

N.C.P.I.—Crim 207.20B

SECOND DEGREE FORCIBLE RAPE. (OFFENSES ON OR AFTER DEC. 1, 2015)
FELONY.

CRIMINAL VOLUME

JUNE 2016

N.C. Gen. Stat. § 14-27.22

207.20B SECOND DEGREE FORCIBLE RAPE. (OFFENSES ON OR AFTER DEC.
1, 2015) FELONY.

NOTE WELL: Where there are facts supporting the conclusion that the alleged victim was asleep or similarly incapacitated, force can be implied. In such cases, use N.C.P.I.—Crim. 207.20A.

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

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 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 the defendant used or threatened to use force sufficient to overcome any resistance the alleged victim might make. (The force necessary to constitute rape need not be actual physical force. Fear or coercion may take the place of physical force.)

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 and that *the defendant* did so by force or threat of force and that this was sufficient to overcome any resistance which the alleged

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victim might make, and that the alleged victim did not consent and it 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. 207.10A 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"