

N.C.P.I.-Crim. 307.10
ACCIDENT (DEFENSE TO HOMICIDE CHARGE, EXCEPT HOMICIDE
COMMITTED DURING PERPETRATION OF A FELONY).
GENERAL CRIMINAL VOLUME
MAY 2003

307.10 ACCIDENT (DEFENSE TO HOMICIDE CHARGE, EXCEPT HOMICIDE
COMMITTED DURING PERPETRATION OF A FELONY).

Where evidence is offered that tends to show that the decedent's death was accidental and you find that the killing was in fact accidental, the defendant would not be guilty of any crime, even though *his* acts were responsible for the decedent's death. A killing is accidental if it is unintentional, occurs during the course of lawful conduct, and does not involve culpable negligence. A killing cannot be [premeditated] (or) [intentional] (or) [culpably negligent] if it was the result of an accident. When the defendant asserts that the victim's death was the result of an accident *he* is, in effect, denying the existence of those facts which the State must prove beyond a reasonable doubt in order to convict *him*. The burden is on the State to prove those essential facts and, in so doing, disprove the defendant's assertion of accidental death. The State must satisfy you beyond a reasonable doubt that the victim's death was not accidental before you may return a verdict of guilty.

NOTE WELL: Add to final mandate at end:

Now members of the jury, bear in mind that the burden of proof rests upon the State to establish the guilt of the defendant beyond a reasonable doubt. If you find from the evidence that the killing of the deceased was accidental;¹ that is, that the decedent's death was brought about by an unknown cause or that it was from an unusual or unexpected event from a known cause, and you also find that the killing of the deceased was unintentional, that at the time of the death the defendant was engaged in the performance of a lawful act without any intention to do harm and that *he* was not culpably negligent; then you would find that the death of the deceased was the result of misadventure and it would be your duty to return a verdict of not guilty.

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1. See *S v. Morgan*, 299 N.C. 191, 209 (1980). *S v. Cherry*, 51 N.C. App. 118 (1981); *aff'd* 304 N.C. 385 (1981) (*per curiam*).

306.10 ACCEPTED MEDICAL PURPOSE (DEFENSE TO FIRST AND SECOND-
DEGREE SEXUAL OFFENSES INVOLVING PENETRATION).

Where evidence is offered that tends to show that penetration was for an accepted medical purpose and you find that the penetration of the victim was in fact for an accepted medical purpose, the defendant would not be guilty of any crime, even though the defendant penetrated the victim. An act is for an accepted medical purpose only where the defendant can show the act was clearly [done for a purpose generally approved or accepted by a physician] [done for purposes accepted in the medical field or in the practice of medicine].¹ Such an act does not have to be performed by a medical professional to be for an accepted medical purpose.

When the defendant asserts that the penetration was for an accepted medical purpose, the defendant is, in effect, denying the existence of those facts, which the State must prove beyond a reasonable doubt in order to convict the defendant. The burden is on the State to prove those essential facts and, in so doing, disprove the defendant's assertion of an accepted medical purpose. The State must satisfy you beyond a reasonable doubt that the penetration was not for an accepted medical purpose before you may return a verdict of guilty.

NOTE WELL: Add to final mandate at end:

Now members of the jury, bear in mind that the burden of proof rests upon the State to establish the guilt of the defendant beyond a reasonable doubt. If you find from the evidence that the penetration was for an accepted medical purpose; that is, the defendant has shown that the act was clearly [done for a purpose generally approved or accepted by a physician] [done for purposes accepted in the medical field or in the practice of medicine], then you would find that the penetration of the

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victim was for an accepted medical purpose, and it would be your duty to return a verdict of not guilty.

¹. See *State v. Stepp*, 367 N.C. 772, 767 S.E.2d 324 (2015) (adopting the dissent from *State v. Stepp*, 232 N.C. App. 132, 753 S.E.2d 485 (2014)).