

254A.10 POSSESSION OF A WEAPON OF MASS DEATH AND DESTRUCTION.
FELONY.

The defendant has been charged with the possession of a weapon of mass death and destruction.

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

First, that the defendant [manufactured] [assembled] [possessed] [stored] [transported] [sold] [offered to sell] [purchased] [offered to purchase] [delivered or gave to another] [acquired] a weapon.

And Second, that this weapon was a weapon of mass death and destruction¹. A(n) (*insert appropriate weapon from Footnote 1, e.g. "bomb"*) is a weapon of mass death and destruction.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [manufactured] [assembled] [possessed] [stored] [transported] [sold] [offered to sell] [purchased] [offered to purchase] [delivered or gave to another] [acquired] a weapon of mass death and destruction (nothing else appearing)², 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 both of these things, then you would return a verdict of not guilty.

1. 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, 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* (“Carey I”), 373 N.C. 445, 838 S.E.2d, (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). *Carey I*, 373 N.C. 445, 838 S.E. 2d 367 (2020).

2. N.C.G.S. § 14-288.8 provides five exceptions, including lawful possession. If the defendant presents evidence of one or more of these exceptions, the trial judge should instruct on the relevant subsection below with regards to the defendant’s evidence.

Where the defendant presents evidence that the defendant was in lawful possession of the weapon, this offense for unlawful possession would not apply. N.C.G.S. § 288.8(b). The exceptions in N.C.G.S. § 288.8(b) are “exculpatory, and [are] not an underlying element of the offense.” See *State v. Carey* (“Carey II”), 273 N.C. App. 593, 849 S.E.2d 111 (2020) (quoting *State v. Palmer*, 273 N.C. App. 169 (2020)). Where the evidence supports an instruction that the defendant was in lawful possession of the weapon, the trial court should instruct on this defense. See *Carey II*, 273 N.C. App. at ____, 849 S.E.2d at 115 (2020) (holding that the trial court committed plain error in its failure to instruct the jury on evidence presented at trial that defendant was in lawful possession of a weapon of mass death or destruction as a contractor for the military, as provided in N.C.G.S. § 288.8(b)(3)).

Under N.C.G.S. § 288.8(b)(3), “[l]awful possession” includes:

- (1) Persons exempted from the provisions of G.S. 14-269 with respect to any activities lawfully engaged in while carrying out their duties.
- (2) Importers, manufacturers, dealers, and collectors of firearms, ammunition, or destructive devices validly licensed under the laws of the United States or the State of North Carolina, while lawfully engaged in activities authorized under their licenses.

- (3) Persons under contract with the United States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts.
- (4) Inventors, designers, ordnance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge knowledge or to facilitate the creation, development, or manufacture of weapons of mass death and destruction intended for use in a manner consistent with the laws of the United States and the State of North Carolina.
- (5) Persons who lawfully possess or own a weapon as defined in subsection (c) of this section in compliance with 26 U.S.C. Chapter 53, §§ 5801-5871. Nothing in this subdivision shall limit the discretion of the sheriff in executing the paperwork required by the United States Bureau of Alcohol, Tobacco and Firearms for such person to obtain the weapon. N.C.G.S. § 288.8(b).

