

CREATING A COUNTERFEIT CONTROLLED SUBSTANCE. G.S. 90-95(a)(2) and 90-87(b). FELONY.

The defendant has been charged with creating¹ a counterfeit controlled substance.

For you to find the defendant guilty of this offense, the State must prove beyond a reasonable doubt that the defendant knowingly and intentionally created a counterfeit controlled substance. A counterfeit controlled substance is

^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

¹"Creating" is not defined by statute. Webster's dictionary defines "create" as to cause to exist; to bring into existence; to make or originate.

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the illegal delivery of controlled substances; [money] (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) [other finished product] containing the substance is substantially identical to (*name controlled substance*).]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant (*describe conduct*) (*name substance*), and that (*describe conduct*) was the intentional and knowing creation of a counterfeit 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, it would be your duty to return a verdict of not guilty.