

BREAKING OR ENTERING WITH THE INTENT OF ALTERING, DESTROYING OR STEALING EVIDENCE. FELONY. G.S. 14-221.1.

The defendant has been charged with felonious breaking or entering into *(name structure or enclosure)*<sup>1</sup> with the intent to [alter] [steal] [destroy] evidence relevant to a [criminal offense] [court proceeding].

Now I charge that 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 by the defendant, which simply means the opening or removal of anything blocking entry. *(State how breaking allegedly occurred)* would be a breaking.<sup>2</sup>]

[an entry by the defendant. *(State how entry allegedly occurred)* would be an entry.<sup>3</sup>]

[either a breaking or an entry by the defendant. *(State how breaking allegedly occurred)* would be a breaking.<sup>2</sup> *(State how entry allegedly occurred)* would be an entry.<sup>3</sup>]

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<sup>1</sup>For purposes of this charge, G.S. 14-221.1, includes any building, structure, compartment, vehicle, file cabinet, drawer, or any other enclosure wherein evidence relevant to any criminal offense or court proceeding is kept or stored.

<sup>2</sup>If the breaking is disputed, state what would not constitute a breaking. As to what would or would not constitute a breaking, see *S. v. McAfee*, 247 N.C. 98 at 101-02 (1957), *S. v. Alexander*, 180 N.C. App. 460 (1973), and *S. v. Styles*, 93 N.C. App. 596 (1989).

<sup>3</sup>If the entry is disputed, state what would not constitute an entry.

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Second, the State must prove that it was (*name structure or enclosure*)<sup>1</sup> that was [broken into] [entered] [broken into or entered].

Third, that evidence relevant to a [criminal offense] [court proceeding] was stored in (*name structure or enclosure*).<sup>1</sup> Evidence is an article or document in the possession of a law enforcement officer or officer of the General Court of Justice being retained for the purpose of being introduced in evidence or having been introduced in evidence or being preserved as evidence. For the purpose of this offense, evidence is relevant when it is pertaining to or connected with a [criminal offense] [court proceeding]. (*Describe evidence*) is such evidence.

And Fourth, that at the time of the [breaking] [entering] [breaking or entering] the defendant intended to [alter] [steal] [destroy] the evidence.<sup>4</sup>

So I charge that if you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant (*describe breaking or entering*) (*describe structure or enclosure*) where (*describe evidence*) which was relevant to a [criminal offense] [court proceeding] was stored with the intent to [alter] [steal] [destroy] this evidence, it would be your duty to return a verdict of guilty. However, if you do not so find or have a

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<sup>4</sup>Where there is a question as to whether defendant intended to alter, steal or destroy the evidence, further definition or elaboration may be necessary.

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reasonable doubt as to one or more of these things, it would be  
your duty to return a verdict of not guilty.<sup>5</sup>

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<sup>5</sup>Where a charge on the lesser included offense of misdemeanor breaking or entering is to be given, the last phrase should be "you will not return a verdict of guilty of felonious breaking or entering a building with the intent to [alter] [steal] [destroy] relevant to a [criminal offense] [court proceeding]."

