

POSSESSION OF PROPERTY STOLEN PURSUANT TO A BREAKING OR ENTERING.
FELONY. G.S. 14-71.1, 14-72(b)(1) and (2).

NOTE WELL: Use this instruction only when the indictment alleges that the property was stolen. Use N.C.P.I.--Crim. 216.49A when the indictment alleges that the property was embezzled, taken by false pretenses, taken in a manner constituting larceny by an employee or taken in any other felonious manner except larceny.

The defendant has been charged with felonious possession of goods stolen pursuant to a breaking or entering,¹ which is possessing property which the defendant knew or had reasonable grounds to believe had been stolen pursuant to a breaking or entering.

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

First, that (*describe property, e.g., "A color TV set"*) was stolen.² 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.

¹Possession of goods is also a felony if they were stolen from the person, or pursuant to a burglary (G.S. 14-51), a breaking out of dwelling house burglary (G.S. 14-53), or a burglary with explosives (G.S. 14-57). In such cases, substitute the appropriate phrase here and elsewhere in this instruction.

²When the charge is possession, as opposed to receiving, it is not necessary for the State to prove that someone other than the defendant stole the property, as it is under a receiving charge.

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Second, that this property was stolen pursuant to a breaking or entering.¹

NOTE WELL: Summarize the elements of breaking or entering or the related crime.

Third, that the defendant possessed the property. One has possession of property when one has both the power and intent to control its disposition or use.

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 knew or had reasonable grounds to believe that the property had been stolen, and that it had been stolen pursuant to a breaking or entering.¹

And Fifth, that the defendant possessed it with a dishonest purpose. (*Describe purpose, e.g., "Converting it to his own use"*) would be a dishonest purpose.

If you find from the evidence beyond a reasonable doubt that (*describe property*) was stolen, and this property was stolen pursuant to a breaking or entering¹ and that on or about the alleged date the defendant possessed this property and that the defendant knew or had reasonable grounds to believe that this property was stolen and that it was stolen pursuant to a breaking

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or entering¹ and that the defendant possessed it for a dishonest purpose 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 any of these things, it would be your duty to return a verdict of not guilty.³

³In cases where there would be, under the evidence, a reasonable doubt as to whether the goods were stolen pursuant to a breaking or entering, the last phrase should read " . . . you would not return a verdict of guilty of possession of goods stolen pursuant to a breaking or entering." Then the judge should adapt and give the last two paragraphs of N.C.P.I.--Crim. 216.48A.

