

214.65 BURGLARY WITH EXPLOSIVES OR ACETYLENE TORCH. FELONY.

The defendant has been charged with burglary with [nitroglycerine] [dynamite] [gunpowder] [other explosives] [acetylene torch].

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

First, that there was a breaking by the defendant. (*State how breaking allegedly occurred*) would be a breaking.¹

Second, that there was an entry by the defendant. (*State how entry allegedly occurred*) would be an entry.²

Third, that it was a building which was broken into and entered.

Fourth, that the [owner] [tenant] did not consent to the breaking and entering.

Fifth, that at the time of the breaking and entering the defendant intended to commit (*name felony*) therein.³

Sixth, that thereafter the defendant [opened] [attempted to open] a vault, safe or other secure place. [A (*describe vault, safe or secure place*) is a [vault] [safe] [secure place].⁴

And Seventh, that the defendant [opened] [attempted to open] it by use of [nitroglycerine] [dynamite] [gunpowder] [other explosives] [an acetylene torch].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant broke into and entered another's building without *his* consent, intending at that time to commit (*name*

felony) therein and that thereafter the defendant [opened] [attempted to open] a [vault] [safe] [secure place] by use of [(*name explosive*)] [an acetylene torch], it would be your duty to return a verdict of guilty of burglary with [nitroglycerine] [dynamite] [gunpowder] [acetylene torch] [other explosives]. If you do not so find, or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of burglary with [nitroglycerine] [dynamite] [gunpowder] [acetylene torch] [other explosives]⁵ but must determine whether the defendant is guilty of felonious breaking or entering. Felonious breaking or entering differs from burglary with [nitroglycerine] [dynamite] [gunpowder] [acetylene torch] [other explosives] in that (a) both a breaking and an entry are not necessary, either is enough and (b) it is not necessary that the defendant [open] [attempted to open] anything after *he* entered the [safe] [vault] [other secure place].

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] another's building without *his* consent, 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 have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious breaking or entering⁶ but must determine whether the defendant is guilty of non-felonious breaking or entering. Non-felonious breaking or entering differs from felonious breaking or entering in that it need not be done with the intent to commit (*name felony*)- so long as it 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 [broke into] [entered] [broke into or entered] another's building without *his* consent and wrongfully, it

would be your duty to return a verdict of guilty of non-felonious breaking or entering. If you do not so find or 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. If the breaking is disputed, state what would not constitute a breaking.
 2. If the entry is disputed, state what would not constitute an entry.
 3. The crime that the defendant allegedly intended to commit should be briefly defined, *e.g.*, "Larceny is the taking and carrying away of the personal property of another without his consent with the intent permanently to deprive him of possession."
 4. The parenthetical phrase should be given only where that which was opened was a vault, safe or secure place as a matter of law.
 5. 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."
 6. 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."