

222.52 FELONIOUS DESECRATION OF A GRAVESITE. FELONY.

NOTE WELL: N.C. Gen. Stat. § 14-148(b) provides for activities to which N.C. Gen. Stat. § 14-148(a) does not apply.

NOTE WELL: According to N.C. Gen. Stat. § 14-148(c) if the damage caused by the violation is one thousand dollars or more the violation is a felony. Any other violation is a misdemeanor.

The defendant has been charged with felonious desecration of a gravesite.

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

First, that the defendant

[(a) [threw] [placed] [put] any [[refuse] [garbage] [trash]] [[in] [on]] a cemetery.]

[(b) [took away] [disturbed] [vandalized] [destroyed] [changed] the location of any [stone] [brick] [iron] [(describe other material)] [fence enclosing a cemetery]¹.]

[(c) [took away] [disturbed] [vandalized] [destroyed] [tampered with] any [shrubbery] [flowers] [plants] [(describe other articles)] that were [planted] [placed] within any cemetery [to designate where human remains are interred] [to preserve and perpetuate the memory and name of any person].]

Second, that the defendant acted willfully.

And Third, that the damage caused was \$1,000 (or more).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully

[(a) [threw] [placed] [put] any [[refuse] [garbage] [trash]] [[in] [on]] a cemetery]

[(b) [took away] [disturbed] [vandalized] [destroyed] [changed] the location of any [stone] [brick] [iron] [(describe other material)] [fence enclosing a cemetery]

[(c) [took away] [disturbed] [vandalized] [destroyed] [tampered with] any [shrubbery] [flowers] [plants] [(describe other articles)] that were [planted] [placed] within any cemetery [to designate where human remains are interred] [to preserve and perpetuate the memory and name of any person]

and the damage caused was \$1,000 (or more), 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 both of these things (nothing else appearing)², it would be your duty to return a verdict of not guilty.³

1. N.C. Gen. Stat. § 14-148(a) provides that the defendant's actions would not violate this statute if the defendant were acting with the authorization of law or the consent of the surviving spouse or next of kin of the deceased.

2. The parenthetical phrase should be used only where there is evidence of justification or excuse, such as authorization of law or the consent of the surviving spouse or the next of kin. N.C. Gen. Stat. § 14-148(a)(2),(3).

3. Instructions on lesser included offenses should only be used when appropriate under the evidence in the case. If there is to be an instruction on lesser included offenses, the last phrase would be amended as follows: ". . . you would not return a verdict of guilty of felonious desecration of a gravesite, but would consider if the defendant is guilty of . . ."