
207.25A SECOND-DEGREE RAPE—ALLEGED VICTIM HAS A MENTAL DISABILITY, IS MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS. (OFFENSES ON OR AFTER DEC. 1, 2015) FELONY.

NOTE WELL: 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. 207.25.

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 alleged victim

a. [had a mental disability. A person has a mental disability if the person suffers from [an intellectual disability] [a mental disorder] and this [intellectual disability] [mental disorder] temporarily or permanently renders the person substantially incapable of [appraising the nature of the person's conduct] [resisting the act of vaginal intercourse] [communicating unwillingness to submit to the act of vaginal intercourse] [resisting a sexual act]¹.]²

b. [was mentally incapacitated. A person is mentally incapacitated when, due to [any act committed upon the person] [a poisonous³ or controlled substance provided to the person without their knowledge or consent] the person is rendered substantially incapable of [appraising

the nature of the person's conduct] [resisting the act of vaginal intercourse] [resisting a sexual act].]⁴

c. [was physically helpless. A person is physically helpless if the person is [unconscious] [physically unable to resist an act of vaginal intercourse] [physically unable to communicate unwillingness to submit to an act of vaginal intercourse] [physically unable to resist a sexual act].]⁵

And Third, that the defendant knew or should reasonably have known that the alleged victim [had a mental disability] [was mentally incapacitated] [was physically helpless.]

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 at that time

a. [the alleged victim suffered from [an intellectual disability] [a mental disorder] and as a result was [temporarily] [permanently] rendered so substantially incapable of [appraising the nature of the alleged victim's conduct] [resisting an act of vaginal intercourse] [communicating unwillingness to submit to an act of vaginal intercourse] [resisting a sexual act] as to be mentally disabled,]

b. [the alleged victim was so substantially incapable of [appraising the nature of the alleged victim's conduct] [resisting an act of vaginal intercourse] [resisting a sexual act] as to be mentally incapacitated,]

c. [the alleged victim was so physically unable to [resist an act of vaginal
intercourse] [communicate unwillingness to submit to an act of vaginal
intercourse] [resist a sexual act] as to be physically helpless]

and that the defendant knew or should reasonably have known that the
alleged victim [had a mental disability] [was mentally incapacitated] [was
physically helpless], it would be your duty to return a verdict of guilty. If you
do not so find or have a reasonable doubt about one or more of these things,
it would be your duty to return a verdict of not guilty.⁶

*NOTE WELL: In an appropriate case the judge should use
N.C.P.I.—Crim. 201.10 to charge on attempted second degree
rape as a lesser included offense under this charge, and the judge
should similarly use N.C.P.I.-Crim. 208.70 (Assault on a Female)
where appropriate.*

1 N.C. Gen. Stat. § 14-27.20(4).

2 N.C. Gen. Stat. § 14-27.20(2a).

3 If the substance used to cause incapacitation of the alleged victim was unusual or not commonly known or thought to be poisonous, use the following statement: "It is not necessary that a substance be widely known as a poison for the purposes of this crime; just as arsenic and cyanide are poisonous substances which will cause death to a human being, so also is sugar to the acute diabetic, or dust to the acute asthmatic. In determining the poisonous nature of a substance, you must look to the peculiar weakness or sensibility of the victim to that particular substance." See N.C.P.I.—Crim. 206.12.

4 N.C. Gen. Stat. § 14-27.20(2).

5 N.C. Gen. Stat. § 14-27.20(3).

6 If there are lesser included offenses, the last phrase should be, ". . . you would not return a verdict of second degree rape."

