

210.30 SECOND DEGREE KIDNAPPING (HOSTAGE, RANSOM, SHIELD, OR
TERROR). FELONY.

NOTE WELL:

1) Use this instruction when the indictment does not allege that a purpose of the kidnapping was to facilitate a felony or inflict serious injury. Use N.C.P.I.—Crim. 210.35 when the indictment does so allege.

2) Use this instruction only when there is no evidence that the victim was not released in a safe place, no evidence that the victim had been seriously injured, and no evidence that the victim had been sexually assaulted. Use N.C.P.I.—Crim. 210.20 when there is such evidence.

3) Where multiple crimes involving force, e.g. armed robbery and kidnapping, are alleged and all alleged crimes are part of one continuous transaction or event, then the jury should be instructed on only one offense. If the multiple crimes are separate transactions, then the jury can be charged on all crimes.

The defendant has been charged with second degree kidnapping.

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

First, that the defendant unlawfully¹

- a) [confined a person, that is, imprisoned the person within a given area.]
- b) [restrained a person, that is, restricted the person's freedom of movement.]
- c) [removed a person from one place to another.]²

Second, that the person [did not consent] [had not reached the person's sixteenth birthday and the person's [parent] [guardian] [legal

custodian] did not consent] to this [confinement] [restraint] [removal].³
(Consent obtained or induced by fraud or fear is not consent.)

And Third, that the defendant did this for the purpose of

- a) [holding that person as a hostage. Holding a person as a hostage means to hold the person as security for the performance or forbearance of some act by some third person.]
- b) [holding that person for ransom.]
- c) [using that person as a shield.]
- d) [terrorizing [that person] [some other person]. Terrorizing means more than just putting another in fear; it means putting that person in some high degree of fear, a state of intense fright or apprehension.⁴]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant unlawfully

- a) [confined a person]
- b) [restrained a person]
- c) [removed a person from one place to another]

and that the person [did not consent] [had not reached the person's sixteenth birthday and the person's [parent] [guardian] [legal custodian] did not consent] to this [confinement] [restraint] [removal], and that this was for the purpose of

- a) [holding that person as a hostage.]
- b) [holding that person for ransom.]
- c) [using that person as a shield.]
- d) [terrorizing [that person] [some other person]],

N.C.P.I.-Crim. 210.30
SECOND DEGREE KIDNAPPING (HOSTAGE, RANSOM, SHIELD, OR TERROR).
FELONY.
GENERAL CRIMINAL VOLUME
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N.C. Gen. Stat. § 14-39

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.⁵

NOTE WELL: When there is evidence of restraint which may have been without any of the purposes required to constitute kidnapping, give N.C.P.I.—Crim. 210.40, Felonious Restraint, and/or N.C.P.I.—Crim. 210.15, False Imprisonment, as a lesser included offense instruction.

1 There will seldom be any need to state separately or elaborate on the "unlawfully" element. It means "without justification or excuse" and in most cases any facts which would establish a justification or excuse would also negate the purposes necessary to establish kidnapping under N.C. Gen. Stat. § 14-39. If the facts should call for further elaboration, the "unlawfully" element should be set out as a separate element.

2 The jury should be instructed on only those theories alleged in the indictment. See *State v. Smith*, 162 N.C. App. 46, 589 S.E. 2d 739 (2004) (concluding that the trial court committed plain error when the indictment alleged an unlawful removal of the victim, but the trial court instructed on removal, confinement and restraining).

3 N.C. Gen. Stat. § 14-39 proscribes the confinement, restraint or removal of any ". . . person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person." Use the first bracketed alternative if the person kidnapped was 16 years of age or over, and use the second bracketed alternative if the person kidnapped was under 16.

4 *S. v. Jones*, 36 N.C. App. 447 (1978). All that is required is that the defendant's purpose was to terrorize; the element is complete even though the victim was not in fact terrorized. *Id.*

5 If there is to be an instruction on felonious restraint and/or false imprisonment, the last sentence should read ". . . you would not return a verdict of guilty of second degree kidnapping."