

ASSAULT WITH A DEADLY WEAPON WITH INTENT TO KILL INFLICTING
SERIOUS INJURY. FELONY. G.S. 14-32(a).

The defendant has been charged with assault with a deadly weapon with intent to kill inflicting serious injury.

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

First, that the defendant assaulted the victim by intentionally¹ (and without justification or excuse)² (*describe assault*).

Second, that the defendant used a deadly weapon. A deadly weapon is a weapon which is likely to cause death or serious bodily injury. [(*Name object*) is a deadly weapon]. [In determining whether (*name object*) was a deadly weapon, you should consider the nature of (*name object*), the manner in which it was used, and the size and strength of the defendant as compared to the victim.]³

Third, the State must prove that the defendant had the specific intent to kill the victim.

And Fourth, that the defendant inflicted serious injury.⁴

¹If a definition of intent is required, see N.C.P.I.--Crim. 120.10.

²The parenthetical phrase should be used only where there is evidence of justification or excuse, such as self-defense.

³Use appropriate bracketed statement. In the event that there is a dispute as to which weapon was used and one of the weapons is non-deadly as a matter of law, e.g., a real pistol and a toy pistol, state what would not be a deadly weapon.

⁴Serious injury may be defined as "such physical injury as causes great pain and suffering." See *S. v. Jones*, 258 N.C. 89 (1962), or *S. v. Ferguson*, 261, N.C. 558 (1964). If there is evidence as to injuries which could not conceivably be considered anything but serious, the trial judge may instruct the jury as follows: "(*Describe injury*) would be a serious injury." *S. v. Davis*, 33 N.C. App. 262 (1977).

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Crim. 308.45.*

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally (*describe assault*) the victim with a (*name object*) (and that (*name weapon*) was a deadly weapon)⁵ and that the defendant intended to kill the victim and did seriously injure him, (nothing else appearing) 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

NOTE WELL: *If self-defense is an issue, use N.C.P.I.--
Crim. 308.45.⁷*

⁵This parenthetical phrase should be used only where the weapon is not deadly per se.

⁶If there is to be instruction on lesser included offenses, the last phrase should be: ". . . you will not return a verdict of guilty of assault with a deadly weapon with intent to kill inflicting serious injury." See State v. Hannah, __ N.C. App. __, __ S.E.2d __ (16 April 2002) (holding that assault inflicting serious bodily injury pursuant to G.S. 14-32.4 is not a lesser-included offense of assault with a deadly weapon with intent to kill inflicting serious injury).

⁷Including self-defense in the mandate is required by S. v. Woodsen, 31 N.C. App. 400 (1976) Cf. S. v. Dooley, 285 N.C. 158 (1974).