

N.C.P.I.—Crim. 235.46

USE OF AN UNMANNED AIRCRAFT SYSTEM NEAR A FOREST FIRE CAUSING DEATH. FELONY.

GENERAL CRIMINAL VOLUME

APRIL 2024

N.C. Gen. Stat. §§ 15A-300.4(a), (c)(1)

235.46 USE OF AN UNMANNED AIRCRAFT SYSTEM NEAR A FOREST FIRE CAUSING DEATH. FELONY.

The defendant, has been charged with use of an unmanned aircraft system near a forest fire causing death.¹

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

First, that the defendant was a [person] [entity] [State agency].

Second, that the defendant used an unmanned aircraft system.

Third, that the defendant did so within a [horizontal]² [vertical] distance of 3,000 feet from any forest fire within the jurisdiction of the North Carolina Forest Service.

And Fourth, that the use of the unmanned aircraft system was a proximate cause of the death of the victim. A proximate cause is a real cause, a cause without which the victim's death would not have occurred, and one that a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result. (The defendant's act need not have been the only cause, nor the last or nearest cause. It is sufficient if it occurred with some other cause acting at the same time, which, in combination with, caused the death of the victim.)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant was a [person] [entity] [State agency], that the defendant used an unmanned aircraft system within a [horizontal] [vertical] distance of 3,000 feet from any forest fire within the jurisdiction of the North Carolina Forest Service, and that the use of the unmanned aircraft system was a proximate cause of the death of the victim, it would be your

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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.³

1. N.C. Gen. Stat. § 15A-300.4(b) provides that “[u]nless the use of the unmanned aircraft system is otherwise prohibited under state or federal law,” this section does not apply to “[a] person operating an unmanned aircraft system with the consent of the official in responsible (*sic*) charge of management of the forest fire,” “[a] law enforcement officer using an unmanned aircraft system in accordance with G.S. 15A-300.1(c),” or “[a] North Carolina Forest Service employee or a person acting under the direction of a North Carolina Forest Service employee.” *See State v. Carey*, 273 N.C. App. 593, 849 S.E.2d 111 (2020) (holding that the language “does not apply” is exculpatory, and is not an underlying element of the offense.”).

2. The horizontal distance shall extend outward from the furthest exterior perimeter of the forest fire or forest fire control lines.

3. If there is evidence to support the submission of a lesser included offense, this last phrase would be amended as follows “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 use of an unmanned aircraft system near a forest fire causing death, but would consider whether the defendant is guilty of”