

N.C.P.I.—Crim-261.50

PSEUDOEPHEDRINE SALES—RETAILER. FELONY, MISDEMEANOR.

GENERAL CRIMINAL VOLUME

JUNE 2013

N.C. Gen. Stat. §§ 90-113.56, 90-113.53, 90-113.54, 90-113.52A.

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NOTE WELL: For a first offense, the retailer would be guilty of a misdemeanor. For a second or subsequent offense, the retailer would be guilty of a felony.

NOTE WELL: See G.S. 15A-928 for provisions regarding indictment, bifurcated trial, verdict, and judgment.

The defendant has been charged with failing to lawfully make a pseudoephedrine product sale.

For you to find the defendant guilty of this offense, the state must prove two (three) things beyond a reasonable doubt:

First, that the defendant was a retailer¹;

Second, that the defendant willfully and knowingly

- a) [[sold a pseudoephedrine product in the form of a [tablet] [caplet] [gel cap]] (not in a blister package).²
- b) [[failed to [store] [sell] the pseudoephedrine product from behind the pharmacy counter]]
- c) [sold a pseudoephedrine product at retail without a prescription to a person under the age of 18 years] [[failed to obtain a [valid] [unexpired] [government issued] photo identification of purchaser]]

1 "Retail" is defined as "the sale of goods or commodities to ultimate consumers, as opposed to the sale for further distribution or processing." Black's Law Dictionary, 1121 (Bryan A. Garner, Abridged 9th ed. 2010)

2 G.S. 90-113.52 (a) states "a pseudoephedrine product in the form of a tablet, caplet, or gel cap shall not be offered for retail sale loose in bottles but shall be sold only in blister packages."

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- [[failed to obtain in [print] [orally] a current valid personal residential address of purchaser]] [[failed to enter the [name] [address] of a purchaser correctly into a record of disposition of pseudoephedrine products]] [failed to correctly identify the pseudoephedrine product purchased in the record of disposition] [failed to get the purchaser to sign a form attesting to the validity of the pseudoephedrine products that were sold]
- d) [failed to maintain a record of disposition of pseudoephedrine products sold to a consumer for at least two years from the date of the transaction]
- e) [sold more than 3.6 grams of any pseudoephedrine product to one person in a single calendar day] [sold more than 9 grams of pseudoephedrine products to one person within a 30-day period]
- f) [[failed to post a [sign] [placard] in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products were offered for sale]]³
- g) [did not electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI) before completing the sale of a pseudoephedrine product];

(And Third, that on (*name date*) the defendant in (*name court*) [was

3 G.S. 90-113.54 (a) provides that the sign posted should contain something similar to "North Carolina law strictly prohibits the purchase of more than two packages (3.6 grams total) of certain products containing pseudoephedrine per day, and more than three packages (9 grams total) of certain products containing pseudoephedrine within a 30-day period. This store will maintain a record of all sales of these products which may be accessible to law enforcement officers."

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 convicted of] [pled guilty to] the crime of (describe pseudoephedrine sales crime under G.S. 90-113.56), that was committed on (*name date*) in violation of the laws of the [State of North Carolina] [State of (*name other state*)] [United States].)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was a retailer, that defendant willfully and knowingly [[sold a pseudoephedrine product in the form of a [tablet] [caplet] [gel cap]] (not in a blister package);

- a) [[failed to [store] [sell] the pseudoephedrine product from behind the pharmacy counter]]
- b) [sold a pseudoephedrine product at retail without a prescription to a person under the age of 18 years] [[failed to obtain a [valid] [unexpired] [government issued] photo identification of purchaser]] [[failed to obtain in [print] [orally] a current valid personal residential address of purchaser]] [[failed to enter the [name] [address] of a purchaser correctly into a record of disposition of pseudoephedrine products]] [failed to correctly identify the pseudoephedrine product purchased in the record of disposition] [failed to get the purchaser to sign a form attesting to the validity of the pseudoephedrine products that were sold]
- c) [failed to maintain a record of disposition of pseudoephedrine products sold to a consumer for at least two years from the date of the transaction]

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- d) [sold more than 3.6 grams of any pseudoephedrine product to one person in a single calendar day] [sold more than 9 grams of pseudoephedrine products to one person within a 30-day period]
- e) [[failed to post a [sign] [placard] in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products were offered for sale]]
- f) [did not electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI) before completing the sale of a pseudoephedrine product] (and that on (*name date*) the defendant in (*name court*) [was convicted of] [pled guilty to] the crime of (describe pseudoephedrine sales crime under G.S. 90-113.56), that was committed on (*name date*) in violation of the laws of the [State of North Carolina] [State of (*name other state*)] [United States]),

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, then it would be your duty to return a verdict of not guilty.