

MALICIOUS ASSAULT AND BATTERY IN A SECRET MANNER WITH A DEADLY WEAPON WITH INTENT TO KILL. FELONY. G.S. 14-31.

The defendant has been charged with malicious assault and battery in a secret manner with a deadly weapon with intent to kill.

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

First, that the defendant committed an assault and battery upon the victim by intentionally¹ (*describe the act*).

Second, that the defendant used a deadly weapon. A deadly weapon is a weapon which is likely to cause death or serious bodily injury. [(*Name object*) is a deadly weapon.] [In determining whether (*name object*) was a deadly weapon, you should consider the nature of (*name object*), the manner in which it was used, and the size and strength of the defendant as compared to the victim.]

Third, that the defendant committed the assault and battery upon the victim in a secret manner. The assault and battery would be in a secret manner if the victim was unaware of the defendant's intent to commit the assault and battery (even though he might have known of the defendant's presence).

Fourth, that the defendant had intent to kill the victim.

And Fifth, that the defendant acted maliciously, that is, with ill will, hatred, or animosity towards the victim.

¹If a definition of intent is required, see N.C.P.I.--Crim. 120.10.

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If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant maliciously committed an assault and battery upon the victim by intentionally (*describe act*) with a deadly weapon in a secret manner and that the defendant intended to kill the victim, 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

²If there is to be an instruction on lesser included offenses, the last phrase should be: ". . . you will not return a verdict of guilty or malicious assault and battery in a secret manner with a deadly weapon with intent to kill."