

215.40 WANTON AND WILLFUL OR FRAUDULENT BURNING OF A DWELLING HOUSE BY THE OWNER OR OCCUPANT. FELONY.

NOTE WELL: Use this instruction only when (1) the defendant is charged with wantonly and willfully or fraudulently burning a dwelling house, which the defendant exclusively occupies, or (2) wantonly and willfully or fraudulently burning a building which is not inhabited, but is designed or intended as a dwelling house and which is owned by the defendant. Where the defendant is charged with burning a dwelling house that is owned by the defendant but inhabited by another, the proper charge may be arson, depending on the language of the indictment.

The defendant has been charged with [[wantonly and willfully] [fraudulently]] [[setting fire to] [burning] [causing to be burned] [aiding, counseling, or procuring the burning of]] a [dwelling house] [building designed or intended as a dwelling house].

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

First, that the defendant [set fire to¹] [burned] [caused to be burned] [aided, counseled, or procured the burning of] a [(describe structure)] [building designed or intended for use as a dwelling house].

Second, that this building was ²[used as a dwelling house and occupied³ by the defendant] (or) [designed or intended for use as a dwelling house and owned by the defendant].

And Third, 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.⁴] [for the fraudulent purpose of obtaining something of value from another by means of an intentional misrepresentation of the truth of the burning.]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant [[wantonly and willfully] [fraudulently]] [[set fire to] [burned] [caused to be burned] [aided, counseled or procured the burning of]] a building that [was used as a dwelling house and was occupied by the defendant] [was designed or intended for use as a dwelling house and was owned by the defendant], 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. Use the first bracketed phrase when the defendant is charged with burning the dwelling house that the defendant occupies. Use the second bracketed phrase when the defendant is charged with burning a building intended for use as a dwelling house and which the defendant owns.

3. In an appropriate case, add the following when using the first bracketed phrase, “The (*describe structure*) would be occupied by the defendant if it was used by the defendant as a permanent, temporary, or seasonal residence, even though *he* was not physically present in the dwelling when it was burned.”

4. 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.