

DRUG TRAFFICKING—POSSESSION (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 2019

N.C. Gen. Stat. § 90-95 (H)

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260.17 DRUG TRAFFICKING—POSSESSION (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<sup>1</sup> [methaqualone] [cocaine] [[amphetamine] [any mixture containing amphetamine]]<sup>2</sup> [[methamphetamine] [any mixture containing methamphetamine]]<sup>3</sup> [opium] [opiate] [opiod] [heroin] [lysergic acid diethylamide (LSD)] [methylenedioxyamphetamine (MDA)] [methylenedioxyamphetamine (MDMA)] [any substituted cathinones]<sup>4</sup> [synthetic cannabinoid], which is the unlawful possession of (*state amount*)<sup>5</sup> of (*name 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 knowingly<sup>6</sup> possessed [marijuana] [methaqualone] [cocaine] [[amphetamine] [any mixture containing amphetamine]] [[methamphetamine] [any mixture containing methamphetamine]] [opium] [opiate] [opiod] [heroin] [LSD] [MDA] [MDMA] [any substituted cathinones] [synthetic cannabinoid].<sup>7</sup> A person possesses (*name controlled substance*) if the person is aware of its presence and has (either by oneself or together with others) both the power and intent to control the disposition or use of that substance.

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

*NOTE WELL: Where the state seeks 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 should 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.)*

And Second, that the amount of (*name controlled substance*) which the defendant possessed was (*state amount*)<sup>8</sup>.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly possessed (*name controlled substance*) and that the amount which the defendant possessed 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 both of these things, it would be your duty to return a verdict of not guilty<sup>9</sup>.

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<sup>1</sup> If the controlled substance is marijuana, see N.C. Gen. Stat. §90-87(16). The term marijuana does not include industrial hemp, as defined in N.C. Gen. Stat. § 106-568.51, when the industrial hemp is produced and used in compliance with rules issued by the Board of Agriculture upon the recommendation of the North Carolina Industrial Hemp Commission.

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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 the following chart. The trial judge should consult the statute directly for the range of punishment under each subsection.

**Chart of Range of Amounts found in attached PDF**

6 If the defendant contends that the defendant did not know the true identity of what the defendant possessed, add this language to the first sentence: "and the defendant knew that what the defendant possessed was (name substance)."

*S. v. Boone*, 310 N.C. 284, 291 (1984). In a proper case in determining the amount it is not required that the substance be included in only one container, and in determining the weight the statute has the words "any mixture containing such substance." N.C. Gen. Stat. § 90-95(h).

7 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).

8 The state is not required to prove that the defendant had knowledge of the weight or amount of the controlled substance the defendant knowingly possessed; only that the

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defendant knowingly possessed the controlled substance. *State v. Shelman*, 159 N.C. App. 300, 584 S.E.2d 88 (2003).

9 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*)."