

105.60 EVIDENCE OF THE DEFENDANT'S CHARACTER TRAIT.

Evidence has been admitted concerning the defendant's character trait for (*describe character trait, e.g., honesty, being law abiding*).¹ The law recognizes that a person having this trait may be less likely to commit the alleged crime(s) than one who lacks this character trait. If you believe from the evidence that the defendant possesses the character trait of (*name character trait*), you may consider this in your determination of the defendant's guilt or innocence and give such weight as you decide it should receive in light of all the other evidence.

1. See *State v. Bogle*, 324 N.C. 190 (1989), construing N.C. Gen. Stat. § 8C-1, Rule 404(a)(1), as to when a given character trait is admissible. See also *State v. Moreno*, 98 N.C. App. 642 (1990), interpreting *State v. Bogle* as establishing the following four-part test entitling a defendant to an instruction on a good character trait as substantive evidence of his innocence:

- 1) The evidence must be of a "trait of character" and not merely evidence of a fact. (*E.g.*, being law-abiding addresses one's character of abiding by all laws, while a lack of convictions addresses only the fact that one has not been convicted of a crime);
- 2) The evidence of the trait must be competent and must conform to N.C. Gen. Stat. § 8C-1, Rule 405.
- 3) The trait must be "pertinent," i.e., "bear a special relationship to" or "be involved in" the crime charged. See *State v. Bogle*, 324 N.C. 190, 201 (1989). The trait of being law-abiding is pertinent in virtually all criminal cases. *Id.* at 198; and
- 4) The instruction must be requested by the defendant.