

215.37 BURNING OF AN OCCUPIED COMMERCIAL STRUCTURE. FELONY.

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 commercial structure or its contents.

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 commercial structure] [the contents of a commercial structure]]. A commercial structure is any building or structure that is designed principally for the manufacture, distribution, or exchange of goods or services, or for any other business or trade purpose.

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 the defendant's act would endanger the rights or safety of others.²

And Third, that the commercial structure was occupied by one or more persons at the time of the burning, that is, that one or more persons were physically present in the commercial structure at the time 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 [[set fire to] [burned] [caused to be burned] [aided, counseled, or procured the burning of]] [[a commercial structure] [the contents of a commercial structure]], and that the commercial structure was occupied by one or more persons at the time of the burning, it would be your duty to return a verdict of guilty of wanton and willful burning of an occupied commercial structure.

If you do not so find, or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of wanton and willful burning of an occupied commercial structure³, but would consider whether the defendant is guilty of wanton and willful burning of an unoccupied commercial structure. Burning of an unoccupied commercial structure differs from burning of an occupied commercial structure in that it is unnecessary for the State to prove that the commercial structure was occupied at the time 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 [[set fire to] [burned] [caused to be burned] [aided, counseled, or procured the burning of]] [[a commercial structure] [the contents of a commercial structure]], and that the commercial structure was unoccupied at the time of the burning, it would be your duty to return a verdict of guilty of burning an unoccupied commercial structure. 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.

³. If there is to be no instruction on lesser included offenses, the last phrase should be: “. . . it would be your duty to return a verdict of not guilty.”