

ASSAULT WITH A DEADLY WEAPON. MISDEMEANOR. G.S. 14-33(c)(1).

The defendant has been charged with assault with a deadly weapon.

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

First, that the defendant assaulted the victim by intentionally<sup>1</sup> (and without justification or excuse)<sup>2</sup> (*describe assault*).

And 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 weapon*) is a deadly weapon.] [In determining whether (*name weapon*) is a deadly weapon, you should consider the nature of (*name weapon*), the manner in which it was used, and the size and strength of the defendant as compared to the victim.]<sup>3</sup>

NOTE WELL: *If self-defense is an issue, use N.C.P.I.--Crim. 308.45.*

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

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

<sup>2</sup>The parenthetical phrase should be used only where there is evidence of justification or excuse, such as self-defense.

<sup>3</sup>Use applicable bracketed statement. In the event that there is a dispute as to which weapon was used and one of the weapons is non-deadly as a matter of law, e.g., a real pistol and a toy pistol, state what would not be a deadly weapon.

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assaulted the victim with a (*name weapon*) (and that (*name weapon*) was a deadly weapon),<sup>4</sup> (nothing else appearing) 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 both of these things, it would be your duty to return a verdict of not guilty.<sup>5</sup>

*NOTE WELL: If self-defense is an issue, use mandate from N.C.P.I.--Crim. 308.45.<sup>6</sup>*

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<sup>4</sup>The parenthetical phrase should be given only where the weapon is not deadly per se.

<sup>5</sup>If there is to be instruction on lesser included offenses, the last phrase should be: ". . . you will not return a verdict of guilty of assault with a deadly weapon."

<sup>6</sup>Including self-defense in the mandate is required by S. v. Woodsen, 31 N.C. App. 400 (1976). Cf. S. v. Dooley, 285 N.C. 158 (1974).