

MALICIOUS DAMAGE OF OCCUPIED PROPERTY BY USE OF EXPLOSIVE OR INCENDIARY [DEVICE] [MATERIAL]. FELONY. G.S. 14-49.1.

The defendant has been charged with maliciously [damaging] property occupied by another by the use of an explosive or incendiary [device] [material].

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

First, that the defendant damaged¹ another's [real] [personal] property.

Second, that the defendant did this with (an) explosive or incendiary [device] [material]. (*Name device or material*) is an explosive or incendiary [device] [material].²

Third, that the defendant acted willfully, that is intentionally and without justification or excuse.

Fourth, that the defendant acted maliciously. Malice means not only hatred, ill will, or spite as it is ordinarily understood--to be sure, that is malice--but it also means that condition of mind which prompts a person to intentionally inflict damage without just cause, excuse, or justification.³

¹If there is an issue as to whether or not the property was damaged, see S. v. Bennett, 132 N.C. App. 187, 51 S.E.2d 698 (1999).

²Where the explosive or incendiary character of the device cannot be determined as a matter of law, this sentence should not be given. See G.S. 14-50.1 for definition of explosive or incendiary device or material.

³See State v. Sexton, 153 N.C. App. 641, 571 S.E.2d (41) (2002) (approving this definition of "malice"), *aff'd*, 357 N.C. 235, 581 S.E.2d 57 (2003).

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(Continued.)

And Fifth, that at that time, the property was occupied by
another person.

If you find from the evidence beyond a reasonable doubt that
on or about the alleged date, the defendant willfully and
maliciously damaged the [real] [personal] property of another
with (an) explosive or incendiary [device] [material] while the
property was occupied by another person, 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.⁴

⁴If instruction on lesser included offenses is to be given the last
phrase should be "...you would not return a verdict of guilty of malicious
damage of occupied property by the use of an explosive or incendiary device."