

## 208.40 SIMPLE ASSAULT. MISDEMEANOR.

The defendant has been charged with simple assault.<sup>1</sup>

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 (*describe assault*).

And Second, that the defendant acted intentionally<sup>2</sup> (and without justification or excuse).<sup>3</sup>

*NOTE WELL: If self-defense is an issue, use charge N.C.P.I.—Crim. 308.40 as to the elements of self-defense. If defense of a family member or third person is an issue, use N.C.P.I.—Crim. 308.40A or 308.50, as appropriate.*

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally (*describe assault*), (nothing else appearing)<sup>3</sup> 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.

*NOTE WELL: If self-defense is an issue, use mandate from N.C.P.I.—Crim. 308.40.<sup>4</sup> If defense of a family member or third person is an issue, use N.C.P.I.—Crim.308.40A or 308.50, as appropriate.*

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1. If a definition of assault is needed, use N.C.P.I.—Crim. 120.20.

2. If a definition of intent is needed, use N.C.P.I.—Crim. 120.10.

3. The parenthetical phrase should be used only where there is evidence of justification or excuse, such as self-defense.

4 .Including self-defense in the mandate is required by *State v. Woodson*, 31 N.C. App. 400 (1976). *Cf. State v. Dooley*, 285 N.C. 158 (1974).