

216.43 RECEIVING CONTROLLED SUBSTANCES—PURSUANT TO A
BREAKING OR ENTERING OF A PHARMACY. FELONY.

The defendant has been charged with receiving controlled substances stolen from a pharmacy.

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

First, that the controlled substance¹ was stolen by someone other than the defendant. Property is stolen when it is taken and carried away without the owner's consent by someone who intends at the time to deprive the owner of its use permanently and knows that *he* is not entitled to take it. (*Name substance*) is a controlled substance.)

Second, that this controlled substance was stolen following a breaking or entering of a pharmacy.² Breaking or entering is the breaking into or entering into another's building, including a pharmacy, without the [owner's] [tenant's] consent.

Third, that the defendant [received] [concealed] the controlled substance.³

NOTE WELL: When constructive possession is at issue or when a fuller definition of actual possession is desired, incorporate the relevant portions of N.C.P.I.—Crim. 104.41 at this point.

Fourth, that the defendant [received] [concealed] this controlled substance with a dishonest purpose. (*State what purpose was, e.g., permanently depriving the owner of his property*) is a dishonest purpose.

And Fifth, that the defendant, at the time the defendant [received] [concealed] this controlled substance, knew⁴ or had reasonable grounds to believe that it was stolen.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant, with a dishonest purpose, [received] (or) [concealed] a controlled substance which was stolen by someone other than the defendant following a breaking or entering of a pharmacy and, at the time the defendant [received][concealed] the controlled substance, the defendant knew or had reasonable grounds to believe someone else had stolen it following the breaking and entering of a pharmacy, it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, then you would return a verdict of not guilty.⁵

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

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

3. In the event that there is some dispute as to "receiving," the jury should be told what will constitute receiving or concealing goods.

4. This knowledge may be actual, or it may be implied when the circumstances are sufficient to lead the party charged to believe the property was stolen. *S. v. Parker*, 316 N.C. 295, 303 (1986).

5. If there are lesser included offenses, the last phrase should be ". . . you would not return a verdict of guilty of receiving stolen controlled substances pursuant to a breaking and entering of a pharmacy, but would consider whether the defendant is guilty of"