

208.45 HABITUAL MISDEMEANOR ASSAULT. FELONY.

NOTE WELL: N.C. Gen. Stat. § 14-33.2 was amended effective December 1, 2004. This instruction should be used for offenses committed before that date. For offenses committed on or after December 1, 2004, N.C.P.I.-Crim. 208.45A should be used. If the defendant admits to five or more prior misdemeanor convictions, two of which were assaults, that element of the offense is established and no evidence in support thereof may be adduced by the State. If the defendant denies five or more prior misdemeanor convictions or remains silent, the State must prove the first element of the offense charged before the jury as part of its case. (See N.C. Gen. Stat. § 15A-928). State v. Burch, 160 N.C. App. 394, 585 S.E.2d 461 (2003)

The defendant has been charged with habitual misdemeanor assault.¹

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

First, that the defendant has been convicted of five (or more) prior misdemeanors, at least two of which were assaults; that is:

a) On (*name date*) in (*name court*) the defendant [was convicted of] [plead guilty to] the misdemeanor of (*name misdemeanor*), that was committed on (*name date*) in violation of the law of the [state of North Carolina] [state of (*name other state*)] [United States].

b) On (*name date*) in (*name court*) the defendant [was convicted of] [plead guilty to] the misdemeanor of (*name misdemeanor*), that was committed on (*name date*) in violation of the law of the [state of North Carolina] [state of (*name other state*)] [United States].

c) On (*name date*) in (*name court*) the defendant [was convicted of] [plead guilty to] the misdemeanor of (*name misdemeanor*), that was committed on (*name date*) in violation of the law of the [state of North Carolina] [state of (*name other state*)] [United States].

d) On (*name date*) in (*name court*) the defendant [was convicted of] [plead guilty to] the misdemeanor of (*name misdemeanor*), that was committed on (*name date*) in violation of the law of the [state of North Carolina] [state of (*name other state*)] [United States].

e) And on (*name date*) in (*name court*) the defendant [was convicted of] [plead guilty to] the misdemeanor of (*name misdemeanor*), that was committed on (*name date*) in violation of the law of the [state of North Carolina] [state of (*name other state*)] [United States].

NOTE WELL: This offense is activated by a violation of N.C. Gen. Stat. § 14-33(c) or N.C. Gen. Stat. § 14-34. Here, N.C. Gen. Stat. § 14-33(c)(2), Assault on a Female, is used as the activating offense.

Second, that the defendant did intentionally² (that is, without justification or excuse)³ assault the victim, a female person, by (*describe assault*).

And Third, that the defendant on (*name date*) was at least 18 years of age.

If you find from the evidence beyond a reasonable doubt that the defendant has been convicted of these five (or more) prior misdemeanors, at least two of which were assaults, and that on (*name date*) the defendant intentionally (*describe assault*), and that the victim was a female person and the defendant a male person, at least 18 years of age, (nothing else appearing)⁴ it would be your duty to return a verdict of

guilty of habitual

misdemeanor assault. 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.

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1. If a definition of assault is needed, see N.C.P.I.-Crim. 120.20.
 2. If a definition of intent is needed, see N.C.P.I.-Crim. 120.10.
 3. The parenthetical phrase should only be used where there is evidence of justification or excuse, such as self-defense.
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