

RESIDENTIAL BURGLARY
(N.J.S.A. 2C:18-2.2) (Cases arising after October 18, 2024)

The indictment charges the defendant with committing the crime of residential 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 a residential burglary if, with purpose to commit an offense therein or thereon, the person:

- (1) Enters a residential dwelling or accommodation, or a separately secured portion thereof, unless the actor is licensed or privileged to enter; or
- (2) Surreptitiously remains in a residential dwelling or accommodation, or a separately secured portion thereof, knowing that the actor is not licensed or privileged to do so.

In order for you to find the defendant guilty of the crime of residential 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; and
- (2) the defendant did so with purpose to commit an offense therein or thereon.

The first element that the State must prove beyond a reasonable doubt is 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.

“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.¹

The second element that the State must prove beyond a reasonable doubt is that the

¹ N.J.S.A. 2C:18-1.

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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 act² 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.]³

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 purpose, and similar words have the same meaning.⁴ 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.⁵

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

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

³ “[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).

⁴ N.J.S.A. 2C:2-2b(1).

⁵ 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.

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the surrounding circumstances.

The State need not prove that the defendant knew that any other person was present in the residential dwelling or accommodation when he/she entered or surreptitiously remained therein, and it shall not be a defense that the defendant did not know that any other person was present in the residential dwelling or accommodation when he/she entered or surreptitiously remained therein.⁶

⁶ N.J.S.A. 2C:18-2.2c provides that:

Residential burglary is a crime of the second degree, subject to section 2 of P.L.1997, c.117 (C.2C:43-7.2), unless the actor demonstrates by a preponderance of evidence that the actor reasonably believed that no resident or any other person, other than a person acting in concert with the actor, was present in the residential dwelling or accommodation when the actor entered or surreptitiously remained therein, in which case the offense is a crime of the second degree, not subject to section 2 of P.L.1997, c.117 (C.2C:43-7.2).

N.J.S.A. 2C:18-2.2c creates neither an element of the crime of residential burglary, see N.J.S.A. 2C:1-14h, nor an affirmative defense, see N.J.S.A. 2C:1-13c; N.J.S.A. 2C:3-1. Rather, subsection c. establishes a sentencing defense, which, if proven by the defendant by a preponderance of evidence, removes the mandatory application of the sentencing provisions in the No Early Release Act, N.J.S.A. 2C:43-7.2. Subsection c. is silent, however, concerning to whom the defendant must prove the defense and at which stage in the criminal proceedings it must be proven. To that end, N.J.S.A. 2C:1-13d provides that:

When the application of the code depends upon the finding of a fact which is not an element of an offense, unless the code otherwise provides:

(1) The burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and

(2) The fact must be proved to the satisfaction of the court or jury, as the case may be.

[(Emphasis added).]

While subsection c. is not a sentencing enhancement, which would otherwise require the jury — not the sentencing court — to decide, see, e.g., Erlinger v. United States, 602 U.S. 821 (2024); State v. Carlton, 480 N.J. Super. 311 (App. Div. 2024), the Criminal Code offers no additional guidance, as no other crimes or offenses include a similar sentencing defense. But see N.J.S.A. 2C:2-12b (establishing the affirmative defense of entrapment which “shall be tried by the trier of fact”); Model Jury Charge (Criminal), “Entrapment (N.J.S.A. 2C:2-12)” (January 12, 1982). Considering the apparent ambiguity between subsections c. and b. of N.J.S.A. 2C:18-2.2 — the latter of which provides that “it shall not be a defense that the [defendant] did not know that any other person was present in the residential dwelling or accommodation when the [defendant] entered or surreptitiously remained therein[]” — the court may determine that that the jury should deliberate the sentencing defense in a bifurcated trial, in which the sentencing defense is severed from the residential burglary charge. Ultimately, the court may take such action as it deems appropriate.

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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.