

N.C.P.I.—Crim. 260.21A.2  
FELONIOUSLY [POSSESSING] [MANUFACTURING] [DISTRIBUTING]  
[EXPORTING] [IMPORTING] EQUIPMENT USED TO CREATE A COUNTERFEIT  
CONTROLLED SUBSTANCE—FELONY.  
GENERAL CRIMINAL VOLUME  
FEBRUARY 2024  
N.C. Gen. Stat. §§ 90-108(a)(12)(a) and 90-108(b)  
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260.21A.2 FELONIOUSLY [POSSESSING] [MANUFACTURING]  
[DISTRIBUTING] [EXPORTING] [IMPORTING] EQUIPMENT USED TO CREATE  
A COUNTERFEIT CONTROLLED SUBSTANCE—FELONY.

The defendant has been charged with feloniously [possessing]  
[manufacturing] [distributing] [exporting] [importing] equipment used to  
create 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 [possessed] [manufactured] [distributed]  
[exported] [imported] any [three-neck round-bottom flask] [tableting  
machine] [encapsulating machine] [gelatin capsule] [equipment] [chemical]  
[product] [material] which may be used to create a counterfeit controlled  
substance.

And Second, that the defendant [knew] [intended]<sup>1</sup> [had reasonable  
cause to believe] that it would be used to create a counterfeit controlled  
substance.<sup>2</sup>

If you find from the evidence beyond a reasonable doubt that on or  
about the alleged date the defendant [possessed] [manufactured]  
[distributed] [exported] [imported] any [three-neck round-bottom flask]  
[tableting machine] [encapsulating machine] [gelatin capsule] [equipment]  
[chemical] [product] [material] which may be used to create a counterfeit  
controlled substance, and the defendant [knew] [intended] [had reasonable  
cause to believe] that it would be used to create 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 both of these things, it  
would be your duty to return a verdict of not guilty.<sup>3</sup>

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1. For a definition of intent see N.C.P.I.—Crim. 120.10.
2. See N.C. Gen. Stat. 90-108(b).

3. If there is evidence to support the submission of a lesser included offense, this last phrase would be amended as follows “If you do not so find or have a reasonable doubt as to one or both of these things, you would not return a verdict of guilty of feloniously [possessing] [manufacturing] [distributing] [exporting] [importing] equipment used to create a counterfeit controlled substance, but would consider whether the defendant is guilty of . . . .” *But see S v. Church*, 73 N.C. App. 645, 646, 327 S.E.2d 33, 34 (1985). Because any commission of the offense set out in N.C. Gen. Stat. § 90-108(a)(12)(a) is by definition intentional, and because N.C. Gen. Stat. § 90-108(b) provides that intentional violations of N.C. Gen. Stat. § 90-108 are felonies, a misdemeanor offense under N.C. Gen. Stat. § 90-108(a)(12)(a) may not exist.