

ARSON

Arson -- Outbuilding -- Common law definition

State v. Nipper 177 N.C. App. 794 (2006).

Defendant was properly indicted and convicted for **first-degree arson** under N.C.G.S. § 14-58, **rather than burning an outbuilding** under N.C.G.S. § 14-62, where **the garage that was burned was within the curtilage of an inhabited house**. Although there is tension between N.C.G.S. § 14-62 and the common law definition of arson, binding precedent from an earlier Court of Appeals panel upholds the common law definition.

Arson -- Burning Public Building -- Setting Off Fireworks in Police Interview Room

In re J.L.B.M. 176 N.C. App. 613 (2006)

There was sufficient evidence to support a charge of burning a public building where a juvenile set off fireworks in an interview room at a police station. The willful and wanton element of the offense is supported by the juvenile's laughter while an officer tried to put out the fireworks, and the "setting fire" element is supported by the fireworks causing a flame two to three feet high which caused black markings on the floor and wall. Given the proximity of the fireworks to the wall and the resulting flame and damage, an intent to "set fire" can be inferred. N.C.G.S. § 14-59.

(1) Arson -- First-Degree Charring -- Sufficiency of Evidence

(2) Arson -- First-Degree -- Instruction -- Attempted Arson

State v. Norris, 172 N.C. App. 722 (2005) [Rev'd 360 NC (June 30, 2006) other issues]

(1) The trial court did not err by denying defendant's motion to dismiss the charge of first-degree arson, because: 1) the residence in the instant case was described as a double-wide mobile home with a vinyl exterior, and the melting of vinyl constitutes a change in the identity of the material beyond a mere scorching or discoloration by heat; 2) evidence tending to show that the vinyl on the exterior of a residence is melted substantiates the charring element of arson; and 3) the owner of the residence testified that she could see flames out her window and an investigator noted damage to the residence including smoke damage and charring.

(2) The trial court did not err in a first-degree arson case by denying defendant's request for a jury instruction on attempted arson, because: 1) there was sufficient evidence from which the jury could find that there was an actual burning of the residence; and 2) there was no evidence presented at trial from which the jury could find an attempt to burn the house which failed.

Arson -- Burning a Garage -- Erroneous Grant of Motion to Dismiss -- Double Jeopardy

State v. Teeter 165 N.C. App. 680 (2004)

The trial **court violated defendant's double jeopardy rights** in a burning a garage in violation of N.C.G.S. § 14-62 case and the **conviction must be vacated based on the trial court's erroneous grant of defendant's motion for dismissal of an arson charge at the first trial**, because: 1) the original indictment charging defendant with first-degree arson was sufficient to support a conviction for burning the garage within the curtilage of the house; 2) dismissal of the original arson charge precludes further prosecution for burning the same outbuilding; and 3) **whether correct or erroneous, the judgment of nonsuit had the force and effect of a verdict of not guilty.**

Arson -- First-Degree -- Malicious Burning of an Occupied Dwelling With an Incendiary Device -- Instructions -- Malice

State v. Sexton 357 N.C. 235 (2003)

The trial court did not commit plain error by instructing the jury that it could find defendant guilty of malicious burning of an occupied dwelling with an incendiary device and first-degree arson of a mobile home if the jury found that defendant acted with implied malice, because: 1) the jury instruction was taken verbatim from the North Carolina pattern jury instructions, 2 N.C.P.I. Crim. 213.20; 2) there is no reason why the definition of malice used in homicide and arson cases should not also apply to the crime of malicious damage to an occupied real property by use of an incendiary device; and 3) there is no requirement that only express malice can be used to prove a violation of N.C.G.S. § 14-49.1. Aff Ct App.

Evidence -- Expert Testimony -- Dwelling Fire Not Caused by Grease

State v. Lassiter 160 N.C. App. 443 (2003)

The admission of testimony that a fire at defendant's mobile home could not have been caused by grease as defendant contended was admissible in a prosecution for first-degree murder and setting fire to a dwelling house. The witness was a qualified expert, and his testimony was not limited to enlightening the jury about everyday grease fires, but concerned the reasons this was not an everyday grease fire.

(1) Arson -- Burning Dwelling for Fraudulent Purposes -- Concealing Evidence of Killing

(2) Arson -- Instruction -- Concealing Evidence of Homicide -- Fraudulent Purpose

State v. Lassiter 160 N.C. App. 443 (2003)

(1) There was sufficient evidence that defendant had burned his dwelling for fraudulent purposes where there was substantial evidence that defendant intentionally burned his mobile home and substantial evidence of his guilt of voluntary manslaughter. A jury could reasonably infer that defendant sought to suppress the truth and deliberately deceive law enforcement in the investigation of the death by setting fire to his dwelling. (2) The trial court did not err by instructing the jury that concealing evidence of a homicide was a fraudulent purpose under N.C.G.S. § 14-65.

Arson -- Fraudulently Burning a Dwelling -- Sufficiency of Evidence -- Defendant's Proximity

State v. Payne 149 N.C. App. 421 (2002)

The trial court did not err by denying defendant's motion to dismiss a charge of fraudulently burning a dwelling where defendant argued that there was no evidence that he was within the temporal and physical proximity of the house when the fire commenced, but temporal and physical proximity is not the only way to determine that defendant is the perpetrator.

Arson -- Burning of Occupied Mobile Home -- Sufficiency of Evidence

State v. Sexton 153 N.C. App. 641 (2002)

The trial court did not err by refusing to dismiss for insufficient evidence charges of first-degree arson, willful and malicious damage to occupied real property through use of an incendiary device, and possession of a weapon of mass death and destruction. Defendant was involved in a confrontation with Bobby and Joe Neal on the evening prior to the fire; the next morning defendant was observed pacing in his yard and staring at Joe Neal's mobile home, periodically breathing into a plastic bag; defendant was seen running from Joe Neal's mobile home after the fire started; defendant ran into the woods when confronted by Bobby Neal; Brenda Neal heard breaking glass from the rear of the mobile home immediately before the fire began and defendant had a cut on his arm when he was arrested; two plastic fuel containers were found in defendant's home; and an SBI agent concluded that the fire was started by a plastic bottle filled with gasoline and ignited by a fabric fuse. Discrepancies in the evidence are for the jury to resolve.

Arson and Other Burnings -- Attempted First Degree Arson -- Occupancy of Dwelling Not Required

State v. Barnes , 333 N.C. 666 (1993) 430 S.E.2d 223

Arson and Other Burnings -- Burning of Unoccupied Mobile Home Second-Degree Arson

State v. Hodge, 121 N.C. App. 209 (1995) ___ S.E.2d ___

The malicious and willful burning of a mobile home which is used as a dwelling and which is unoccupied at the time of the burning constitutes second-degree arson. N.C.G.S. 11 14-58.1, 14-58.2.

Arson -- Homicide -- Interval Between Killing and Burning Occupancy of Dwelling First-Degree Arson Felony Murder

State v. Jaynes, 342 N.C. 249 (1995) ___ S.E.2d ___

The evidence was sufficient to show that the killing of the victim and the burning of his dwelling were so joined by time and circumstances as to be part of one continuous transaction and therefore supports a finding that the dwelling was "occupied" within the meaning of N.C.G.S. 1 14-58

Evidence and Witnesses -- Fire Intentionally Set Expert Testimony

State v. Hales, 344 N.C. 419 (1996) 474 S.E.2d 328

A witness accepted as an expert in the field of incendiary fires was qualified to render an opinion that a fire was intentionally set. Furthermore, the jury was not as able as the witness to form the opinion that the fire was purposely set, and the opinion of the witness was helpful to the jury in reaching its decision. N.C.G.S. § 8C-1, Rule 702.

Arson -- Aggravating Factor -- Damage Causing Great Monetary Loss

State v. Bishop, 346 N.C. 365 (1997)

The evidence supported the trial court's finding as an aggravating factor for arson that the offense involved property damage causing great monetary loss where the State presented evidence that the house that was burned was a frame, single-story house with two bedrooms, a living room, a kitchen, a den, and a porch; two persons resided in the house; the owner testified that the house had a replacement value of \$80,000 and was a "complete loss"; an assistant fire marshal testified that it took firemen two hours to suppress the flames and that one-third of the house had flames coming through the roof; and the State presented photographs showing the house as it appeared before and after the fire. N.C.G.S. § 15A-1340.16(d)(14).

Arson - Indictment for Arson - Improper Conviction for Burning Uninhabited House

State v. Britt, 132 N.C. App. 173 (1999)

The crime of burning an uninhabited house, N.C.G.S. § 14-62, is not a lesser-included offense of the crime of arson. Therefore, a defendant indicted for arson could not properly be convicted of burning an uninhabited house.

Damaging Occupied Property by Incendiary Device -- Insufficient Evidence of Measurable Damage -- Remand for Judgment for Attempt

State v. Bennett, 132 N.C. App. 187 (1999)

The State's evidence was insufficient to support defendant's conviction of maliciously damaging occupied property by an incendiary device in violation of N.C.G.S. § 14-49.1 because it failed to show measurable damage where it tended to show that defendant ignited his blue jeans outside his jail cell and that the fire left a burned spot which was only slightly visible after it was stripped and waxed. However, by finding defendant guilty of the charged offense, the jury necessarily found that defendant committed all of the elements of the lesser offense of an attempt to maliciously damage occupied property by an incendiary device, and the case is remanded for entry of judgment for the lesser offense.