

N.C.P.I.—CRIM 260.15A
POSSESSION OF A COUNTERFEIT CONTROLLED SUBSTANCE WITH INTENT
TO [SELL] [DELIVER]. FELONY.
GENERAL CRIMINAL VOLUME
JUNE 2014
N.C. Gen. Stat. § 90-87(6) and § 90-95(a)(2), (c)

260.15A POSSESSION OF A COUNTERFEIT CONTROLLED SUBSTANCE WITH
INTENT TO [SELL] [DELIVER]. FELONY.

The defendant has been charged with possessing a counterfeit controlled substance, with the intent to [sell] [deliver] it.

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 possessed a counterfeit controlled substance.¹ A counterfeit controlled substance means

- (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. 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]

¹ If the defendant contends that he did not know the true identity of what the defendant possessed, add this language: "that is the defendant knew that what the defendant possessed was a counterfeit controlled substance." See *S. v. Boone*, 310 N.C. 284 (1984).

² Prior to searching a person, a person's premises, or a person's vehicle, an officer may ask the person whether the person is in possession of a hypodermic needle or other

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 (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) [finished product] containing the substance is substantially identical to (*name controlled substance*).]

A person possesses a counterfeit controlled substance when the person is aware of its presence and has (either by [*himself*] [herself] [together with others]) both the power and intent to control the disposition or use of that substance.²

NOTE WELL: If constructive possession of the counterfeit controlled substance 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.

And Second, that the defendant intended to [sell] [deliver]³ the counterfeit controlled substance. (Intent is seldom, if ever, provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred).

² Prior to searching a person, a person's premises, or a person's vehicle, an officer may ask the person whether the person is in possession of a hypodermic needle or other sharp object that may cut or puncture the officer or whether such a hypodermic needle or other sharp object is on the premises or in the vehicle to be searched. If there is a hypodermic needle or other sharp object on the person, on the person's premises, or in the person's vehicle and the person alerts the officer of that fact prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object. The exemption under this subsection does not apply to any other drug paraphernalia that may be present and found during the search. For purposes of this subsection, the term "officer" includes "criminal justice officers" as defined in N.C. Gen. Stat. § 17C-2(3) and "justice officer" as defined in N.C. Gen. Stat. § 17E-2(3).

³ "Deliver" is defined in N.C. Gen. Stat. § 90-87(7) (see N.C.P.I.-Crim. 260.21) but the transfer of less than 5 grams of marijuana for no remuneration does not constitute delivery. See N.C. Gen. Stat. § 90-95(b)(2). "The transfer by sale or delivery of a controlled substance is one statutory offense." *S. v. Moore*, 327 N.C. 378 (1990).

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If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly possessed a counterfeit controlled substance, and that the defendant intended to [sell] [deliver] such substance as (*name 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.

