

214.45 FELONIOUS BREAKING OR ENTERING—PLACE OF RELIGIOUS WORSHIP. FELONY.

The defendant has been charged with felonious breaking or entering into a place of religious worship without the consent of the [owner] [tenant] and 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. [a breaking¹ by the defendant. (*State how breaking allegedly occurred*) would be a breaking.]
- b. [an entry by the defendant. (*State how entry allegedly occurred*) would be an entry.]
- c. [either a breaking¹ 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, that the building [broken into] [entered] [broken into or entered] was a place of religious worship.

Third, that the [owner] [tenant] did not consent to the [breaking] [entering] [breaking or entering].

And Fourth, that at the time of the [breaking] [entering] [breaking or entering], the defendant intended to commit the [felony of (*name felony*)]² [larceny]

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 that was a place of religious worship without the consent of the [owner] [tenant], intending at that time to commit the [felony of (*name felony*)] [larceny], 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, it would be do your duty to return a verdict of not guilty.³

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 the defendant 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. Instructions on lesser included offenses should only be used when appropriate under the evidence in the case. If there is to be an instruction on lesser included offenses, the last phrase would be amended as follows: “. . . you would not return a verdict of guilty of felonious breaking or entering a place of religious worship, but would consider whether the defendant is guilty of. . .”