

Forced Self-Penetration Supports a Sex Offense Conviction

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Over the years I've been asked a bunch of times whether forced self-penetration constitutes a "sexual act" supporting a conviction for forcible sexual offense. Until recently, we had no clear answer in North Carolina. However, the North Carolina Court of Appeals recently addressed the issue, holding that this conduct can support a sexual offense conviction.

In [State v. Green](#), the defendant was charged with first-degree sexual offense (a B1 felony). The evidence showed that the defendant pointed a gun at the victim's head and ordered her to undress, insert her fingers into her vagina, and "play with herself." She complied. After he was convicted, the defendant appealed, arguing that the charge should have been dismissed. Specifically, he asserted that he didn't engage in a sexual act with the victim because he never physically touched her.

First-degree sexual offense requires, in part, that the defendant engage in a "sexual act" with the victim. Jessica Smith, *North Carolina Crimes: A Guidebook on the Elements of Crime* 232 (7th ed. 2012). That term includes cunnilingus, anilingus, fellatio, anal intercourse, and insertion of "any object" into another's genital or anal opening. *Id.*

The *Green* Court began by noting that the issue was one of first impression in North Carolina. It added however that decisions in Florida and California have determined that such conduct was covered by analogous sex crimes statutes. It went on to reject the defendant's argument that since the victim touched herself, he did not engage in a sexual act with her:

While defendant did not physically touch [the victim], he was "was "involved" in that he coerced her to touch herself. Defendant was not merely an observer or bystander, but rather he participated in the action by directing [the victim]. Given that the text of North Carolina statutes do not explicitly exclude instances such as the one in this case and the persuasive trend in other courts is to recognize coerced self-penetration as a sexual offense, we hold that the act of forcing a victim to self-penetrate constitutes "engag[ing] in a sexual act ... with another person ... and against the will of the other person." Defendant's assertion that he did not engage in a sexual act with [the victim] because he did not make physical contact with her therefore fails.

Slip Op. at p. 14 (citation omitted).