

N.C.P.I.—Criminal 210.20

FIRST DEGREE KIDNAPPING (HOSTAGE, RANSOM, SHIELD, OR TERROR) COVERING SECOND DEGREE KIDNAPPING AS A LESSER INCLUDED OFFENSE. G.S. 14-39

General Criminal Volume

Replacement June 2011

Note Well:

(1) Use this instruction when the indictment does not allege that a purpose of the kidnapping was to facilitate a felony or inflict serious injury. Use N.C.P.I.—Crim. 210.25 when the indictment does so allege.

(2) Use this instruction when there is evidence that the victim was not released in a safe place, or was seriously injured, or was sexually assaulted. When there is no evidence of any of those three things, use N.C.P.I.—Crim. 210.30.

The defendant has been charged with first degree kidnapping.

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

First, that the defendant unlawfully¹

- a) [confined a person, that is, imprisoned the person within a given area.]
- b) [restrained a person, that is, restricted the person's freedom of movement.]
- c) [removed a person from one place to another.]

Second, that the person [did not consent] [had not reached the person's sixteenth birthday and the person's [parent] [guardian] [legal custodian] did not consent] to this [confinement] [restraint] [removal].² (Consent obtained or induced by fraud or fear is not consent.)

Third, that the defendant did this for the purpose of

- a) [holding that person as a hostage. Holding a person as a hostage means to

¹ There will seldom be any need to state separately or elaborate on the "unlawfully" element. It means "without justification or excuse" and in most cases any facts which would establish a justification or excuse would also negate the purposes necessary to establish kidnapping under G.S. § 14-39. However, if the facts should call for further elaboration, the "unlawfully" element should be set out as a separate element.

² G.S. 14-39 proscribes the confinement, restraint or removal of any ". . . person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person." Use the first bracketed alternative if the person kidnapped was 16 years of age or over, and use the second bracketed alternative if the person kidnapped was under 16.

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hold the person as security for the performance or forbearance of some act by some third person.]

- b) [holding that person for ransom.]
- c) [using that person as a shield.]
- d) [terrorizing that person or any other person. Terrorizing means more than just putting another in fear; it means putting that person in some high degree of fear—a state of intense fright or apprehension.³]

And Fourth, that the person [was not released by the defendant in a safe place]⁴ [had been sexually assaulted]⁵ [had been seriously injured].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant unlawfully

- a) [confined a person]
- b) [restrained a person]
- c) [removed a person from one place to another]

and that the person [did not consent] [had not reached the person's sixteenth birthday and the person's [parent] [guardian] [legal custodian] did not consent] to this [confinement] [restraint] [removal], that this was for the purpose of

- a) [holding that person as a hostage]
- b) [holding that person for ransom]

³ *S. v. Jones*, 36 N.C. App. 447 (1978). All that is required is that the defendant's *purpose* was to terrorize; the element is complete even though the victim was not in fact terrorized. *Id.*

⁴ Releasing a kidnap victim when the kidnapper is aware he is cornered and outnumbered by law enforcement officials is not "voluntary" and sending her out into the focal point of their weapons is not a "safe place". See *State v. Heatwole*, 333 N.C. 156, 423 S.E.2d 735 (1992). See also *State v. Corbett*, 607 S.E.2d 281 (N.C. Ct. App. January 2005).

⁵ The defendant cannot be sentenced for both first degree kidnapping and sexual offense/rape if the sole basis for escalating second degree kidnapping to first degree kidnapping is the sexual offense/rape. In the above situation the defendant can be sentenced for both second degree kidnapping and sexual offense/rape. See *State v. Belton*, 318 N.C. 141 (1986).

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- c) [using that person as a shield]
- d) [terrorizing that person or any other person],

and that the person [was not released in a safe place] [had been sexually assaulted] [had been seriously injured], it would be your duty to return a verdict of guilty of first degree kidnapping. 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 first degree kidnapping,⁶ but would consider whether the defendant is guilty of second degree kidnapping. Second degree kidnapping differs from first degree kidnapping in that it is unnecessary for the State to prove that the person [was not released by the defendant in a safe place] [had been sexually assaulted] [had been seriously injured].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant unlawfully

- a) [confined a person]
- b) [restrained a person]
- c) [removed a person from one place to another]

and that the person [did not consent] [had not reached the person's sixteenth birthday and the person's [parent] [guardian] [legal custodian] did not consent] to this [confinement] [restraint] [removal], and that this was for the purpose of

- a) [holding that person as a hostage]
- b) [holding that person for ransom]
- c) [using that person as a shield]
- d) [terrorizing that person or any other person],

it would be your duty to return a verdict of guilty of second degree kidnapping. 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

⁶ If no lesser included offense instructions are to be given, the last phrase should be "it would be your duty to return a verdict of not guilty."

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a verdict of not guilty.

NOTE WELL: When there is evidence of restraint which may have been without any of the purposes required to constitute kidnapping, give N.C.P.I.--Crim. 210.40, Felonious Restraint and/or N.C.P.I.—Crim. 210.15, False Imprisonment, as a lesser included offense instruction.