

N.C.P.I.—Criminal 260.23

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

GENERAL CRIMINAL VOLUME

REPLACEMENT JUNE 2012

G.S. 90-95 (H)

DRUG TRAFFICKING—[SELLING] [DELIVERING] (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 [marijuana] [methaqualone] [cocaine] [[amphetamine] [any mixture containing amphetamine]]¹ [[methamphetamine] [any mixture containing methamphetamine]]² [opium] [heroin] [lysergic acid diethylamide (LSD)] [methylemedioxyamphetamine (MDA)] [methylenedioxyamphetamine (MDMA)] [methylenedioxypropylamphetamine (MDPV)] [mephedrone] [synthetic cannabinoid], which is the unlawful [sale] [delivery] of (*state amount*)³ of (*name controlled substance*).

1 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 G.S. 90-95(h)(3b).

2 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 G.S. 90-95(h)(3b).

3 The range of amounts set out in each subsection of G.S. 90-95(h) is given in footnote 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 may seek 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 may 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

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For you to find the defendant guilty of this offense the State must prove two things beyond a reasonable doubt:

First, that the defendant knowingly⁴ [sold] [delivered]⁵ [marijuana] [methaqualone] [cocaine] [[amphetamine] [any mixture containing amphetamine]] [[methamphetamine] [any mixture containing methamphetamine]] [opium] [heroin] [LSD] [MDA] [MDMA] [MDPV] [mephedrone] [synthetic cannabinoid] to (*name buyer or distributee*).

And Second, that the amount of (*name controlled substance*) which the defendant [sold] [delivered] was (*state amount*).

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.)

4 If the defendant contends that he did not know the true identity of what he [sold] [delivered], add this language to the first sentence: "and the defendant knew that what he [sold] [delivered] was (name substance)." S. v. Boone, 310 N.C. 284, 291 (1984).

5 "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.

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G.S. 90-95 (H)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly [sold] [delivered] (*name controlled substance*) to (*name buyer or distributee*), and that the amount which he [sold] [delivered] 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 more of these things, it would be your duty to return a verdict of not guilty.⁶

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*)."

