

272.13 POSSESSION OF NONTAXPAID ALCOHOLIC BEVERAGES WITH THE INTENT TO SELL. MISDEMEANOR.

*NOTE WELL: Generally, this charge covers only offenses involving white, non-tax paid liquor. Under G.S. § 18B-306, an individual may make, possess, and transport native wines and malt beverages for his own use and the use of his family and guests. No ABC permit is required to make such beverages, and they are exempt from taxation. Wine kits and malt beverage kits may be sold in North Carolina.*

The defendant has been charged with possession of nontaxpaid alcoholic beverages with the intent to sell.

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

First, that the defendant possessed alcoholic beverages. [An alcoholic beverage is any beverage containing at least one-half of one per cent alcohol by volume, including [malt beverages] [unfortified wine] [fortified wine] [spirituous liquor] (and) [mixed beverages].] A person possesses an alcoholic beverage when he is aware of its presence, and (either by himself or together with others), has both the power and intent to control its disposition or use.

*NOTE WELL: Where constructive possession of the alcoholic beverage is an issue, or where an amplified definition of actual possession is needed, the trial judge should refer to N.C.P.I.—Crim. 104.41 for further instructions.*

Second, the State must prove that the taxes imposed on the alcoholic beverages either by the United States or by the [State] [territorial jurisdiction] in which the alcoholic beverages were purchased had not been paid.

(If you find that the alcoholic beverages were not in their original containers, you may consider this in determining whether federal and state

taxes had been paid on the alcoholic beverages.)

(If you find that the alcoholic beverages were in a container which did not have a [federal tax stamp] [local Alcoholic Beverage Control Board stamp]. You may consider this in determining whether [federal] [state] taxes had been paid on the alcoholic beverages.)<sup>1</sup>

And Third, that defendant intended to sell those beverages. Intent is seldom, if ever, provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred.<sup>2</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant possessed nontaxpaid alcoholic beverages for sale that he intended to sell, 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.

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1. Use this second parenthetical only where the alcoholic beverage is spirituous liquor.

2. For further definition of intent, see N.C.P.I.—Crim. 120.18