

[TRANSPORTING FOR OTHER THAN PERSONAL USE] [POSSESSING FOR PURPOSE OF SALE] OF SPIRITUOUS LIQUOR FOR USE AS A BEVERAGE KNOWING IT TO BE POISONOUS. G.S. 14-329(b). FELONY.

The defendant has been charged with [transporting for other than personal use] [possessing for purpose of sale] spirituous liquor for use as a beverage knowing it to be poisonous.

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

First, that the defendant [transported for other than personal use] [possessed for purpose of sale] spirituous liquor. Spirituous liquor is distilled spirits or ethyl alcohol, including [spirits of [wine] [whiskey] [rum] [brandy] [gin]] (and) [all (other) distilled spirits] (and) [mixtures of cordials] [liqueur] (and) [premixed cocktails], in closed containers for beverage use regardless of their dilution.<sup>1</sup> (The defendant possessed spirituous liquor if he was aware of its presence, and (either by himself or together with others) had both the power and the intent to control its disposition or use.)

NOTE WELL: *If constructive possession of the spirituous liquor is an issue, or if an amplified definition of actual possession is needed, the trial judge should refer to N.C.P.I.--Crim. 104.41 for further instructions.*

If you find beyond a reasonable doubt that the defendant [transported] [possessed] more than one gallon of spirituous

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<sup>1</sup>See G.S. 18B-101(14).

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(Continued.)

liquor, you may, but need not, find that he [transported] [possessed] it for [other than personal use] [the purpose of sale].

Second, the State must prove that the defendant [transported] [possessed] the spirituous liquor for use as a beverage.

Third, that the spirituous liquor contained foreign properties or ingredients poisonous to the human system.

And Fourth, that the defendant knew or had reasonable grounds to know of the foreign poisonous properties or ingredients.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [transported for other than personal use] [possessed for the purpose of sale] spirituous liquor for use as a beverage, that it contained foreign properties or ingredients poisonous to the human system, and that the defendant knew or had reasonable grounds to know this, 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.<sup>2</sup>

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<sup>2</sup>If lesser included offenses are to be given, the last phrase should be "you would not return a verdict of guilty as charged." See N.C.P.I.--Crim. 241.16 for the lesser included misdemeanor offense.