

WANTON AND WILLFUL BURNING OF A [GINHOUSE] [TOBACCO HOUSE]
[MISCELLANEOUS STRUCTURE]. G.S. §§ 14-64, 14-67.1. FELONIES.

The defendant has been charged with wantonly and willfully [setting fire to] [burning] [causing the burning of]¹ a [ginhouse] [tobacco house] [*(name structure not specifically covered by any other section of G.S. § 14-58 et seq., e.g., a condemned house)*]²].

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

First, that the defendant intentionally [set fire to]³ [burned] [caused the burning of] a [ginhouse] [tobacco house] [*(name structure not specifically covered by any other section of G.S. § 14-58 et seq.)*].

¹G.S. 14-64 and 14-67.1 also make it an offense to "aid, counsel or procure" the burning of these types of property. If the defendant is prosecuted under one of these statutes for "aiding" the burning of these types of property, use the elements of N.C.P.I.--Crim. 202.20 or 202.20A (Aiding and Abetting) and incorporate this instruction as indicated therein. If the defendant is prosecuted under one of these statutes as an accessory before the fact, use the elements of N.C.P.I.--Crim. 202.30 (Accessory Before the Fact) and incorporate this instruction as indicated (applies only to felonies committed before July 1, 1981). See also Note 8 to N.C.P.I.--Crim. 215.25, re charging the burning of a "tobacco house" under G.S. 14-62 as a more serious offense.

²See G.S. 14-67.1.

³It 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."

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(Continued.)

And Second, that the defendant did so wantonly and willfully; that is, intentionally and without justification or excuse, with the knowledge or reasonable grounds to believe his act would endanger the rights or safety of others.⁴

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant intentionally [set fire to] [burned] [caused the burning of] a [ginhouse] [tobacco house] [*describe other structure*], and that the defendant did so wantonly and willfully, 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.

⁴See 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.