

BURGLARY IN THE THIRD DEGREE
(N.J.S.A. 2C:18-2a)

The indictment charges the defendant with committing the crime of burglary. The indictment reads as follows:

(Read Indictment)

N.J.S.A. 2C:18-2a insofar as it is applicable to this case reads as follows:

A person is guilty of burglary if, with purpose to commit an offense therein the person:

- (1) Enters a (research facility) (structure), or a separately secured or occupied portion thereof, unless the (research facility) (structure) was at the time open to the public or the person is licensed or privileged to enter; or
- (2) Surreptitiously remains in a (research facility) (structure) or a separately secured or occupied portion thereof knowing that he is not licensed or privileged to do so.

Specifically, the defendant in this case is charged with entering with the purpose to commit an offense. I must therefore explain to you, first, what constitutes burglary under the law and second, what constitutes an offense.

In order for you to find the defendant guilty of burglary, the State must prove beyond a reasonable doubt the following elements:

1. that the defendant entered¹ the (research facility) (structure) known as _____ without permission.
2. that the defendant did so with the purpose to commit an offense therein.

¹ If “surreptitiously remaining” is in your case, charge as follows: that the defendant surreptitiously remained for some duration in the (research facility) (structure), or a separately secured or occupied portion thereof knowing that (he/she) was not licensed or privileged to do so. See N.J.S.A. 2C:18-2a(2) and Cannel, Criminal Code Annotated, Comment 4, N.J.S.A. 2C:18-2 (requirement that this offense “requires a stay of some duration”). “Surreptitiously” means secretly, stealthily, or fraudulently. Black’s Law Dictionary at p. 1445 (6th ed. 1990).

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(WHERE APPLICABLE CHARGE PERTINENT PART OF N.J.S.A. 2C:1-14p)

Research facility means any building, laboratory, institution, organization, or school engaged in research, testing, educational or experimental activities, or any commercial or academic enterprise that uses warm-blooded or cold-blooded animals for food or fiber production, agriculture, research, testing, experimentation, or education. A research facility includes, but is not limited to, any enclosure, separately secured yard, pad, pond, vehicle, building structure or premises or separately secured portion thereof.

Structure includes any building [**OR** room, ship, vessel, car, vehicle, or airplane, and also means any place adapted for overnight accommodation of persons or for carrying on business therein] whether or not a person is actually present.²

[Charge when appropriate]

A structure includes a place adapted for business when it is specifically used for conducting commercial activity and is secured from the public whether or not a person is actually present.³

“Purpose to commit an offense” means that the defendant intended to commit an unlawful act⁴ inside the (structure) (research facility). [**WHERE APPLICABLE CHARGE:** The unlawful act(s) allegedly intended are set forth in count(s) _____ of this indictment.]⁵

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. Purpose, with purpose, and similar words have the same meaning.⁶ In other words, in order for you to find that the defendant acted purposely, the State must prove beyond a reasonable doubt

² N.J.S.A. 2C:18-1.

³ State v. Olivero, 221 N.J. 632, 635, 643 (2015).

⁴ State v. Robinson, 289 N.J. Super. 447, 455 (App. Div. 1996); N.J.S.A. 2C:1-14k.

⁵ “[W]here the circumstances surrounding the unlawful entry do not give rise to any ambiguity or uncertainty as to a defendant’s purpose in entering a structure without privilege to do so [and] led inevitably and reasonably to the conclusion that some unlawful act is intended to be committed inside the structure, then specific instructions delineating the precise unlawful acts intended are unnecessary.” Robinson, 289 N.J. Super. at 458 (emphasis in original). However, where the circumstances surrounding defendant’s purpose in entering or surreptitiously remaining in the structure or research facility are ambiguous, i.e., the evidence suggests both criminal and non-criminal purposes for the entry, then it might be necessary to direct the jury’s consideration to the specific criminal acts alleged in the indictment, if there are any. See, for instance, State v. Marquez, 277 N.J. Super. 162, 168-169 (App. Div. 1994).

⁶ N.J.S.A. 2C:2-2b(1).

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that it was the defendant's conscious object at the time he/she unlawfully entered [OR surreptitiously remained in] the premises to commit an unlawful act.⁷

Purpose is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary, members of the jury, that witnesses be produced to testify that an accused said he/she acted purposely when he/she engaged in a particular act. His/Her state of mind may be gathered from his/her acts and his/her conduct, and from all he/she said and did at the particular time and place, and from all of the surrounding circumstances.⁸

If you find that the State has proved the crime charged and each of its elements beyond a reasonable doubt, then you must find the defendant guilty.

If you find that the State has failed to prove any element beyond a reasonable doubt, then you must find the defendant not guilty.

⁷ If the jury may find from the facts that, although defendant entered the premises without permission he did not do so with the purpose to commit an offense therein, the jury must be charged on the appropriate lesser included offense of criminal trespass. See N.J.S.A. 2C:18-3.

⁸ See 2A Model Charge 4.181, INTENT and N.J.S.A. 2C:2-2.