

260.21A [SELLING] [DELIVERING] A COUNTERFEIT CONTROLLED  
SUBSTANCE. FELONY.

The defendant has been charged with [selling] [delivering]<sup>1</sup> a counterfeit controlled substance.

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

First, that the defendant knowingly<sup>2</sup> [sold] [delivered] (*name substance*) to (*name buyer or distributee*)<sup>3</sup> representing it to be (*name controlled substance*), a controlled substance.

Second, that (*name substance*) was a counterfeit controlled substance. A counterfeit controlled substance is

- a. [a controlled substance which, or the container or labeling of which without authorization, bears the [trademark] [trade name] (or) [another identifying mark, imprint, number, or device, or any likeness thereof] of a [manufacturer] [distributor] (or) [dispenser] other than the person or persons who in fact [manufactured] [distributed] (or) [dispensed] such substance and which thereby falsely [purports] (or) [is represented] [to be the product of] (or) [to have been distributed by] such other [manufacturer] [distributor] (or) [dispenser] .]
- b. [any substance which is by any means intentionally represented as a controlled substance when it is not.<sup>4</sup> It is evidence that the counterfeit substance has been intentionally misrepresented as a controlled substance if the following factors are established: the substance was [packaged] (or) [delivered] in a manner normally used for the illegal delivery of controlled substances; [money] (or) [other valuable property] has been exchanged or requested for the substance, and the amount of that [money] (or) [valuable property] was substantially in excess of the reasonable value of the substance; the physical

appearance of the [tablets] [capsules] (or) [other finished product] containing the substance is substantially identical to (*name controlled substance*).]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly [sold] [delivered] (*name substance*) to (*name buyer or distributee*), representing it to be (*name controlled substance*), a controlled substance, and that (*name substance*) was a counterfeit controlled substance, it would be your duty to return a verdict of guilty.

If you do not so find or if you 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. "Delivery" is defined by G.S. 90-87(7) as the actual, constructive, or attempted transfer from one person to another of a controlled substance. But the transfer of less than five grams of marijuana for no remuneration does not constitute delivery. G.S. 90-95(b)(2).

2. If the defendant contends that he didn't know the true identity of what he [sold] [delivered], add this language to the first sentence: "and the defendant knew what he [sold] [delivered) was (*name substance*)." *S. v. Boone*, 310 N.C. 284, 291 (1984).

3. Bill of indictment must state the name of the purchaser or that his name is unknown. *State v. Bennett*, 280 N.C. 167 (1971), *S v. Wall*, 96 N.C. App. 45 (1989).

4. For elaboration of what constitutes a controlled substance see G.S. 90-87 (6).