N.C.P.I.—Criminal 214.32
FELONIOUS BREAKING OR ENTERING. FELONIOUS LARCENY—PURSUANT TO A BREAKING OR ENTERING OR WHERE THE PROPERTY IS WORTH MORE THAN $1,000. FELONY.
GENERAL CRIMINAL VOLUME
REPLACEMENT JUNE 2012
G.S. 14-54, 14-70, 14-72(a), (b)(2)
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# FELONIOUS BREAKING OR ENTERING. FELONIOUS LARCENY—PURSUANT TO A BREAKING OR ENTERING OR WHERE THE PROPERTY IS WORTH MORE THAN $1,000. FELONY.

The defendant has been charged with felonious breaking or entering and felonious larceny.

As to the felonious breaking or entering[1], it is your duty under the law and the evidence in this case to return one of the following verdicts:

(1) guilty of felonious breaking or entering, or

(2) guilty of non-felonious breaking or entering, or

(3) not guilty.

As to felonious larceny, it is your duty under the law and the evidence in this case to return one of the following verdicts:

(1) guilty of felonious larceny, or

(2) guilty of non-felonious larceny, or

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[1] This charge essentially combines 214.30 and 216.35 use in the most common situation where defendant is accused of both crimes.

(3) not guilty.

For you to find the defendant guilty of felonious breaking or entering the State must prove four things beyond a reasonable doubt.

First, that there was

[a breaking[2] by the defendant.]

[an entry by the defendant.]

[either a breaking[2] or an entry by the defendant.]

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[2] If the breaking is not actual, but falls into the category of a "constructive" breaking, the trial judge should use an additional explanation, such as:

"A breaking need not be actual; that is, the person breaking need not physically remove the barrier himself. He may, by a threat of force (such as threatening to burn down the structure into which entry is sought), inspire such fear as to induce the occupant to allow him to enter. He may, by some trick or fraudulent representation (such as pretending to be a repairman), cause someone in the structure to open an entry to him. In any of these situations, the defendant would have constructively broken, and such constructive breaking is as sufficient a breaking for the purposes of this offense as any physical removal by the defendant of a barrier to entry."

As to what would or would not constitute a breaking see state v. Mcafee, 247 N.C. 98 at 101-02 (1957).

Second, that it was a building[3] 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 that time, the defendant intended to commit larceny. Larceny is the taking and carrying away of the personal property of another without [his] [her] consent with the intent to deprive [him] [her] of possession permanently.[4]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [broke into] [entered] [broke into or entered] a building without the consent of the [owner] [tenant], intending at that time to commit larceny, 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

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[3] A mobile home is a building, even if on a dealer's lot. S v. Douglas, 54 N.C. app. 85 (1981), aff'd. 304 N.C. 713 (1982).

[4] Failure to define the crime may constitute reversible error. State v. Elliot, 21 N.C. app. 555 (1974).

verdict of guilty of felonious breaking or entering[5] but must determine whether the defendant is guilty of non-felonious breaking or entering. 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 it 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 the felony of larceny, 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 on the breaking or entering count.

For you to find the defendant guilty of felonious larceny, the State must prove six things beyond a reasonable doubt:

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[5] If there is to be no instruction on lesser included offenses, that last phrase should be: ". . . It would be your duty to return a verdict of not guilty."

First, that the defendant took property belonging to another person.[6]

Second, that the defendant carried away the property.[7]

Third, that the victim did not consent to the taking and carrying away of the property.

Fourth, that at the time of the taking, the defendant intended to deprive the victim of its use permanently.[8]

Fifth, that the defendant knew he was not entitled to take the property.[9]

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6 If the property was severed from the possession of the owner and under the control of the defendant for any period of time, even if only for an instant, this would constitute a taking. S. V. Carswell, 296 N.C. 101 (1978).

7 In the event that there is some dispute as to asportation, the jury should be told that the slightest movement is sufficient.

8 In the event of that there is some dispute as to permanent deprivation, the jury should be told that an intent to temporarily deprive will not suffice.

9 In the event that the defendant relies on claim of right, the jury should be told that if the defendant honestly believed that he was entitled to take the property, he cannot be guilty of larceny.

And Sixth, either that the property was taken from a building after a breaking or entering, or that the property was worth more than $1,000.[10]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away another person's property without his consent knowing that he was not entitled to take it and intending at that time to deprive that person of its use permanently, and either that the defendant took the property from a building after a breaking or entering or that the property was worth more than $1,000, it would be your duty to return a verdict of guilty of felonious larceny. 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 larceny[11] but must determine whether the defendant is guilty of non-felonious larceny. Non-felonious larceny differs from felonious larceny in that the State need not prove either that the property was taken from a

[10] Note that if the larceny was committed pursuant to burglary violations (G.S. 14-51,53,54 or 57) or was of an explosive or incendiary device or of a firearm it is a felony without regard to the value of the property. G.S. 14-72(b)(2), (3), (4).

[11] If there is to be no instruction on lesser included offenses, that last phrase should be: ". . . It would be your duty to return a verdict of not guilty."

building after a breaking or entering or that the property was worth more than $1,000.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant wrongfully took and carried away another person's property without his consent knowing that he was not entitled to take it and intending at that time to deprive that person of its use permanently, it would be your duty to return a verdict of guilty of non-felonious larceny. 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 on the larceny count.