

N.C.P.I. -- CRIM. 208.15 ASSAULT WITH A DEADLY WEAPON INFLICTING SERIOUS INJURY. FELONY. G.S. 14-32(b).

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

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

First, that the defendant assaulted the victim by intentionally<sup>1</sup> (and without justification or excuse)<sup>2</sup> (*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.]<sup>3</sup>

And Third, that the defendant inflicted serious injury<sup>4</sup> upon the victim.

*NOTE WELL: If self-defense is an issue, use N.C.P.I.--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 object*) was a deadly weapon),<sup>5</sup> thereby inflicting serious injury upon the victim

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

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

<sup>3</sup> Use 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.

<sup>4</sup> Serious injury may be defined as "such physical injury as causes great pain and suffering." See S. v. Jones, 258 N.C. 89 (1962); 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. Johnson, 320 N.C. 746 (1987).

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

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(nothing else appearing)<sup>6</sup> 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.<sup>7</sup>

*NOTE WELL: If self-defense is an issue, continue with mandate from N.C.P.I.-Crim. 308.45.<sup>8</sup>*

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<sup>6</sup> The parenthetical phrase should be used only where there is some evidence of justification or excuse, such as self-defense.

<sup>7</sup> If 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 inflicting serious injury, but will consider whether the defendant is guilty of..." See State v. Hannah, 149 N.C. App. 713, 563 S.E.2d 1 (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). Presumably, the holding in Hannah would also mean that assault inflicting serious bodily injury is not a lesser-included offense of assault with a deadly weapon inflicting serious injury.

<sup>8</sup> Including 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).