

206.31B SECOND DEGREE MURDER, CAUSED BY CONTROLLED SUBSTANCE.  
FELONY.

The defendant has been charged with second degree murder.

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

First, that the victim's death was caused by ingesting (*name substance*).<sup>1</sup>

Second, that the defendant intentionally and unlawfully distributed that (*name substance*).<sup>2</sup>

Third, that the defendant's unlawful distribution of that (*name substance*) was a proximate cause of the victim's death. A proximate cause is a real cause, a cause without which the victim's death would not have occurred, and one that a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result. (The defendant's act need not have been the only cause, nor the last or nearest cause. It is sufficient if it occurred with some other cause acting at the same time, which, in combination with, caused the death of the victim.) (A child has been killed if the child was born alive, but died as a result of injuries inflicted prior to being born alive.)<sup>3</sup>

And Fourth, that the defendant unlawfully and with malice killed the victim. Malice arises when an act that is inherently dangerous to human life is done so recklessly and wantonly as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant unlawfully and with malice killed the victim by the intentional and unlawful distribution of (*name substance*), 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.

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1 The statute lists “any opium, opiate, or opioid, any synthetic or natural salt, compound, derivative, or preparation of opium, or opiate, or opioid, or cocaine, or other substance described in G.S. 90-91(1)d, methamphetamine, or a depressant described in G.S. 90-92(a)(1).”

2 If the defendant contends that *he* did not know the true identity of the substance distributed, add this language: “and the defendant knew that what *he* distributed was (*name substance*).”

3 This sentence is only to be provided if the offense involved the killing of a child.