

HOME INVASION BURGLARY
(N.J.S.A. 2C:18-2.1) (Cases arising after October 18, 2024)

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

(Read Indictment)

The pertinent part of the statute on which this indictment is based reads as follows:

A person is guilty of home invasion burglary if, with purpose to commit an offense therein or thereon, the person, without license or privilege to do so, enters or surreptitiously remains in a residential dwelling or accommodation, or a separately secured portion thereof, and in the course of committing the offense, the person:

- (1) Purposely, knowingly, or recklessly inflicts, attempts to inflict, or threatens to inflict bodily injury on anyone; or
- (2) Is armed with or displays what appear to be explosives or a deadly weapon.

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

- (1) That the defendant, without license or privilege to do so, entered or surreptitiously remained in a residential dwelling or accommodation, or a separately secured portion thereof;
- (2) That the defendant did so with purpose to commit an offense therein or thereon; and
- (3) In the course of committing the offense, the defendant either purposely, knowingly, or recklessly inflicted, attempted to inflict, or threatened to inflict bodily injury on anyone, or was armed with or displayed what appeared to be explosives or a deadly weapon.

(Choose as appropriate)

The first element that the State must prove beyond a reasonable doubt is that the defendant, without license or privilege to do so, entered a residential dwelling or accommodation, or a separately secured portion thereof.

(Choose as appropriate)

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The first element that the State must prove beyond a reasonable doubt is that the defendant, without license or privilege to do so, surreptitiously remained for some duration in a residential dwelling or accommodation, or a separately secured portion thereof.¹ Surreptitiously means secretly, stealthily, or fraudulently.²

(Resume charge)

“Residential dwelling or accommodation” means a permanent structure intended as and currently being utilized as a residence by a private person or persons and any place adapted for overnight accommodation of persons.³

The second element that the State must prove beyond a reasonable doubt is that the defendant did so with purpose to commit an offense therein or thereon.

“Purpose to commit an offense” means that the defendant intended to commit an unlawful act⁴ inside the residential dwelling or accommodation, or a separately secured portion thereof.

[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 their conduct or a result thereof if it is their conscious object to engage in conduct of that nature or to cause such a result. Purpose, with

¹ 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”).

² Black’s Law Dictionary at p. 1445 (6th ed. 1990).

³ N.J.S.A. 2C:18-1.

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, e.g., State v. Marquez, 277 N.J. Super. 162, 168-69 (App. Div. 1994).

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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 that it was the defendant's conscious object at the time they unlawfully entered [OR surreptitiously remained in] the residential dwelling or accommodation to commit an unlawful act.⁷

A person's purpose is a state or 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 they had a certain state of mind when they engaged in a particular act. Their state of mind may be gathered from their acts and their conduct, and from all they said and did at the particular time and place, and from all of the surrounding circumstances.

The third element that the State must prove beyond a reasonable doubt is that, in the course of committing the offense, the defendant either purposely, knowingly, or recklessly inflicted, attempted to inflict, or threatened to inflict bodily injury on anyone, or was armed with or displayed what appeared to be explosives or a deadly weapon.

An act shall be deemed “in the course of committing” an offense if it occurs in an attempt to commit an offense or in immediate flight after the attempt or commission.⁸

(Charge when appropriate)

(A)(1) In this case the State has alleged that the defendant purposely inflicted bodily injury on _____ (alleged victim).

⁶ N.J.S.A. 2C:2-2b(1).

⁷ If the jury may find from the facts that although defendant entered the residential dwelling or accommodation without permission, he did not do so with the purpose to commit an offense therein, then the unauthorized entry may constitute a criminal trespass. In that case, the jury should be charged on the appropriate lesser included offense of criminal trespass. See N.J.S.A. 2C:18-3.

⁸ N.J.S.A. 2C:18-2.1.

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I have already defined the term “purposely.”

(Charge when appropriate)

(A)(2) In this case the State has alleged that the defendant knowingly inflicted bodily injury on _____ (alleged victim). A person acts knowingly with respect to the nature of their conduct or the attendant circumstances if they are aware that their conduct is of that nature, or that such circumstances exist, or they are aware of a high probability of their existence. A person acts knowingly with respect to a result of their conduct if they are aware that it is practically certain that their conduct will cause such a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.⁹

(Charge when appropriate)

(A)(3) In this case the State has alleged that the defendant recklessly inflicted bodily injury on _____ (alleged victim). A person acts recklessly with respect to a material element of an offense when they consciously disregard a substantial and unjustifiable risk that the material element exists or will result from their conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor’s conduct and the circumstances known to them, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor’s situation. “Recklessness,” “with recklessness” or equivalent terms have the same meaning.¹⁰

(Charge when appropriate)

(A)(4) In this case the State has alleged that the defendant purposely attempted to inflict bodily injury on _____ (alleged victim). To find the defendant guilty of attempting to inflict bodily injury on another, the State must prove beyond a reasonable doubt that

⁹ N.J.S.A. 2C:2-2b(2).

¹⁰ N.J.S.A. 2C:2-2b(3).

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the defendant purposely¹¹ attempted to inflict bodily injury to another. If you find beyond a reasonable doubt that the defendant attempted to inflict bodily injury on another, it does not matter whether such injury actually resulted.

The law provides that a person is guilty of attempt if, acting purposefully, they:

(Select appropriate section)

(1) Engaged in conduct that would constitute the offense if the attendant circumstances were as a reasonable person would believe them to be;

(or)

(2) Did (or omitted to do) anything with the purpose of causing bodily injury to another without further conduct on their part. This means that the defendant(s) did something designed to cause bodily injury without having to take any further action.

(or)

(3) Did (or omitted to do) anything that, under the circumstances as a reasonable person would believe them to be, was an act (or omission) constituting as substantial step in a course of conduct planned to culminate in their commission of the crime. The step taken must be one that is strongly corroborative of the defendant's criminal purpose. The accused must be shown to have had a firmness of criminal purpose in light of the step(s) they had already taken. These preparatory steps must be substantial and not just very remote preparatory acts.¹²

(Charge when appropriate)

(A)(5) In this case the State has alleged that the defendant knowingly¹³ threatened to inflict bodily injury on _____ (alleged victim).

I have already defined the term "knowingly."

¹¹ When a person actually causes bodily injury, it does not matter whether his mental state is purposeful, knowing or reckless (under circumstances manifesting extreme indifference to the value of human life). When, however, the person attempts to cause, but does not cause, bodily injury, he must act purposefully. Cf. State v. McAllister, 211 N.J. Super. 355, 362 (App. Div. 1986).

¹² State v. Fornino, 223 N.J. 531, 538 (App. Div. 1988), certif. denied, 111 N.J. 570 (1988); cert. denied, 488 U.S. 859 (1988).

¹³ See N.J.S.A. 2C:2-2c(3).

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(Resume charge)

The phrase “bodily injury” means physical pain, illness or impairment of physical condition.¹⁴

(Charge when appropriate)

(B) In this case the State alleges that the defendant was armed with or displayed what appeared to be **(CHOOSE AS APPROPRIATE)** (explosives) (or a deadly weapon). For a person to be armed with or display what appears to be **(CHOOSE AS APPROPRIATE)** [explosives] [or a deadly weapon], they must first be in possession of it/them. The word “possess” means a knowing, intentional control of a designated thing, accompanied by a knowledge of its character. I have already defined the term “knowingly.”

Thus, the person must know or be aware that they possess the item (in this case), and they must know what it is that they possess or controls (that it is _____).

[WHERE APPLICABLE CHARGE: This possession cannot merely be a passing control that is fleeting or uncertain in its nature. In other words, to “possess” within the meaning of the law, the defendant must knowingly procure or receive the item possessed or be aware of their control thereof for a sufficient period of time to have been able to relinquish their control if they chose to do so.]

When we speak of possession, we mean a conscious, knowing possession. The law recognizes two kinds of possession: they are actual possession and constructive possession.

A person is in actual possession of a particular article or thing when they know what it is: that is, they have knowledge of its character and knowingly have it on their person at a given time. A person who, with knowledge of its character, knowingly has direct physical control over a thing, at a given time, is in actual possession of it.

¹⁴ N.J.S.A. 2C:11-1a.

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Constructive possession means possession in which the person does not physically have the property, but though not physically on one's person, they are aware of the presence of the property and is able to and has the intention to exercise control over it.

A person who, although not in actual possession, has knowledge of its character, knowingly has both the power and the intention at a given time to exercise control over a thing, either directly or through another person or persons, is then in constructive possession of it.

[WHERE APPLICABLE CHARGE: The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint; that is, if they knowingly share control over the article.]

In order for defendant to be guilty of being “armed with” **(CHOOSE AS APPROPRIATE)** (explosives) (or a deadly weapon), however, the State must prove not only possession but also immediate access to that **(CHOOSE AS APPROPRIATE)** (explosives) (or a deadly weapon). The State must prove beyond a reasonable doubt that the item(s) was/were easily accessible and readily available for use during the burglary.¹⁵ **[WHERE APPLICABLE CHARGE:** As long as such ready accessibility is proven, it does not matter whether defendant was armed prior to arriving at the scene of the burglary or obtained the weapon during the course

¹⁵ State v. Merritt, 247 N.J. Super. 425, 430-31 (App. Div. 1991) (“[T]he term ‘armed’ is not synonymous with the term ‘in possession of a weapon’...,” which is the standard for mandatory sentencing under the Graves Act [N.J.S.A. 2C:43-6c]). “The term ‘armed’ connotes not only possession but also immediate access to a weapon.” Id. at 430. Note that in State v. Rolon, 199 N.J. 575, 584-85 (2009), in which it was held that in a prosecution for first degree robbery involving a non-firearm weapon, “a defendant cannot be considered to have been ‘armed with a deadly weapon’ unless he had immediate access to the potential weapon and an intent to use it in a way that is ‘capable of producing death or serious bodily injury,’” the Court rejected the State’s reliance on the above-quoted definition of “armed” because Merritt was “decided under an entirely different statutory scheme.” However, in footnote 1 of Rolon, the Court cautioned that “[w]e do not decide here whether our reasoning regarding the robbery statute is applicable in the burglary setting.” Id. at 585. But see the concurring opinion in Rolon, 199 N.J. at 587-91, in which two justices expressed the belief that the rationale of Rolon regarding non-firearm armed robbery applies equally to the second-degree burglary statute.

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of the burglary.]¹⁶

(Choose as appropriate)

“Explosive” means any chemical compound or mixture that is commonly used or is possessed for the purpose of producing an explosion and which contains any oxidizing and combustible materials or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on continuous objects.¹⁷

(Or)

“Deadly weapon” means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury.¹⁸

“Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.¹⁹ **[WHERE APPLICABLE CHARGE: I have already defined the term “bodily injury.”]**

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

¹⁶ This sentence should be considered when it is alleged that the weapon with which defendant was “armed” was part of the proceeds of a theft committed during the burglary. Merritt, 247 N.J. Super. at 430.

¹⁷ N.J.S.A. 2C:39-1e.

¹⁸ N.J.S.A. 2C:11-1c.

¹⁹ N.J.S.A. 2C:11-1b.

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you must find the defendant not guilty.