

203.11 VIOLENT HABITUAL FELON.¹

NOTE WELL: Use this instruction where the offense occurs on or after May 1, 1994. N.C. Gen. Stat. § 14-7.7 is effective May 1, 1994. See N.C. Gen. Stat. § 14-7.11 for provisions regarding indictment, bifurcated trial, verdict, and judgment.

The defendant has been charged with being a violent habitual felon. A violent habitual felon is an individual who has been [convicted of] (or) [pled guilty to] (or) [pled no contest to] violent felony offenses² on at least two separate occasions since July 6, 1967. The second (and other subsequent) crime(s) must have been committed after the [conviction of] (or) [plea of guilty to] (or) [plea of no contest to] the one before it.³

For you to find the defendant guilty of being a violent habitual felon, the State must prove two things beyond a reasonable doubt:

First, that on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] [pled no contest to] the violent felony of (*name violent felony*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States];

And Second, that on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] [pled no contest to] the violent felony of (*name violent felony*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States];

If you find from the evidence beyond a reasonable doubt that:

(1) On (*name date*), the defendant in (*name court*) [was convicted of] [pled guilty to] [pled no contest to] the violent felony of (*name violent felony*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States]; and

(2) On (*name date*), the defendant in (*name court*) [was convicted of] [pled guilty to] [pled no contest to] the violent felony of (*name violent felony*), that was committed on (*name date*) in violation of the law of the [State of North Carolina] [State of (*name other state*)] [United States];

it would be your duty to return a verdict of guilty. If you do not so find or have reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1 Under N.C. Gen. Stat. § 14-7.5, the issue of whether a defendant is an habitual felon is submitted to the jury, or, in the alternative, a defendant may enter a guilty plea to the charge of being an habitual felon. Even when a defendant stipulates to the three prior convictions and as to his status as an habitual felon, such stipulation, in the absence of an inquiry by the trial court to establish a record of a formal guilty plea, is not tantamount to a guilty plea. *State v. Gilmore*, 142 N.C. App. 465, 542 S.E.2d 694 (2001). The trial judge is strongly advised to use a transcript of plea if defendant pleads guilty or admits to being a habitual felon.

2 N.C. Gen. Stat. § 14-7.7(b) defines Class A-E felonies as violent felonies. (For violent habitual felon indictments issued between May 1, 1994 and Oct. 1, 1994, see House Bill 31, Chapter 22, Part 6, 1994 Extra Session.)

3 Pleas of guilty or no contest to or convictions of felony offenses, prior to July 6, 1967, shall not constitute felony offenses, nor shall any felony offense to which a pardon has been extended constitute a felony. Federal offenses involving intoxicating liquors are not felonies for purposes of the offense.