

FIRST DEGREE ARSON, BURNING A STRUCTURE WITHIN THE CURTILAGE OF THE DWELLING HOUSE (INCLUDING SECOND DEGREE ARSON, BURNING AN UNINHABITED HOUSE). FELONIES.
G.S. §§ 14-58, 14-62.

NOTE WELL: *G.S. 14-58 divides common law arson into two degrees: first degree arson for the burning of an "occupied" dwelling and second degree arson for the burning of an "unoccupied" dwelling. Use this instruction when there is evidence that the defendant burned a house that was used as a home by someone, and in which someone was present at the time of the burning.*

The defendant has been charged with first degree arson.

Under the law and evidence in this case it is your duty to return one of the following verdicts:

- (1) guilty of first degree arson;
- (2) guilty of second degree arson;¹
- (3) guilty of burning an uninhabited house;¹
- (4) not guilty.

For you to find the defendant guilty of first degree arson the State must prove five things beyond a reasonable doubt.

¹Instruct on these lesser included offenses only when there is evidence that the structure burned was something other than an *occupied* dwelling house, i.e., an *unoccupied* dwelling house or uninhabited house.

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G.S. §§ 14-58, 14-62. (Continued.)

First, that the defendant burned² (*describe structure*).

Second, that this (*describe structure*) was an outbuilding within the curtilage of a dwelling house. (A dwelling house is a house that is inhabited, that is, a house that is the permanent, temporary, or seasonal residence of some person.)³ Curtilage means a piece of ground, either enclosed or not, that is commonly used with a dwelling house. The curtilage of a house includes the yard around the house.

Third, that this (*describe structure*) was an outbuilding within the curtilage of a dwelling house of someone other than

²If there is some question as to burning, the jury may be told "A partial burning or the slightest charring is sufficient, but a mere discoloration does not constitute a burning." The trial judge is advised that it is not appropriate to instruct the jury that a person "burns" a dwelling house when he "sets fire to" it, since these terms have different meanings under the law of arson in North Carolina. See *S. v. Hall*, 93 N.C. 573 (1885).

³If there is an issue as to whether the structure burned was a dwelling house, add the following to this element. "A house is not a dwelling house if it is [under construction and no one has yet moved in] [between tenants] [abandoned]." *S. v. Long*, 243 N.C. 393 (1956).

The malicious burning of any mobile home or manufactured-type house or recreational trailer which is the dwelling house of another also constitutes the crime of arson. G.S. § 14-58.2.

Note also that "inhabited" does not mean "occupied." A house can be inhabited and therefore a "dwelling house" even though its inhabitants are temporarily absent at the time the burning occurred. See *S. v. Vickers*, 306 N.C. 90 (1982).

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G.S. §§ 14-58, 14-62. (Continued.)

the defendant.⁴

Fourth, that the dwelling house was occupied when the defendant burned the (*describe structure*), that is, that some person was physically present in the dwelling house at that time.

And Fifth, that the defendant did so maliciously, that is, that he intentionally and without justification or excuse

^a[burned the (*describe structure*)]

^b[burned another structure, and that as a proximate result of his act, the fire spread to the (*describe*

⁴When dealing with a single unit dwelling house and there is evidence that the defendant inhabited the dwelling along with others, add the following:

"If this (*describe structure*) was the dwelling house of the defendant as well as that of (an)other person(s), it would be the dwelling house of someone other than the defendant."

When a landlord burns a house rented to a tenant, the landlord *does* commit arson, but when the tenant burns it, he does *not* unless another person also lives there. *S. v. Shaw*, 305 N.C. 327 (1982). When one spouse sets fire to a house exclusively occupied by the other, he commits arson even though title to the house is only in his name; but when the other spouse sets fire to that house she does *not* commit arson. When the defendant shares a single unit dwelling house with other persons (whether spouse, children, relatives, boarders, or roommates), the defendant would commit arson by burning that house, since the dwelling is inhabited by others. *S. v. Shaw*, 305 N.C. 327 (1982).

When dealing with a multi-unit dwelling, and there is evidence that all the units other than the defendant's were uninhabited, give the following:

"However, if all the other units in (*describe structure*) were uninhabited, the defendant would not be guilty of first degree arson. Therefore the State must satisfy you that at least one other unit in (*describe structure*) was inhabited by someone."

The tenant of one of the apartments in a multi-unit dwelling commits arson when he sets fire to his own apartment, even if the fire does not spread to any other part of the building, as long as there are occupied units in the building. *S. v. Jones*, 296 N.C. 75 (1978).

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G.S. §§ 14-58, 14-62. (Continued.)

structure)]⁵

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant burned (*describe structure*), and that this (*describe structure*) was an outbuilding within the curtilage of a dwelling house, and that it was the dwelling house of some person other than the defendant, and that someone was physically present in the dwelling house when the defendant burned the (*describe structure*), and that the defendant burned

^a[(*describe structure*) maliciously]

^b[(*describe other structure or place*) maliciously, and that as a proximate result of his act the fire spread to the (*describe structure*)]

it would be your duty to return a verdict of guilty of first degree arson.

If you do not so find, or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of first degree arson but you must determine whether the defendant is guilty of second degree arson. Second degree

⁵A person can burn a dwelling "maliciously" in one of two ways: (a) he may intentionally and without justification or excuse burn the dwelling itself, or (b) he may intentionally and without justification or excuse burn some structure or place that is not the dwelling of another and thereby create an unreasonable danger of fire to the dwelling.

"For a burning to be 'willful and malicious' in the law of arson, it must simply be done voluntarily, without excuse or justification, and without any bona fide claim of right. An intent or animus against either the property itself or its owner is not an element of common law arson." *S. v. Allen*, 322 N.C. 176 (1988).

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G.S. §§ 14-58, 14-62. (Continued.)

arson differs from first degree arson only in that the State need not prove that the dwelling house was occupied at the time (*describe structure*) was burned.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant burned (*describe structure*) and that this (*describe structure*) was an outbuilding within the curtilage of a dwelling house, and that it was the dwelling house of some person other than the defendant and that the defendant burned

a[*(describe structure)* maliciously]

b[*(describe other structure or place)* maliciously, and that as a proximate result of his act, the fire spread to the (*describe structure*)]

it would be your duty to return a verdict of guilty of second degree arson. If you do not so find, or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of second degree arson⁶ but you must determine whether the defendant is guilty of burning an uninhabited house.⁷

⁶If no lesser included offense instruction is given, the last phrase should read, "it would be your duty to return a verdict of not guilty."

⁷G.S. § 14-62. The trial judge should instruct the jury on this lesser included offense only if there is some evidence that the house was an uninhabited house.

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For you to find the defendant guilty of burning an uninhabited house the State must prove three things beyond a reasonable doubt:

First, that the defendant burned (*describe structure*).

Second, that this (*describe structure*) was within the curtilage of an uninhabited house. (An uninhabited house is one that is fit to live in, but is not being lived in.)⁸

And Third, that the defendant did so wantonly and willfully, that is deliberately and without justification or excuse.⁹

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant burned (*describe structure*) and that this (*describe structure*) was within the curtilage of an uninhabited house, and that the defendant did so wantonly and willfully, it would be your duty to return a verdict of guilty of burning an uninhabited house. 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.

⁸*S. v. Long*, 243 N.C. 393 (1956).

⁹"The words 'willful' and 'wanton' bear substantially the same meaning when identifying the requisite state of mind for violation of a criminal statute. *S. v. Williams*, 284 N.C. 73 (1973). 'Willful' means the wrongful doing of an act without justification or excuse, or purposely and deliberately in violation of law." *S. v. Murchinson*, 39 N.C. App. 163 (1978).