
214.70 BREAKING OR ENTERING OF A PHARMACY WITH THE INTENT TO COMMIT LARCENY OF A CONTROLLED SUBSTANCE. FELONY.

The defendant has been charged with breaking or entering a pharmacy with the intent to commit larceny¹ of a controlled substance.

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 breaking² by the defendant.]

[an entry by the defendant.]

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

Second, that it was a pharmacy³ 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 of a controlled substance.⁴ 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.⁵ (*Name substance*) is a controlled substance.

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 pharmacy without the consent of the [owner] [tenant], intending at that time to commit larceny of a controlled substance, it would be your duty

to return a verdict of guilty. If you do not so find or if you have a reasonable doubt as to one or more of these things, then you would return a verdict of not guilty.⁶

1. For an example of an instruction that combines breaking and entering and larceny, see N.C.P.I. Crim 214.32, which combines N.C.P.I. Crim 214.30 and 216.35, for the situation where defendant is accused of both crimes.

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).

3. A pharmacy is a business that has a pharmacy permit under G.S. 90-85.21.

4. Controlled substances are defined in G.S. 90-87(5).

5. Failure to define the crime of larceny may constitute reversible error. *State v. Elliot*, 21 N.C. app. 555 (1974).

6. If there are lesser included offenses, the last phrase should be ". . . you would not return a verdict of guilty of breaking or entering a pharmacy with the intent to commit larceny of a controlled substance, but would consider whether the defendant is guilty of . . ."