

216.49B POSSESSION OF STOLEN FIREARM. FELONY.

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

The defendant has been charged with possession of a stolen firearm.

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., "A twelve gauge shotgun"*) 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 (*describe property*) was a firearm.²

Third, that the defendant possessed this firearm. 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, that the defendant knew or had reasonable grounds to believe it was stolen and that it was a firearm.

And Fifth, that the defendant possessed the firearm 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 the property was stolen, and it was a firearm and that on or about the alleged date the defendant possessed this firearm and that the defendant knew or had reasonable grounds to believe it was stolen and that it was a firearm, and that the defendant possessed this firearm for a dishonest purpose, 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 more of these things, it would be your duty to return a verdict of not guilty.

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)(4) defines "firearm" to include "any instrument used in the propulsion of a shot, shell or bullet by the action of gunpowder or any other explosive substance within it. A "firearm," which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols.

Where there is conflicting evidence as to what it was that the defendant possessed, explain what would and would not be a firearm.