

N.C.P.I.—Crim 254A.11
POSSESSION OF A FIREARM OR WEAPON OF MASS DEATH AND
DESTRUCTION BY A FELON. FELONY.
CRIMINAL VOLUME
REPLACEMENT JUNE 2015
N.C. Gen. Stat. § 14-415.1

254A.11 POSSESSION OF A FIREARM OR WEAPON OF MASS DEATH AND
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NOTE WELL: Prior offenses to which N.C. Gen. Stat. § 14-415.1(b) applies include all 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 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 possessing¹ 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 thereafter the defendant possessed⁵ a [firearm] [weapon of mass death and destruction]⁶.

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If you find from the evidence beyond a reasonable doubt that the defendant was convicted of a felony in (*name court*), and that the defendant thereafter possessed 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 more of these things, it would be your duty to return a verdict of not guilty.

1 Also purchasing, owning, or having in his custody, care or control. Because of the wide range of variations set in the statute, only one possibility has been given in the charge above. The further provisions of the statute will be set out in notes below, and the charge should be modified as needed to fit the circumstances of the case.

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

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- (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.

4 The term "conviction" is defined as 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 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.

6 "Consistent 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*, ____ N.C. App. ____, 768 S.E. 2d 619 (2015) (citing *State v. Monroe*, ____ N.C. App. ____, ____, 756 S.E.2d 376, 380 (2014)). "The test in *Deleveaux*

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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*, ____ N.C. App. ____, 768 S.E. 2d 619 (2015) (citing *United States v. Deleveaux*, 205 F.3d 1292, 1297 (11th Cir. 2000)).