

ILLUSTRATIVE PATTERN JURY INSTRUCTION

(MARKED TO BE READ TO THE JURY IN A SPECIFIC CASE)

Note Well: Attached is a photocopy of N.C.P.I.--Crim. 207.10, marked up so that it can be read, as marked, to the jury in an actual case. In marking this copy, it was assumed that the only aggravating circumstance suggested by the evidence was the use by the defendant of a .38 calibre pistol and that the defendant and the victim were not married. Note that the names of the defendant and the victim, the date, and the relevant facts have been written in where indicated by the italicized directions as to facts, and that all headings, "Note Well's" and footnotes, and all bracketed and parenthetical phrases which do not apply to these facts, have been marked out. A summary of the evidence is not written in on this copy, but the "Model Jury Instruction" on the preceeding pages contains an illustrative summary of evidence.

~~FIRST DEGREE RAPE (WEAPON, SERIOUS INJURY OR MULTIPLE ASSAILANTS) AND
LESSER INCLUDED OFFENSES. G.S. § 14-27.2~~

~~NOTE WELL: Use the following instruction in first degree rape
cases where the alleged crime was committed after January 1, 1980.
When the alleged crime was committed earlier, use N.C.P.I. - Crim.
207.11 or 207.1A.~~

John Doe

The defendant has been accused of first degree rape.

Under the law and the evidence in this case, it is your duty to return one of the following verdicts:

- (1) guilty of first degree rape;
- (2) guilty of second degree rape;
- (3) guilty of attempted first degree rape;
- (4) guilty of attempted second degree rape;
- (5) guilty of assault on a female;
- (6) not guilty.

(Briefly summarize the evidence. See N.C.P.I.--Crim. 100.00.)

Now I charge that for you to find the defendant guilty of first degree rape, the State must prove four things beyond a reasonable doubt:

First, that the defendant engaged in vaginal intercourse with *Patricia Poe* ~~(name)~~ *Poe, victim*. (Vaginal intercourse is penetration, however slight, of the female sex organ by the male sex organ. The actual emission of semen is not necessary.)

Second, that the defendant used or threatened to use force sufficient to overcome any resistance *Patricia Poe* ~~(name victim)~~ might make.

Third, that *Patricia Poe* ~~(name victim)~~ did not consent and it was against her will. (Consent induced by fear is not consent at law.)

~~FIRST DEGREE RAPE (WEAPON, SERIOUS INJURY OR MULTIPLE ASSAULTS) AND LESSER INCLUDED OFFENSES: G.S. § 14-27.2. (Continued.)~~

(And) fourth, that the defendant

~~/~~ [[employed] (or) [displayed]]

~~/~~ [dangerous or deadly weapon. *a .38 Cal. pistol* ~~[(Name weapon)]~~ is a

dangerous or deadly weapon.] ~~[A dangerous or deadly~~

~~weapon is a weapon which is likely to cause death or serious bodily injury.]]~~

~~/~~ ~~[(name article, e.g., a toy pistol) and that (name~~

~~victim) reasonably believed that (name article) was a dangerous or deadly weapon.]]~~

~~[inflicted serious personal¹ injury upon (name victim or other person injured).]~~

~~Or was aided and abetted by one or more other persons. And defendant would be aided and abetted by another person if that person [is present at the time the rape is committed and knowingly [advised] [encouraged] [instigated] [aided] him to commit the crime] (or) [though not physically present at the time the rape was committed, shared the defendant's criminal purpose and, to the defendant's knowledge was aiding or was in a position to aid him at the time the rape was committed.]]~~

¹Note that G.S. § 14-27.2 requires serious personal injury, not physical or bodily injury. The evident intent was to include extreme emotional distress as a non-physical, but still personal, injury which would raise a rape or sexual offense to first degree. If the state relies on such a theory of personal injury, the judge may wish to add to this element, "personal injury includes emotional distress such as (describe distress)" if it is extremely serious.

~~FIRST DEGREE RAPE (WEAPON, SERIOUS INJURY OR MULTIPLE ASSAILANTS) AND
LESSER INCLUDED OFFENSES. G.S. § 14-27.2. (Continued)~~

~~NOTE WELL: If the defendant and the victim were married at
the time of the rape, add the following element, and change the
"Now I charge..." sentence to "... five things..."~~

~~(And fifth, that the defendant and (name victim) were living
separate and apart pursuant to a [written agreement] [judicial decree].)~~

So I charge that if you find from the evidence beyond a reasonable
doubt that on or about ^{Jan 2, 1980} ~~(name date)~~ ^{John Doe} ~~(name defendant)~~ engaged in vaginal
intercourse with ^{Patricia Poe} ~~(name victim)~~ and that he did so by ^{holding a .38 cal pistol against} ~~(describe force or~~
^{her head} ~~the use of force)~~ and that this was sufficient to overcome any resistance
which ^{Patricia Poe} ~~(name victim)~~ might make, and that ^{Patricia Poe} ~~(name victim)~~ did not consent
and it was against her will, and that

^{John Doe} ~~(name defendant)~~ [employed] ^{a .38 cal. pistol, it would} ~~(or) [displayed] a (name weapon~~
~~or article)~~ (and that [this was] [(name victim) reasonably
believed that this was] a dangerous or deadly weapon).]

~~h [inflicted (describe serious personal injury) upon (name
victim or other person) and that this was serious personal
injury.]~~

~~f [(Describe aiding or abetting, i.e., (name other person) held
(name victim) down) and that (name defendant) was aided and
abettted by (name person/persons)]~~

~~(and that (name defendant) and (name victim) were living separate and
apart pursuant to a [written agreement] [judicial decree]), it would~~

~~FIRST DEGREE RAPE (WEAPON, SERIOUS INJURY OR MULTIPLE ASSAILANTS) AND
LESSER INCLUDED OFFENSES.—G.S. § 14-27.2. (Continued.)~~

be your duty to return a verdict of guilty of first degree rape. However if you do not so find or if you have a reasonable doubt as to one or more of these things you would not return a verdict of guilty of first degree rape.

If you do not find the defendant guilty of first degree rape, you must determine whether he is guilty of second degree rape. Second degree rape differs from first degree rape only in that it is not necessary for the state to prove beyond a reasonable doubt that the defendant

~~a [[employed] (or) [displayed] [a dangerous or deadly weapon] [an article which (name victim) reasonably believed was a dangerous or deadly weapon]]~~

~~b [inflicted serious personal injury upon (name victim or other person)]~~

~~c [was aided and abetted by (name other person or persons)]~~

So I charge that if you find from the evidence beyond a reasonable doubt that on or about Jan. 2, 1980 John Doe engaged in vaginal intercourse with Patricia Poe and that he did so by threatening to kill her and putting his hand on her throat ~~(name victim)~~ and that this was sufficient to overcome any resistance which Patricia Poe might make, and that Patricia Poe did not consent and it was against her will, ~~(and that (name defendant) and (name victim) were living separate and apart pursuant to a [written agreement] [judicial~~

~~FIRST DEGREE RAPE (WEAPON, SERIOUS INJURY OR MULTIPLE ASSAILANTS) AND
LESSER INCLUDED OFFENSES - C.S. 14-27.2 (Continued)~~

~~decree~~)), it would be your duty to return a verdict of guilty of second degree rape. However, if you do not so find or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of second degree rape.

If you do not find the defendant guilty of second degree rape, you must determine whether he is guilty of attempted first degree rape.

For you to find the defendant guilty of attempted first degree rape, the State must prove three things beyond a reasonable doubt:

First, that the defendant intended to engage in vaginal intercourse with ~~same victim~~ *Patricia Ae* by force and against her will.

Second, that at the time the defendant had this intent, he performed an act which was calculated and designed to bring about vaginal intercourse by force and against the will of ~~same victim~~ *Patricia Ae* and which came so close to bringing it about that in the ordinary and likely course of things he would have completed such intercourse had he not been stopped or prevented from completing his apparent course of action.

(Mere preparation or mere planning is not enough to constitute such an act. But the act need not necessarily be the last act required to complete the offense.)

(And) third, that the defendant

^a ~~[[employed] (or) [displayed]]~~ a *a 38 cal pistol*
[dangerous or deadly weapon. ~~[(Name weapon)]~~ is a
dangerous or deadly weapon.] ~~[A dangerous or deadly
weapon is a weapon which is likely to cause death or~~

~~FIRST DEGREE RAPE (WEAPON, SERIOUS INJURY OR MULTIPLE ASSAILANTS) AND
LESSER INCLUDED OFFENSES. G.S. § 14-27.2. (Continued)~~

If you do not find the defendant guilty of attempted second degree rape, you must determine whether the defendant is guilty of assault on a female. (An assault is an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm.)

Now I charge that for you to find the defendant guilty of assault on a female, the State must prove three things beyond a reasonable doubt:

First, that the defendant intentionally (and without justification or excuse) assaulted ~~(name victim)~~ *Patricia Poe* by ~~(describe assault)~~ *placing his hands upon her and pushing her onto a bed.*

Second, that ~~(name victim)~~ *Patricia Poe* was a female person.

And third, that ~~(name defendant)~~ *John Doe* was a male person, who had reached his eighteenth birthday.

So I charge that if you find from the evidence beyond a reasonable doubt that on or about ~~(date)~~ *Jan 2, 1970* ~~(name defendant)~~ *John Doe* intentionally ~~(describe assault)~~ *placed his hands upon Patricia Poe and pushed her onto a bed and that Patricia Poe* ~~(name victim)~~ *Patricia Poe* was a female person and ~~(name defendant)~~ *John Doe* was a male person, who had reached his eighteenth birthday, it would be your duty to return a verdict of guilty of assault on a female. However, 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.

~~FIRST DEGREE RAPE (WEAPON, SERIOUS INJURY OR MULTIPLE ASSAILANTS) AND
LESSER INCLUDED OFFENSES. C.S. 14-27-21 (Continued.)~~

~~serious bodily injury.]]~~

^a~~[(name article, e.g., toy pistol) and that (name
victim) reasonably believed that (name article) was
a dangerous or deadly weapon.]]~~

~~b [inflicted serious personal injury upon (name victim or
other person injured).]~~

~~c [was aided and abetted by one or more other persons. A
defendant would be aided and abetted by another person if
that person [is present at the time the rape is ^{attempted} committed
and knowingly [advised] [encouraged] [instigated] [aided]
him to commit the crime] (or) [though not physically present
at the time the rape was ^{attempted} committed, shared the defendant's
criminal purpose and, to the defendant's knowledge was aiding
or was in a position to aid him at the time the rape was
^{attempted} committed.]~~

~~NOTE WELL: If the defendant and the victim were married at
the time of the ^{attempted} rape, add the following element, and change the
"Now I charge. . ." sentence to ". . . five things. . ."~~

~~(And fourth, that the defendant and (name victim) were living
separate and apart pursuant to a [written agreement] [judicial decree].)~~

So I charge that if you find from the evidence beyond a reasonable
doubt that on or about ^{June, 1980} ~~(name date)~~ ^{John Doe} ~~(name defendant)~~ intended to have

~~FIRST DEGREE RAPE (WEAPON, SERIOUS INJURY OR MULTIPLE ASSAULTS) AND
LESSER INCLUDED OFFENSES. G.S. § 14-27.2. (Continued.)~~

Patricia Poe

vaginal intercourse with ~~(name victim)~~ by force and against her will
and that he ~~(describe conduct, e.g., forced her into the back seat of
his car, removed her clothing and fondled her private parts)~~
*broke into her home, forced her onto a bed,
removed her clothing and fondled her private parts*

these were acts designed to bring about vaginal intercourse by force and
against ~~(name victim)~~'s will and would have resulted in such intercourse
had ~~(name defendant)~~ not been ~~[stopped]~~ [prevented] from completing his
John Doe
apparent course of action, and that

a ~~(name defendant)~~ [employed] ~~(or)~~ [displayed] a ^{*.38 cal pistol*} ~~(name weapon
or article)~~ (and that [this was] ~~(name victim)~~ reasonably
believed that this was] a dangerous or deadly weapon.)]

~~(name defendant)~~ [inflicted ~~(describe serious personal injury)~~ upon ~~(name
victim or other person)~~ and that this was serious personal
injury]

~~(name defendant)~~ [aided or abetted, i.e., ~~(name other person)~~
held ~~(name victim)~~ down] and that ~~(name defendant)~~ was aided
and abetted by ~~(name person/persons)~~

~~(and that (name defendant) and (name victim) were living separate and
apart pursuant to a [written agreement] [judicial decree]),~~ it would
be your duty to return a verdict of guilty of attempted first degree
rape. However if you do not so find or if you have a reasonable doubt
as to one or more of these things you would not return a verdict of
guilty of attempted first degree rape.

~~FIRST DEGREE RAPE (WEAPON, SERIOUS INJURY OR MULTIPLE ASSAILANTS) AND LESSER INCLUDED OFFENSES. C.S. 14-27.2. (Continued.)~~

If you do not find the defendant guilty of attempted first degree rape, you must determine whether he is guilty of attempted second degree rape. Attempted second degree rape differs from attempted first degree rape only in that it is not necessary for the state to prove beyond a reasonable doubt that the defendant

~~[[employed] (or) [displayed] [a dangerous or deadly weapon] [an article which (name victim) reasonably believed was a dangerous or deadly weapon].]~~

~~[[inflicted serious personal injury upon (name victim) or other person].]~~

~~[[was aided and abetted by (name other person or persons)].]~~

So I charge that if you find from the evidence beyond a reasonable doubt that on or about ^{Jan 3, 1970} ~~(name date)~~ ^{John Doe} ~~(name defendant)~~ intended to have

vaginal intercourse with ^{Patricia Lee} ~~(name victim)~~ by force and against her will and that he ~~(describe conduct, e.g., forced her into the back seat of her clothing and fondled her private parts)~~ ^{broke into her house, forced her out of bed, removed her clothing and fondled her private parts} and that

these were acts designed to bring about vaginal intercourse by force

and against ^{Patricia Lee's} ~~(name victim)'s~~ will and would have resulted in such inter-

course had ^{John Doe} ~~(name defendant)~~ not been ~~[stopped]~~ [prevented] from completing

his apparent course of action, it would be your duty to return a verdict

of guilty of attempted second degree rape. However if you do not so

find or have a reasonable doubt as to one or more of these things,

you would not find the defendant guilty of attempted second degree rape.

