

N.C.P.I.—CRIM 260.16

AGGRAVATED POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO [MANUFACTURE] [SELL] [DELIVER] -LESSER INCLUDED OFFENSES.

GENERAL CRIMINAL VOLUME

JUNE 2014

N.C. Gen. Stat. § 90-95(a)(1), (b)(2), (e)(1-4)

260.16 AGGRAVATED POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO [MANUFACTURE] [SELL] [DELIVER] - LESSER INCLUDED OFFENSES.

The defendant has been charged with possessing (name substance), a controlled substance, with the intent to [manufacture] [sell] [deliver] it, (*describe aggravating condition; see N.C.P.I.-Crim. 260.45*).

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

First, that the defendant knowingly possessed (*name substance*).¹ (*Name substance*) is a controlled substance. A person possesses (*name substance*) when the person is aware of its presence and has, (either by [*himself*] [*herself*] [*together with others*]), both the power and intent to control the disposition or use of that substance.²

NOTE WELL: If constructive possession of the controlled substance 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 for further instructions.

1 If the defendant contends that the defendant didn't know the identify of what the defendant possessed, add this language to the first sentence: "and the defendant knew or had reason to know that what he possessed was (*name substance*). *State v. Stacy*, 19 N.C. App. 35 (1973).

2 Prior to searching a person, a person's premises, or a person's vehicle, an officer may ask the person whether the person is in possession of a hypodermic needle or other sharp object that may cut or puncture the officer or whether such a hypodermic needle or other sharp object is on the premises or in the vehicle to be searched. If there is a hypodermic needle or other sharp object on the person, on the person's premises, or in the person's vehicle and the person alerts the officer of that fact prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object. The exemption under this subsection does not apply to any other drug paraphernalia that may be present and found during the search. For purposes of this subsection, the term "officer" includes "criminal justice officers" as defined in N.C. Gen. Stat. § 17C-2(3) and "justice officer" as defined in N.C. Gen. Stat. § 17E-2(3).

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 Second, that the defendant possessed (*name substance*) with the intent to [manufacture]³ [sell] [deliver]⁴ it.

And Third, (*instruct as to aggravating condition; see N.C.P.I.-Crim. 260.45*).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant knowingly possessed (*name substance*) with the intent to [manufacture] [sell] [deliver] it and that (*describe aggravating condition*), it would be your duty to return a verdict of guilty of possessing (*name substance*), with the intent to [manufacture] [sell] [deliver] it, (*describe aggravating condition*). If you do not so find or if you have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of possessing (*name substance*), with intent to [manufacture] [sell] [deliver] it, (*describe aggravating condition*),⁵ but would consider whether the defendant is guilty of possessing (*name substance*), with intent to [manufacture] [sell] [deliver] it.

Possessing (*name substance*), with intent to [manufacture] [sell] [deliver] does not require proof that (*describe aggravating condition*).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant knowingly possessed (*name substance*) with the intent to [manufacture] [sell] [deliver] it, it would be

³ "Manufacture" is defined in N.C. Gen. Stat. § 90-87(15). See N.C.P.I.-Crim. 260.19.

⁴ "Deliver" is defined in N.C. Gen. Stat. § 90-87(7) (see N.C.P.I.-Crim. 260.21) but the transfer of less than 5 grams of marijuana for no remuneration does not constitute delivery. See N.C. Gen. Stat. § 90-96(b)(2).

⁵ If all the evidence is that the defendant is guilty of the greater offense, if he is guilty at all, the judge should conclude " . . . it would be your duty to return a verdict of not guilty."

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 your duty to return a verdict of guilty of possessing (*name substance*), with the intent to [manufacture] [sell] [deliver] it. If you do not so find or if you have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of possessing (*name substance*), with intent to [manufacture] [sell] [deliver] it,⁶ but would consider whether the defendant is guilty of possessing (*name substance*) (*describe aggravating condition*).

Possessing (*name substance*), (*describe aggravating condition*) differs from possessing (*name substance*) with the intent to [manufacture] [sell] [deliver] it, in that the State need not prove that the defendant intended to [manufacture] [sell] [deliver] the (*name substance*). The State must prove two things beyond a reasonable doubt:

First, that the defendant knowingly possessed (*name substance*).

And Second, (*describe aggravating condition*).⁷

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant knowingly possessed (*name substance*) and that (*describe aggravating condition*) it would be your duty to return a verdict of guilty of possession of (*name substance*), (*describe aggravating condition*). If you do not so find or if you have a reasonable doubt as to one or both of these things you will not return a verdict of guilty of possession of (*name substance*), (*describe aggravating condition*), but

⁶ If all the evidence is that the defendant is guilty of the greater offense, if he is guilty at all, the judge should conclude " . . . it would be your duty to return a verdict of not guilty."

⁷ Under some circumstances possession of a controlled substance under aggravating conditions will carry a more severe penalty than possession of a controlled substance with intent to sell or deliver it. *E.g.*, possession of a schedule I drug where the defendant has previously been convicted. In this situation the order of charging on these two lesser included offenses should be reversed.

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would consider whether the defendant is guilty of possession of (*name substance*).

Possession of (*name substance*) does not require proof that (*describe aggravating condition*).

If you find from the evidence beyond a reasonable doubt that on or about (*name date*), the defendant knowingly possessed (*name substance*), it would be your duty to return a verdict of guilty of possession of (*name substance*). If you do not so find or if you have a reasonable doubt, it would be your duty to return a verdict of not guilty.