

[SELLING] [DELIVERING] A COUNTERFEIT CONTROLLED SUBSTANCE.  
G.S. 90-95(a)(2) and 90-87(6). FELONY.

The defendant has been charged with [selling] [delivering]<sup>1</sup>  
a counterfeit 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 knowingly<sup>2</sup> [sold] [delivered]  
(*name substance*) to (*name buyer or distributee*)<sup>3</sup> representing it  
to be (*name controlled substance*), a controlled substance.

Second, that (*name substance*) was 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

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<sup>1</sup>"Delivery" is defined by G.S. 90-87(7) as the actual, constructive, or  
attempted transfer from one person to another of a controlled substance. But  
the transfer of less than five grams of marijuana for no remuneration does not  
constitute delivery. G.S. 90-95(b)(2).

<sup>2</sup>If the defendant contends that he didn't know the true identity of what  
he [sold] [delivered], add this language to the first sentence: "and the  
defendant knew what he [sold] [delivered] was (*name substance*)."  
S v. Boone, 310 N.C. 284, 291 (1984).

<sup>3</sup>Bill of indictment must state the name of the purchaser or that his  
name is unknown. State v. Bennett, 280 N.C. 167 (1971), S v. Wall, 96 N.C.  
App. 45 (1989).

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thereby falsely [purports] (or) [is represented] [to be  
the product of] (or) [to have been distributed by] such  
other [manufacturer] [distributor] (or) [dispenser].]

<sup>b</sup>[any substance which is by any means intentionally  
represented as a controlled substance when it is not.<sup>4</sup>  
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] (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 knowingly [sold]  
[delivered] (*name substance*) to (*name buyer or distributee*),  
representing it to be (*name controlled substance*), a controlled

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<sup>4</sup>For elaboration of what constitutes a controlled substance see G.S. 90-  
87(6).

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substance, and that (*name substance*) was 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 as to one or more of these things, it would be your duty to return a verdict of not guilty.

