

N.C.P.I.-Crim. 208.09
MALICIOUS ASSAULT AND BATTERY IN A SECRET MANNER WITH A DEADLY
WEAPON WITH INTENT TO KILL. FELONY.
GENERAL CRIMINAL VOLUME
MARCH 2002
N.C. Gen. Stat. § 14-31

208.09 MALICIOUS ASSAULT AND BATTERY IN A SECRET MANNER WITH A
DEADLY WEAPON WITH INTENT TO KILL. FELONY.

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.

If you find from the evidence beyond a reasonable doubt that on or
about the alleged date, the defendant maliciously committed an assault

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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

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

2. If 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."