (11th Cir. 2000). *Mercer* is not the first decision to apply the *Deleveaux* test, but it is the first decision in which the Court of Appeals has found that every element of the test is satisfied. In addressing whether an instruction on justification is required, the Court of Appeals explained, “[c]onsistent with the precedent from this Court, we assume without deciding, that the *Deleveaux* rationale applies in North Carolina prosecutions for possession of a firearm by felon.” *State v. Edwards*, 239 N.C. App. 391, 394, 768 S.E. 2d 619, 621 (2015) (citing *State v. Monroe*, 233 N.C. App. 563, 568, 756 S.E.2d 376, 380 (2014)).

In *State v. Edwards*, the Court explained, that “the *Deleveaux* rationale applies in North Carolina prosecutions for possession of a firearm by felon.” *State v. Edwards*, 239 N.C.App. 391, 768 S.E. 2d 619 (2015) (citing *State v. Monroe*, 233 N.C.App. 563, 756 S.E.2d 376, 380 (2014)). “The test in *Deleveaux* requires a criminal defendant to produce evidence of the following to be entitled to an instruction on justification as a defense to a charge of possession of a firearm by felon: (1) that the defendant was under unlawful and present, imminent, and impending threat of death or serious bodily injury; (2) that the defendant did not negligently or recklessly place himself in a situation where he would be forced to engage in criminal conduct; (3) that the defendant had no reasonable legal alternative to violating the law; and (4) that there was a direct causal relationship between the criminal action and the avoidance of the threatened harm.” *State v. Edwards*, 239 N.C App. 391, 768 S.E. 2d 619 (2015) (citing *United States v. Deleveaux*, 205 F.3d 1292, 1297 (11th Cir. 2000)). See also *State v. Mercer*, 373 N.C. 459, 838 S.E. 2d 359 (2020).

