

N.C.P.I.-Crim. 213.20
MALICIOUS DAMAGE OF OCCUPIED PROPERTY BY USE OF EXPLOSIVE OR
INCENDIARY [DEVICE] [MATERIAL]. FELONY.
GENERAL CRIMINAL VOLUME
NOVEMBER 2003
N.C. Gen. Stat. § 14-49.1

213.20 MALICIOUS DAMAGE OF OCCUPIED PROPERTY BY USE OF
EXPLOSIVE OR INCENDIARY [DEVICE] [MATERIAL]. FELONY.

The defendant has been charged with maliciously [damaging]
property occupied by another by the use of an explosive or incendiary
[device] [material].

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

First, that the defendant damaged¹ another's [real] [personal]
property.

Second, that the defendant did this with (an) explosive or
incendiary [device] [material]. (*Name device or material*) is an explosive
or incendiary [device] [material].²

Third, that the defendant acted willfully, that is intentionally and
without justification or excuse.

Fourth, that the defendant acted maliciously. Malice means not
only hatred, ill will, or spite as it is ordinarily understood- to be sure,
that is malice- but it also means that condition of mind which prompts a
person to intentionally inflict damage without just cause, excuse, or
justification.³

And Fifth, that at that time, the property was occupied by another
person.

If you find from the evidence beyond a reasonable doubt that on or
about the alleged date, the defendant willfully and maliciously damaged
the [real] [personal] property of another with (an) explosive or incendiary

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[device] [material] while the property was occupied by another person, 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.⁴

1. If there is an issue as to whether or not the property was damaged, see *State v. Bennett*, 132 N.C. App. 187, 51 S.E.2d 698 (1999).

2. Where the explosive or incendiary character of the device cannot be determined as a matter of law, this sentence should not be given. See N.C. Gen. Stat. § 14-50.1 for definition of explosive or incendiary device or material.

3. See *State v. Sexton*, 153 N.C. App. 641, 571 S.E.2d (41) (2002) (approving this definition of "malice"), *aff'd*, 357 N.C. 235, 581 S.E.2d 57 (2003).

4. If instruction on lesser included offenses is to be given the last phrase should be "...you would not return a verdict of guilty of malicious damage of occupied property by the use of an explosive or incendiary device."