

222.85 GRAFFITI VANDALISM. FELONY.

NOTE WELL: Use this instruction only if the defendant denies a previous conviction under N.C. Gen. Stat. §14-127.1 or remains silent. If the defendant admits the previous conviction, use N.C.P.I -Crim. 222.80, the misdemeanor offense. See N.C. Gen. Stat. § 15A-928 for provisions regarding indictment, bifurcated trial, verdict, and judgment. See also N.C.P.I.-Crim. 204.05 for a model instruction for bifurcated proceedings. This instruction is effective for offense occurring on or after December 1, 2015.

The defendant has been charged with graffiti vandalism.¹

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

First, that on or about the alleged date, (name date), the defendant [wrote] [scribbled] [marked] [painted] [defaced] [besmeared] (on) [the walls of [[public] [private] real property]] [cemetery tombstone] [cemetery monument] [public [building] [facility]]² [[statute] [monument] situated in a public place], using (a) [pen] [paint] [marker].³

Second, that the defendant acted unlawfully, that is, knowingly and without the consent of any person authorized to give consent.

Third, that defendant [was convicted of] [pled guilty to] the offense of graffiti vandalism on (name date) in (*name court*) in violation of the law of the [State of North Carolina], which occurred prior to (name date alleged in first element)]⁴.

And Fourth, that defendant [was convicted of] [pled guilty to] the offense of graffiti vandalism on (name date) in (*name court*) in violation of the law of the [State of North Carolina], which occurred prior to (name date alleged in third element).

If you find from the evidence beyond a reasonable doubt that on or about (name date alleged in the first element), the defendant unlawfully

[wrote] [scribbled] [marked] [painted] [defaced] [besmeared] (on) [the walls of [[public] [private] real property]] [cemetery tombstone] [cemetery monument] [[public [building] [facility]]] [statute] [monument] situated in a public place], using (a) [pen] [paint] [marker], that defendant [was convicted of] [pled guilty to] the offense of graffiti vandalism on (name date) in (*name court*) in violation of the law of the [State of North Carolina] which occurred prior to (name date alleged in first element)], and that defendant [was convicted of] [pled guilty to] the offense of graffiti vandalism on (name date) in (*name court*) in violation of the law of the [State of North Carolina], which occurred prior to (name date alleged in third element), then 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.⁵

1 Pursuant to N.C. Gen. Stat. § 14-127.1(c), any person who has two or more prior convictions for a violation of § 14-127.1(a), where the current violation was committed after the second conviction, and the violation resulting in the second conviction was committed after the first conviction, that person shall be guilty of a Class H felony.

2 N.C. Gen. Stat. § 14-132(c) defines the term "public building or facility" as used in this section, to include any building or facility which is: (1) One to which the public or a portion of the public has access and is owned or controlled by the State, any subdivision of the State, any other public agency, or any private institution or agency of a charitable, educational, or eleemosynary nature; or (2) Dedicated to the use of the general public for a purpose which is primarily concerned with public recreation, cultural activities, and other events of a public nature or character.

3 The statute applies regardless of whether the pen or marker contains permanent ink, paint, or spray paint.

4 The statute does not apply to convictions from any other state.

5 If there is to be an instruction on misdemeanor graffiti vandalism, the last sentence should read ". . . you would not return a verdict of guilty for this offense."