

254A.19 PURCHASE OR POSSESSION, OR ATTEMPTED PURCHASE OR POSSESSION OF FIREARMS BY PERSON SUBJECT TO DOMESTIC VIOLENCE PROTECTIVE ORDER. FELONY.

The defendant has been charged with [[purchasing] [attempting to purchase]] [[possessing] [attempting to possess]] [[receiving] [attempting to receive]] a [firearm]¹ [machine gun] [ammunition] [permit to purchase or carry concealed firearms] while being subject to a domestic violence protective order.

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

First, that on (*name date*), a valid domestic violence protective order² had been issued [by a North Carolina court] [by the courts of another state] [by the court of an Indian tribe].

Second, that after (*name date from the first element as alleged in the indictment*), the defendant [[purchased] [attempted to purchase]] [[possessed] [attempted to possess]]³ [[received] [attempted to receive]] a [firearm] [machine gun] [ammunition] [permit to purchase or carry concealed firearms].⁴

And Third, the domestic violence [protective order] [successive protective order] was in effect against the defendant at the time the defendant [[purchased] [attempted to purchase]] [[possessed] [attempted to possess]] [[received] [attempted to receive]] a [firearm] [machine gun] [ammunition] [permit to purchase or carry concealed firearms].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date that the defendant was subject to a domestic violence protective order issued by (*name court from the first element*), and the defendant, after (*name date from the first element as alleged in the*

indictment) [[purchased] [attempted to purchase]] [[possessed] [attempted to possess]] [[received] [attempted to receive]] a [firearm] [machine gun] [ammunition] [permit to purchase or carry concealed firearms] while the protective order was in effect, 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.

1. A firearm for purposes of this statute is defined pursuant to N.C.G.S. § 14-409.39(2) as including a “handgun, shotgun, or rifle which expels a projectile by action of an explosion.”

2. *See State v. Poole*, 228 N.C. App. 248, 259, 745 S.E.2d 26, 34 (2013) (holding that “[i]n light of the 2009 amendments to Chapter 50B clarifying that a ‘valid protective order’ includes *ex parte* orders...we conclude that a ‘protective order’ includes an *ex parte* or emergency order for purposes of N.C. Gen Stat. §§ 14-269.8 and 50B-3.1.”); *see also* N.C.G.S. § 14-269.8 (including “any successive protective order” as a valid court order which would make it unlawful to possess, purchase, or receive, or attempt to possess, purchase, or receive a firearm, machine gun, ammunition, or permits to purchase or carry concealed firearms).

3. 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.

4. The Supreme Court of North Carolina has recognized that in narrow and extraordinary circumstances, justification may be an available defense to a charge under N.C.G.S. § 14-415.1 (Possession of Firearm by Felon). *State v. Mercer*, 373 N.C. 459, 838 S.E.2d 359 (2020); *see also United States v. Deleveaux*, 205 F.3d 1292, 1297-98 (11th Cir. 2000) (providing factors which were adopted in *Mercer* to establish that the defendant is entitled to an instruction on justification); N.C.P.I.—Crim. 310.14. The Supreme Court of North Carolina has not yet applied the affirmative defense of justification to this statute.