

N.C.P.I.-Crim. 216.49
POSSESSION OF STOLEN EXPLOSIVES, PUBLIC RECORDS. FELONY.
GENERAL CRIMINAL VOLUME
MAY 2002
N.C. Gen. Stat. §§ 14-71.1, 14-72(b)(3)(4) and (5)

216.49 POSSESSION OF STOLEN EXPLOSIVES, PUBLIC RECORDS.
FELONY.

NOTE WELL: Use this instruction only when the indictment alleges that the property was stolen. Use N.C.P.I.-Crim. 216.49A when the indictment alleges that the property was embezzled, taken by false pretenses, taken in a manner constituting larceny by an employee or taken in any other felonious manner except larceny.

The defendant has been charged with possession of a stolen [explosive] [incendiary device or substance] [record or paper in the custody of the North Carolina State Archives], which is possessing [an explosive] [incendiary device or substance] [a record or paper in the custody of the North Carolina State Archives] which the defendant had reasonable grounds to believe was stolen.

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

First, that (*describe property, e.g., "The explosive"*) was stolen.¹ Property is stolen when it is taken and carried away without the owner's consent by someone who intends at the time to deprive the owner of its use permanently and knows that *he* is not entitled to take it.

Second, that this property was [[an explosive] [an incendiary device or substance]. A (*describe property, e.g., "A stick of dynamite"*) is an [explosive] [incendiary device or substance.]]² [a record or paper in the custody of the North Carolina State Archives.]³

Third, that the defendant possessed this property. One has possession of property when one has both the power and intent to control its disposition or use.

NOTE WELL: When constructive possession is at issue, or when a fuller definition of actual possession is needed, incorporate the relevant portions of N.C.P.I.-Crim. 104.41 at this point.

Fourth, the State must prove beyond a reasonable doubt that the defendant knew or had reasonable grounds to believe that the property was stolen and was [an explosive] [an incendiary device or substance] [a record or paper in the custody of the North Carolina State Archives].

And Fifth, that the defendant possessed this property with a dishonest purpose. (*Describe purpose, e.g., "Converting it to his own use,"*) would be a dishonest purpose.

If you find from the evidence beyond a reasonable doubt that (*describe property*) was stolen, and that this property was [an explosive] [an incendiary device or substance] [a record or paper in the custody of the North Carolina State Archives], and that on or about the alleged date the defendant possessed this property and that the defendant knew or had reasonable grounds to believe that it was stolen and that it was [an explosive] [an incendiary device or substance] [a record, or paper in the custody of the North Carolina State Archives⁴] and that the defendant possessed this property for a dishonest purpose it would be your duty to return a verdict of guilty of possession of a stolen [explosive] [incendiary device or substance] [record or paper in the custody of the North Carolina State Archives]. If you do not so find, or if you have a reasonable doubt as to one or more these things, it would be your duty to return a verdict of not guilty.⁴

1. When the charge is possession, as opposed to receiving, it is not necessary for the State to prove that someone other than the defendant stole the property, as it is under a receiving charge.

2. N.C. Gen. Stat. § 14-72(b)(3) defines "explosive or incendiary device or substance" to include "any explosive or incendiary grenade or bomb; any dynamite, blasting powder, nitroglycerin, TNT, or other high explosive; or any device, ingredient for such device, or type or quantity of substance primarily useful for large-scale destruction of property by explosive or incendiary action or lethal injury to persons by explosive or incendiary action. This definition shall not include fireworks; or any form, type, or quantity of gasoline, butane gas, natural gas, or any other substance having explosive or incendiary properties but serving a legitimate nondestructive or nonlethal use in the form, type, or quantity stolen."

Where there is conflicting evidence as to what it was that the defendant possessed, explain what would and what would not be an explosive or incendiary device or substance.

3. N.C. Gen. Stat. § 121-2(7), which is incorporated in N.C. Gen. Stat. § 14-72(b)(5) defines North Carolina Archives as "an establishment or establishments administered by the Department of Cultural Resources as the State's official repository for the preservation of those public records or other documentary materials that have been determined by the Department in accordance with rules, regulations, and standards of the Historical Commission to have sufficient historical or other value to warrant their continued preservation and have been accepted by the Department for preservation in its custody." N.C. Gen. Stat. § 121-2(8) which is also incorporated in N.C. Gen. Stat. § 14-72(b)(5), defines "public records" to mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of official business by any agency.

If there is an issue as to whether the thing possessed by the defendant was a public record or was in the custody of the North Carolina Archives, give an appropriate definition.

4. In a proper case, a further instruction as to any lesser included offense may be necessary.