

ACCIDENT (DEFENSE TO HOMICIDE CHARGE, EXCEPT HOMICIDE COMMITTED DURING PERPETRATION OF A FELONY).

Where evidence is offered that tends to show that the decedent's death was accidental and you find that the killing was in fact accidental, the defendant would not be guilty of any crime, even though his acts were responsible for the decedent's death. A killing is accidental if it is unintentional, occurs during the course of lawful conduct, and does not involve culpable negligence. A killing cannot be [premeditated] (or) [intentional] (or) [culpably negligent] if it was the result of an accident. When the defendant asserts that the victim's death was the result of an accident he is, in effect, denying the existence of those facts which the State must prove beyond a reasonable doubt in order to convict him. The burden is on the State to prove those essential facts and, in so doing, disprove the defendant's assertion of accidental death. The State must satisfy you beyond a reasonable doubt that the victim's death was not accidental before you may return a verdict of guilty.

NOTE WELL: *Add to final mandate at end:*

Now members of the jury, bear in mind that the burden of proof rests upon the State to establish the guilt of the defendant beyond a reasonable doubt. If you find from the evidence that the killing of the deceased was accidental;¹ that

¹See *S v. Morgan*, 299 N.C. 191, 209 (1980). *S v. Cherry*, 51 N.C. App. 118 (1981); *aff'd* 304 N.C. 385 (1981) (per curiam).

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is, that the decedent's death was brought about by an unknown cause or that it was from an unusual or unexpected event from a known cause, and you also find that the killing of the deceased was unintentional, that at the time of the death the defendant was engaged in the performance of a lawful act without any intention to do harm and that he was not culpably negligent; then you would find that the death of the deceased was the result of misadventure and it would be your duty to return a verdict of not guilty.