

208.25 ASSAULT WITH A DEADLY WEAPON WITH INTENT TO KILL.
FELONY.

The defendant has been charged with assault with a deadly weapon with intent to kill.

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

First, that the defendant assaulted the victim by intentionally¹ (and without justification or excuse)² (*describe assault*).

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.]³

And Third, that the defendant had the specific intent to kill the victim.

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 (*describe assault*) the victim with a (*name object*) (and that (*name object*) was a deadly weapon),⁴ intending to kill the victim, (nothing else appearing)⁵ 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.⁶

NOTE WELL: If self-defense is an issue, use mandate from N.C.P.I.-Crim. 308.45.⁷

-
1. If a definition of intent is required, see N.C.P.I.-Crim. 120.10.
 2. The parenthetical phrase should be used only where there is evidence of justification or excuse, such as self-defense.
 3. Use appropriate 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.
 4. This parenthetical phrase should only be used where the weapon is not deadly *per se*.
 5. The parenthetical phrase should be used only where there is some evidence of justification or excuse, such as self-defense.
 6. 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 with intent to kill."
 7. 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).