

DRUG TRAFFICKING—MANUFACTURING (MARIJUANA, METHAQUALONE, COCAINE, AMPHETAMINE, METHAMPHETAMINE, OPIUM OR HEROIN, LYSERGIC ACID DIETHYLAMIDE, METHYLENEDIOXYAMPHETAMINE, METHYLENEDIOXYMETHAMPHETAMINE, METHYLENEDIOXYPYROVALERONE, MEPHEDRONE, OR SYNTHETIC CANNABINOID). FELONY.

REPLACEMENT JUNE 2016

N.C. Gen. Stat. § 90-95 (H)

260.20A DRUG TRAFFICKING—MANUFACTURING (MARIJUANA, METHAQUALONE, COCAINE, AMPHETAMINE, METHAMPHETAMINE, OPIUM OR HEROIN, LYSERGIC ACID DIETHYLAMIDE, METHYLENEDIOXYAMPHETAMINE, METHYLENEDIOXYMETHAMPHETAMINE, METHYLENEDIOXYPYROVALERONE, MEPHEDRONE, OR SYNTHETIC CANNABINOID). FELONY.

The defendant has been charged with trafficking in [marijuana¹] [methaqualone] [cocaine] [[amphetamine] [any mixture containing amphetamine]]² [[methamphetamine] [any mixture containing methamphetamine]]³ [opium] [heroin] [lysergic acid diethylamide (LSD)] [methylenedioxyamphetamine (MDA)] [methylenedioxymethamphetamine (MDMA)] [methylenedioxypyrovalerone (MDPV)] [mephedrone] [synthetic cannabinoid], which is the unlawful manufacturing of (*state amount*) of (*name controlled 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 manufactured [marijuana] [methaqualone] [cocaine] [[amphetamine] [any mixture containing amphetamine]] [[methamphetamine] [any mixture containing methamphetamine]] [opium] [heroin] [LSD] [MDA] [MDMA] [MDPV] [mephedrone] [synthetic cannabinoid]. (Describe manner in which manufacturing was done, *e.g.*, growing, chemically compounding⁴ (*name controlled substance*) would be manufacture of (*name controlled substance*).

And Second, that the amount of (*name controlled substance*)] which the defendant manufactured was (*state amount*)⁵.

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If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant manufactured (*name controlled substance*) by (*describe manner of manufacturing*) it, and that the amount which the defendant manufactured 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.⁶

1 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.

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 "Manufacture" is defined by N.C. Gen. Stat. § 90-87(15). It includes producing, preparing, propagating, compounding, converting or processing a controlled substance, either by extraction from substances of natural origin or by chemical synthesis. Also included are packaging or repackaging and labeling or relabeling of the container of a controlled substance.

5 The range of amounts set out in each subsection of N.C. Gen. Stat. § 90-95(h) is given in note one of N.C.P.I.—Crim. 260.17. The trial judge should consult the statute directly for the range of punishment under each subsection.

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

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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.)

6. 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*). See *State v. McCain*, 713 S.E.2d 21, 24 (N.C. Ct. App. 2011) (“possession with the intent to manufacture cocaine is not a lesser included offense of trafficking in cocaine.”)

