

N.C.P.I.—CRIMINAL 260.90

[INTENTIONALLY] [KNOWINGLY] [KEEPING] [MAINTAINING] A BUILDING OR VEHICLE FOR THE [USE] [KEEPING] [SELLING] OF CONTROLLED SUBSTANCES. FELONY; MISDEMEANOR.
GENERAL CRIMINAL VOLUME

REPLACEMENT JUNE 2009

N.C. Gen. Stat. § 90-108(A)(7)

260.90 [INTENTIONALLY] [KNOWINGLY] [KEEPING] [MAINTAINING] A BUILDING OR VEHICLE FOR THE [USE] [KEEPING] [SELLING] OF CONTROLLED SUBSTANCES. FELONY; MISDEMEANOR.

The defendant has been charged with intentionally [keeping] [maintaining] a [building]¹ [vehicle] [(*describe other place*)] which is [resorted to by persons using controlled substances unlawfully] [used for the purpose of unlawfully [keeping] (or) [selling] controlled substances].

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

First, that the defendant [kept] [maintained]² a [building] [vehicle] [(*describe other place*)] which was [resorted to by persons using (*describe controlled substance*) unlawfully. (*Describe substance*) is a controlled substance, the (*describe use, e.g. smoking*) of which is unlawful.³] [used for the purpose of unlawfully [keeping] (or) [selling] (*describe substance*). (*Describe substance*) is a controlled substance, the [keeping] (or) [selling] of which is unlawful.]

And Second, that the defendant did this intentionally. Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. You arrive at the intent of a person by such just and reasonable deductions from the circumstances proven as a reasonably prudent person would ordinarily draw therefrom.⁴ A person acts intentionally if he desires to cause the consequences of his act.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally [kept] [maintained] a [building] [vehicle] [(*describe other place*)] which was [resorted to by persons using controlled substances unlawfully] [used for the unlawful [keeping] (or) [selling] controlled substances], then it would be your duty to return a verdict of guilty of this offense. If you do not so find, or have a reasonable doubt as

to one or both of these things, you would not find the defendant guilty of this offense, but you must consider whether the defendant is guilty of the offense of knowingly [keeping] [maintaining] a [building] [vehicle] [(*describe other place*)] which is [resorted to by persons using controlled substances unlawfully] [used for the purpose of unlawfully [keeping] (or) [selling] controlled substances].

The offense of knowingly [keeping] [maintaining] a [building] [vehicle] [(*describe other place*)] which was [resorted to by persons using controlled substances unlawfully] [used for the purpose of unlawfully [keeping] (or) [selling] controlled substances], differs from the offense of intentionally [keeping] [maintaining] such a [building] [vehicle] [(*describe other place*)] in that the State is not required to prove beyond a reasonable doubt that the defendant acted intentionally but that he did so knowingly. A person knows of an activity if he is aware of a high probability of its existence.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant knowingly [kept] [maintained] a [building] [vehicle] [(*describe other place*)] which was [resorted to by persons using controlled substances unlawfully] [used for the purpose of unlawfully [keeping] (or) [selling] controlled substances] then it would be your duty to return a verdict of guilty of knowingly [keeping] [maintaining] a [building] [vehicle] [(*describe other place*)] which was [resorted to by persons using controlled substances unlawfully] [used for the purpose of unlawfully [keeping] (or) [selling] controlled substances]. If you do not so find, or have a reasonable doubt as to one or both of these things, it would be your duty to return a verdict of not guilty.

1. G.S. 90-108(a)(7) proscribes the keeping or maintaining of any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, for such purposes.

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2. The verb "maintain" is defined as: "to continue, to carry on; to keep up; to preserve or retain; to keep in a condition of good repair or efficiency; to provide for; to bear the expenses of".

The term "keeping" denotes not just possession but possession which occurs over a period of time. *State v. Mitchell*, 336 N.C. 22 (1994).

3. If there is an issue as to the lawfulness of the defendant's use of the controlled substances, describe the circumstances under which the use of the substance would be lawful, e.g., a licensed practitioner engaging in scientific research of the properties of the controlled substance.

4. N.C.P.I.—Crim. 120.10.