

307.11 ACCIDENT (DEFENSE IN CASES OTHER THAN HOMICIDE).

When evidence has been offered that tends to show that the alleged assault was accidental and you find that the injury was in fact accidental, the defendant would not be guilty of any crime even though the defendant's acts were responsible for the alleged victim's injury. An injury is accidental¹ if it is unintentional, occurs during the course of lawful conduct, and does not involve culpable negligence.

Culpable negligence is such gross negligence or carelessness as imparts a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others. When the defendant asserts that the alleged victim's injury was the result of an accident the defendant is, in effect, denying the existence of those facts which the state must prove beyond a reasonable doubt in order to convict the defendant. The burden is on the state to prove those essential facts and in so doing disprove the defendant's assertion of accidental injury. The State must satisfy you beyond a reasonable doubt that the alleged victim's injury was not accidental before you may return a verdict of guilty.

NOTE WELL: Add to the final mandate at end:

Or if you fail to find beyond a reasonable doubt that the injury to the alleged victim was not accidental, it would be your duty to return a verdict of not guilty.

¹. See *State v. Bediz*, 837 S.E.2d 188 (N.C. Ct. App. 2019).