

SIMPLE ASSAULT. G.S. 14-33(a). MISDEMEANOR. (INVOLVING PHYSICAL CONTACT.)

NOTE WELL: *If physical contact is not involved, use N.C.P.I.—Crim. 208.40.*

The defendant has been charged with simple assault.<sup>1</sup>

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

First, that the defendant assaulted the victim by (*describe assault*).

And Second, that the defendant acted intentionally<sup>2</sup> (and without justification or excuse).<sup>3</sup>

NOTE WELL: *If self-defense is an issue, use charge N.C.P.I.—Crim. 308.40 as to the elements of self-defense. If defense of a family member or third person is an issue, use N.C.P.I.—Crim.308.40A or 308.50, as appropriate.*

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally (*describe assault*), (nothing else appearing)<sup>3</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 both of these things, it would be your duty to return a verdict of not guilty.

NOTE WELL: *If self-defense is an issue, use mandate from N.C.P.I.—Crim. 308.40.<sup>4</sup> If defense of a family member or third person is an issue, use N.C.P.I.—Crim.308.40A or 308.50, as appropriate.*

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1. Provided there is a battery involved, choose the most appropriate definition of assault as follows: (An assault is an intentional application of force, however slight, directly or indirectly, to the body of another person without that person's consent.) (An assault is an intentional, offensive touching of another person without that person's consent.)

2. If a definition of intent is needed, use N.C.P.I.—Crim. 120.10.

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

4. Including self-defense in the mandate is required by *State v. Woodson*, 31 N.C. App. 400 (1976). *Cf. State v. Dooley*, 285 N.C. 158 (1974).

