

203.13. ARMED HABITUAL FELON.¹

NOTE WELL: The Pattern Jury Instruction Committee advises using a transcript of plea if defendant pleads guilty or otherwise admits a previous conviction. See N.C. Gen. Stat. § 15A-928 for provisions regarding allegations and proof of previous convictions.

NOTE WELL: See N.C. Gen. Stat. §§ 14-7.40 and 14-7.41 for provisions regarding indictment, bifurcated trial, verdict, and judgment.

The defendant has been charged with being an armed habitual felon. An armed habitual felon is an individual who has been [convicted of] [pled guilty to] [pled no contest to] a firearm-related felony offense² on at least one prior occasion.³

For you to find the defendant guilty of being an armed habitual felon, the State must prove beyond a reasonable doubt:

That on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] [pled no contest to] the firearm-related felony of (*name firearm related felony*), that was committed on (*name date*) in violation of the law 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 (*name date*), the defendant in (*name court*) [was convicted of] [pled guilty to] [pled no contest to] the firearm-related felony of (*name firearm-related felony*), that was committed on (*name date*) in violation of the law 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 reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1. Under N.C. Gen. Stat. 14-7.5, the issue of whether a defendant is an habitual felon is submitted to the jury, or, in the alternative, a defendant may enter a guilty plea to the charge of being an habitual felon. Even when a defendant stipulates to the three prior convictions and as to his status as an habitual felon, such stipulation, in the absence of an inquiry by the trial court to establish a record of a formal guilty plea, is not tantamount to a guilty plea. *State v. Gilmore*, 142 N.C. App. 465, 542 S.E.2d 694 (2001).

2. N.C. Gen. Stat. 14-7.35 defines firearm-related felony as "any felony committed by a person in which the person used or displayed a firearm while committing the felony."

3. Firearm-related felonies committed before the defendant turned 18 years of age do not constitute more than one firearm-related felony for purposes of this offense.