

N.C.P.I.-Crim. 240.51
VIOLATION OF A PROTECTIVE ORDER WHILE IN POSSESSION OF A
DEADLY WEAPON. FELONY.
GENERAL CRIMINAL VOLUME
REPLACEMENT JUNE 2016
N.C. Gen. Stat. § 50B-4.1(g)

240.51 VIOLATION OF A PROTECTIVE ORDER WHILE IN POSSESSION OF
A DEADLY WEAPON. FELONY.

NOTE WELL: If there is an issue as to whether the weapon used by the Defendant constituted a deadly weapon, the Court should also instruct the jury on the lesser-included misdemeanor offense of violation of a valid protective order not involving a deadly weapon. N.C.P.I.-Crim. 240.50. State v. Edgerton, 234 N.C. App. 412, 759 S.E.2d 669 (2014), reversed, 368 N.C. 32 (2015) (holding that erroneous failure to instruct jury on this lesser-included offense was not plain error).

The defendant has been charged with knowingly violating a domestic violence protective order while in possession of a deadly weapon.

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

First, that a domestic violence protective order had been issued [by a North Carolina court] [by the courts of another state] [by the court of an Indian tribe].

Second, that the defendant knowingly violated the domestic violence protective order by *(describe conduct that would constitute a violation of the order)*.¹ (Where a domestic violence protective order has been served on a defendant, you may presume that the defendant knew the specific terms of the domestic violence protective order.)

And Third, that the defendant violated the domestic violence protective order while in possession of a deadly weapon which was [on or about [his] [her] person] [within close proximity to [his] [her] person]. A deadly weapon is a weapon which is likely to cause death or serious bodily injury.² [(Name object) is a deadly weapon.] [In determining whether (name object) was a deadly weapon, you should consider the nature of (name object), the manner in which it was used, and the size

N.C.P.I.-Crim. 240.51
VIOLATION OF A PROTECTIVE ORDER WHILE IN POSSESSION OF A
DEADLY WEAPON. FELONY.
GENERAL CRIMINAL VOLUME
REPLACEMENT JUNE 2016
N.C. Gen. Stat. § 50B-4.1(g)

and strength of the defendant as compared to the victim.]]³

NOTE WELL: If constructive possession of the weapon is an issue, or if an amplified definition of actual possession is needed, the trial judge should refer to N.C.P.I.-Crim. 104.41.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly violated a domestic violence protective order while in possession of a deadly weapon which was [on or about [his] [her] person] [within close proximity to [his] [her] person], 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 The statute provides that a person violates the statute by “failing to stay away from a place or a person, as so directed under the terms of the order.”

2 Certain weapons have been determined “deadly weapons” as a matter of law. Other weapons may be found to be deadly under certain circumstances. Choose the appropriate bracketed statement depending on the circumstances.

3 In the event that there is a dispute as to which weapon was used and one of the weapons is non-deadly as a matter of law, e.g. a real pistol and a toy pistol, state what would not be a deadly weapon.