

N.C.P.I.—Crim 207.20A.1

SECOND DEGREE RAPE—FORCIBLE (ALLEGED VICTIM ASLEEP OR
SIMILARLY INCAPACITATED). (OFFENSES ON OR AFTER DEC. 1, 2015)
FELONY.

CRIMINAL VOLUME

JUNE 2016

N.C. Gen. Stat. § 14-27.22

207.20A.1 SECOND DEGREE FORCIBLE RAPE (ALLEGED VICTIM ASLEEP OR
SIMILARLY INCAPACITATED). (OFFENSES ON OR AFTER DEC. 1, 2015)
FELONY.

*NOTE WELL: This instruction is intended for use where there is
some evidence that the alleged victim was asleep or similarly
incapacitated. Where there are no facts supporting the
conclusion that the alleged victim was asleep or otherwise
incapacitated, use N.C.P.I.—Crim. 207.20.*

*This instruction is valid for offenses committed on or after
December 1, 2015. For offenses committed before December 1,
2015, see N.C.P.I.—Crim. 207.20A.*

The defendant has been charged with second degree forcible rape.

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

First, that the defendant engaged in vaginal intercourse with the
alleged 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 at this time, the alleged victim was asleep or similarly
incapacitated.

And Third, that the alleged victim did not consent and it was against
the alleged victim's will. (Consent induced by fear is not consent in law.)¹

*NOTE WELL: Marriage is not a defense to this offense. N.C. Gen.
Stat. § 14-27.34 (2015).*

If you find from the evidence beyond a reasonable doubt that on or
about the alleged date, the defendant engaged in vaginal intercourse with
the alleged victim, that at that time the alleged victim was asleep or
similarly incapacitated, and that the alleged victim did not consent and it

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was against the alleged victim's will, 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.²

*NOTE WELL: In an appropriate case the judge should use
N.C.P.I.—Crim. 201.10 to charge on an attempted second
degree rape as lesser included offense under this charge. See
N.C.P.I.—Crim. 207.10 for guidance.*

¹ See *State v. Moorman*, 320 N.C. 387, 358 S.E.2d 502 (1987); *State v. Smith*, 360 N.C. 341, 626 S.E.2d 258 (2006).

² If there are lesser included offenses, the last phrase should be ". . . you would not return a verdict of second degree forcible rape, but would consider whether the defendant is guilty of"