

214.30 FELONIOUS BREAKING OR ENTERING. 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 breaking<sup>1</sup> 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 breaking<sup>1</sup> 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*).<sup>2</sup>

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 (*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 entering<sup>3</sup> but must determine whether the defendant is guilty of non-felonious breaking or entering.<sup>4</sup> 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.

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1. A 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.

2. The 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).

3. If 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."

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