

206.20 FIRST DEGREE MURDER BY TORTURE. FELONY.

*NOTE WELL: N.C. Gen. Stat. §§ 15-176.4; 15A-2000(a): When the defendant is indicted for first degree murder the court shall, upon request by either party, instruct the jury as follows:*

*"In the event that the defendant is convicted of murder in the first degree, the court will conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment (without parole).<sup>1</sup> This proceeding may be conducted before you or another jury. It will be conducted, if necessary, as soon as practical after any verdict of guilty of first degree murder is returned. If that time comes, you will receive separate sentencing instructions. However, at this time your only concern is to determine whether the defendant is guilty of the crime charged or any lesser included offenses about which you are instructed."*

*NOTE WELL: The presence or absence of premeditation, deliberation and specific intent to kill is irrelevant in determining whether the evidence is sufficient for first-degree murder by torture. State v. Lee, 348 N.C. 474 (1998).*

The defendant has been charged with first degree murder by torture.

For you to find the defendant guilty of first degree murder by torture the State must prove two things beyond a reasonable doubt:

First, that the defendant intentionally<sup>2</sup> tortured the victim.

Torture is defined as the course of conduct by one who intentionally inflicts grievous pain and suffering upon another for the purpose of punishment, persuasion, or sadistic pleasure.<sup>3</sup> Course of conduct is defined as the pattern of the same or similar acts, repeated over a period of time, however short, which establishes that there existed in the mind of the defendant a plan, scheme, system or design to inflict cruel

suffering upon another.<sup>4</sup>

And Second, that the torture was a proximate cause of the victim's death. A proximate cause is real cause, a cause without which the victim's death would not have occurred,<sup>5</sup> and one that a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result. (The defendant's act need not have been the only cause, or the nearest cause. It is sufficient if it occurred with some other cause acting at the same time, which, in combination with, caused the death of the victim.) (A child has been killed if the child was born alive, but died as a result of injuries inflicted prior to being born alive.)<sup>6</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally tortured the victim, thereby proximately causing the victim's death, it would be your duty to return a verdict of guilty of first degree murder by torture. However, if you do not so find or if you have a reasonable doubt as to one or more of these things it would be your duty to return a verdict of not guilty.

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1 The parenthetical phrase, without parole, must be used for offenses occurring on or after October 1, 1994.

2 To define intent, use N.C.P.I.-Crim. 120.10.

3 *State v. Lee*, 384 N.C. 474 (1998).

4 *State v. Lee*, *supra*.

5 Where there is a serious issue as to proximate cause, further instruction may be helpful, *e.g.*, "The Defendant's act need not have been the last or the nearest cause. It is sufficient if it concurred with some other cause acting at the same time, which in combination with it proximately caused the death of (*name victim*)."

6 This sentence is only to be provided if the offense involved the killing of a child.