

FELONIOUS BREAKING OR ENTERING. G.S. 14-54. FELONY.

The defendant has been charged with felonious breaking or entering into another's building without his consent with the intent to commit a felony.

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

First, that there was

[a breaking¹ by the defendant. (*State how breaking allegedly occurred*) would be a breaking.]

[an entry by the defendant. (*State how entry allegedly occurred*) would be an entry.]

[either a breaking¹ or an entry by the defendant. (*State how breaking allegedly occurred*) would be a breaking. (*State how entry allegedly occurred*) would be an entry.]

Second, the State must prove that it was a building that was [broken into] [entered] [broken into or entered].

Third, that the [owner] [tenant], did not consent to the [breaking] [entering] [breaking or entering].

And Fourth, that at the time of [breaking] [entering] [breaking or entering], the defendant intended to commit the felony of (*name felony*).²

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [broke into]

¹A breaking need not be actual, but may be by threat of force, by some trick, or by fraudulent representation inducing someone to open an entry to him.

²The crime that he allegedly intended to commit should be briefly defined. Failure to define the crime may constitute reversible error. S. v. Elliot, 21 N.C. App. 555 (1974).

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[entered] [broke into or entered] a building without the consent of the [owner] [tenant], intending at that time to commit (*name felony*), it would be your duty to return a verdict of guilty of felonious breaking or entering. If you do not so find or if you have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious breaking or entering³ but must determine whether the defendant is guilty of non-felonious breaking or entering.⁴ Non-felonious breaking or entering differs from felonious breaking or entering in that it need not be done with the intent to commit a felony so long as the breaking or entering was wrongful, that is, without any claim of right.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant wrongfully [broke into] [entered] [broke into or entered] another person's building without his consent, but do not find beyond a reasonable doubt that he intended to commit (*name felony*), it would be your duty to return a verdict of guilty of non-felonious breaking or entering. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

³If there is to be no instruction on lesser included offenses, the last phrase should be: ". . . it would be your duty to return a verdict of not guilty."

⁴Instructions on lesser included offenses should only be used when appropriate under the evidence with the case.