

215.34 BURNING OF A BUILDING OR STRUCTURE IN THE PROCESS OF CONSTRUCTION. FELONY.

*NOTE WELL: This instruction applies whether the building or structure in the process of construction is in the possession of the offender or in the possession of any other person at the time of the burning.*

The defendant has been charged with wantonly and willfully [setting fire to] [burning] [causing to be burned] [aiding, counseling, or procuring the burning of] a building or structure in the process of construction.

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

First, that the defendant [set fire to<sup>1</sup>] [burned] [caused to be burned] [aided, counseled, or procured the burning of] a building or structure.

Second, that the building or structure was in the process of construction.

Third, that the building was for use or intended to be used [as a dwelling house] [in carrying on any trade or manufacture, or otherwise].

And Fourth, that the defendant did so wantonly and willfully, that is, intentionally and without justification or excuse, with the knowledge or reasonable grounds to believe the defendant's act would endanger the rights or safety of others.<sup>2</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant wantonly and willfully [set fire to] [burned] [caused to be burned] [aided, counseled, or procured the burning of] a building or structure, that the building or structure was in the process of construction, and that the building or structure was for use or intended to be used [as a dwelling house] [in carrying on any trade or manufacture, or otherwise], 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.

1. It is possible for a person to “set fire to” property without burning it. *S. v. Hall*, 93 N.C. 573 (1885). If there is some question as to whether the defendant “set fire to” the property, the jury may be told that “a person sets fire to property whenever he causes fire to come into contact with the property, even though the property may not in fact be burned, or is merely scorched or discolored by heat.” If there is some question as to whether the defendant “burned” the property, the jury may be told that “a partial burning or the slightest charring is sufficient, but a mere scorching or discoloration by heat does not constitute a burning.”

2. See *S. v. Brackett*, 306 N.C. 138 (1982) for a discussion of the terms willful and wanton as used in this statute. The words have substantially the same meaning. The terms willful and wanton also mean the same thing as intentional.