

DRUG TRAFFICKING—[SELLING] [DELIVERING] (MARIJUANA, METHAQUALONE, COCAINE, AMPHETAMINE, METHAMPHETAMINE, OPIUM, OPIATE, OPIOID OR HEROIN, LYSERGIC ACID DIETHYLAMIDE, METHYLENEDIOXYAMPHETAMINE, METHYLENEDIOXYMETHAMPHETAMINE, SUBSTITUTED CATHINONES, OR SYNTHETIC CANNABINOID). FELONY.

GENERAL CRIMINAL VOLUME

REPLACEMENT JUNE 2023

N.C. Gen. Stat. § 90-95(h)

260.23 DRUG TRAFFICKING—[SELLING] [DELIVERING] (MARIJUANA, METHAQUALONE, COCAINE, AMPHETAMINE, METHAMPHETAMINE, OPIUM, OPIATE, OPIOID OR HEROIN, LYSERGIC ACID DIETHYLAMIDE, METHYLENEDIOXYAMPHETAMINE, METHYLENEDIOXYMETHAMPHETAMINE, SUBSTITUTED CATHINONES, OR SYNTHETIC CANNABINOID). FELONY.

The defendant has been charged with trafficking in [marijuana]¹ [methaqualone] [cocaine] [[amphetamine] [any mixture containing amphetamine]]² [[methamphetamine] [any mixture containing methamphetamine]]³ [opium] [opiate] [opioid] [heroin] [lysergic acid diethylamide (LSD)] [methylemedioxyamphetamine (MDA)] [methylenedioxyamphetamine (MDMA)] [any substituted cathinones]⁴ [synthetic cannabinoid], which is the unlawful [sale] [delivery] of (*state amount*)⁵ of (*name 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 knowingly⁶ [sold] [delivered]⁷ [marijuana] [methaqualone] [cocaine] [[amphetamine] [any mixture containing amphetamine]] [[methamphetamine] [any mixture containing methamphetamine]] [opium] [opiate] [opioid] [heroin] [LSD] [MDA] [MDMA] [any substituted cathinones] [synthetic cannabinoid] to (*name buyer or distributee*).

And Second, that the amount of (*name controlled substance*) which the defendant [sold] [delivered] was (*state amount*).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly [sold] [delivered] (*name controlled substance*) to (*name buyer or distributee*), and that the amount which *he* [sold] [delivered] was (*state amount*), 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.⁸

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1. If the controlled substance is marijuana, see N.C. Gen. Stat. §90-87(16). The term marijuana does not include hemp or hemp products, as defined in N.C. Gen. Stat. § 90-87(13a) and (13b).

2. For offenses occurring on or after September 1, 2009, the charge of trafficking in amphetamine is based on the weight of the entire powder or liquid mixture rather than the weight of the actual amount of amphetamine in the powder or liquid mixture. See N.C. Gen. Stat. § 90-95(h)(3b).

3. For offenses occurring on or after September 1, 2009, the charge of trafficking in methamphetamine is based on the weight of the entire powder or liquid mixture rather than the weight of the actual amount of methamphetamine in the powder or liquid mixture. See N.C. Gen. Stat. § 90-95(h)(3b).

4. "Substituted cathinone" is defined by N.C. Gen. Stat. § 90-89(5)(j) as "a compound, other than bupropion, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways: (i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents; (ii) by substitution at the 3-position to any extent; or (iii) by substitution at the nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups or by inclusion of the nitrogen atom in a cyclic structure."

5. The range of amounts set out in each subsection of N.C. Gen. Stat. § 90-95(h) is given in note one of N.C.P.I.—Crim. 260.17. The trial judge should consult the statute directly for the range of punishment under each subsection.

Where the state may seek to establish the exact amount of the controlled substance involved, this exact amount may be inserted. Where the exact amount is at issue, the judge may instruct on the appropriate range of amounts under the statute. Care should be used in explaining the applicable range. See *State v. Charles*, 669 S.E.2d 859 (N.C. App. 2008) (holding that the court's instruction did not constitute plain error where the court instructed the jury that the amount trafficked by the defendant was "between 10 and 50 pounds", although the statute provided that the amount be "in excess of 10 pounds but less than 50 pounds"; there was no evidence that the weight was 10 pounds.)

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

7. "Delivery" is defined by N.C. Gen. Stat. § 90-87(7) as the actual, constructive, or attempted transfer from one person to another of a controlled substance.

8. If there is to be instruction on lesser included offenses, the last phrase should be: "...you will not return a verdict of guilty of trafficking in (*name controlled substance*)."