

## BURGLARY

### **(1) No Fatal Variance Between Burglary Indictment and Evidence at Trial, Although Alleged Street Number of Residence Was Incorrect**

### **(2) Trial Court Did Not Err in Taking Judicial Notice of Time of Sunset for Burglary Offense**

*State v. McCormick*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (18 May 2010).

The defendant was convicted of first-degree burglary and other offenses. (1) The court ruled, relying on *State v. Davis*, 282 N.C. 107 (1972), that there was not a fatal variance between the burglary indictment and evidence presented at trial although the alleged street number of the residence was incorrect. A nominal or inconsequential error in a street address does not render an indictment fatally defective. (2) The court ruled, relying on evidence Rule 201, *State v. Dancy*, 297 N.C. 40 (1979), and other cases, that the trial court did not err in taking judicial notice of the time of sunset on the date of the burglary offense.

### **Defendant's Entry Into Manager's Video Store Office Not Open to Public to Steal Money in Bank Deposit Bag Was Sufficient Evidence to Support Conviction of Felonious Breaking or Entering**

*State v. Rawlinson*, \_\_\_ N.C. App. \_\_\_, 679 S.E.2d 878 (4 August 2009).

The court ruled, relying on *In re S.D.R.*, \_\_\_ N.C. App. \_\_\_, 664 S.E.2d 414 (5 August 2008), that the defendant's entry into the manager's video store office that was not open to the public to steal money in a bank deposit bag was sufficient evidence to support a conviction of felonious breaking or entering.

### **(2) Doctrine of Possession of Recently-Stolen Property Was Properly Applied to Charge of Breaking or Entering of Church**

*State v. Patterson*, \_\_\_ N.C. App. \_\_\_, 671 S.E.2d 357 (6 January 2009).

The defendant was convicted of felonious breaking or entering of a church, larceny of property pursuant to the breaking or entering, and felonious possession of stolen goods pursuant to the breaking or entering. The trial judge arrested judgment for the conviction of possession of stolen goods. (1) The court ruled, relying on *State v. Thornton*, 251 N.C. 658 (196), and *State v. Cathey*, 162 N.C. App. 350 (2004), that the indictment charging larceny of the church (alleged as "First Baptist Church of Robbinsville") was fatally defective because it did not indicate that the church was a legal entity capable of owning property. The court noted that this ruling did not apply to the offense of possession of stolen goods. (2) The evidence showed that property stolen from the church—as well as other stolen property and tools often used for breaking and entering—were found in the defendant's exclusive control twenty-one days after the church break-in. The defendant argued on appeal that twenty-one days was not "recent" for application of the doctrine of possession of recently-stolen property, which permits an inference of guilt. The court ruled, distinguishing *State v. Hamlet*, 316 N.C. 41 (1986), that

the doctrine was properly applied to the breaking and entering charge and there was sufficient evidence to support the conviction.

**(2) Jury's Guilty Verdict of Felony Possessing Stolen Goods Must Be Set Aside When Jury Found Defendant Not Guilty of Felony Breaking or Entering and Judge Had Instructed Jury on Charge of Felony Possessing Stolen Goods Only on Theory That Property Was Stolen Pursuant to Breaking or Entering**

*State v. Tanner*, \_\_\_ N.C. App. \_\_\_, 666 S.E.2d 845 (7 October 2008).

The defendant was convicted of felony possession of stolen goods. (2) The court ruled, relying on *State v. Marsh*, \_\_\_ N.C. App. \_\_\_, 652 S.E.2d 744 (2007), and other cases, that a jury's guilty verdict of felony possessing stolen goods must be set aside when the jury found the defendant not guilty of felony breaking or entering and the judge had instructed the jury on the charge of felony possessing stolen goods only on the theory that the property was stolen pursuant to a breaking or entering. Although the indictment in this case had alleged that the value of the stolen goods exceeded \$1,000.00 and evidence was presented at trial to support this valuation, the trial judge failed to submit this theory to the jury.

**(1) Sufficient Evidence to Support Conviction of Attempted First-Degree Burglary**

**(2) Trial Judge Did Not Err in Not Submitting Attempted Misdemeanor Breaking or Entering as Lesser Offense of Attempted First-Degree Burglary**

*State v. Martin*, \_\_\_ N.C. App. \_\_\_, 665 S.E.2d 471 (5 August 2008).

The defendant was convicted of attempted first-degree burglary that was committed on March 29, 2007. A person taking a bath in a house heard a loud noise, looked out the bathroom window, and saw the defendant walk around the corner of her house. She then heard scratching at her bedroom window. She pulled back the window shade and saw the defendant on the other side of the window, pulling on the window and a cord attached to the window. The defendant had put his fingers around the window screen and had pushed the window off its track. The defendant then left the area. (1) The court ruled that the evidence was sufficient to support the defendant's conviction of attempted first-degree burglary. (2) The court ruled that the trial judge did not err in not submitting attempted misdemeanor breaking or entering as a lesser offense of attempted first degree burglary. The court stated that there was no evidence presented at trial to suggest that the defendant's intent was anything other than to commit a felony within the home. There was no evidence to support the defendant's appellate argument that the defendant could have been attempting to look at the person while she was bathing.

### **Insufficient Evidence of Intent to Commit Felony Inside House to Support Conviction of First-Degree Burglary; Court Suggests Modification of Pattern Jury Instruction**

*State v. Goldsmith, 187 N.C. App. 162, 652 S.E.2d 336 (6 November 2007).*

The court ruled that there was insufficient evidence of the defendant's intent to commit the felony of armed robbery inside the house to support the defendant's conviction of first-degree burglary. The court stated that the defendant's act of pulling the victim outside the house was evidence to support an inference that the defendant intended to commit the robbery outside the home. The court also suggested that the pattern jury instruction should require the jury to find that the defendant at the time of the breaking and entering intended to commit the felony in the building that was broken into and entered.

### **Burglary and Unlawful Breaking or Entering--First-Degree Burglary--Motion to Dismiss--Sufficiency of Evidence - Failure to Preserve or Argue**

*State v. Holt, 181 N.C. App. 328 (05-1613) (2 January 2007).*

The trial court did not err by denying defendant's motion to dismiss the charge of first-degree burglary at the close of all evidence, because: (1) our Supreme Court has held that it is entirely appropriate to convict a defendant of burglary even if he is acquitted of the underlying felony, which was attempted rape in this case, since the issue is defendant's intent at the time of breaking and entering instead of his subsequent success following through on his plans; (2) there was substantial evidence from which the jury could have plausibly determined that defendant entered with the intent of committing rape, but did not follow through with his plans; and (3) the Court of Appeals declined to exercise its discretionary authority under N.C. R. App. P. 2 to review defendant's unassigned error alleging the trial court erred by instructing the jury on the effect defendant's intoxication could have upon his ability to form a specific intent to commit a felony at the time of his breaking and entry into the victim's dwelling.

### **Burglary and Unlawful Breaking or Entering--Standing on Doorsill--Sufficient Evidence of Attempted Second-Degree Burglary**

*State v. Key, 180 N.C. App. 286 (2006)*

Standing on a door sill for thirty to sixty seconds was an overt act going beyond preparation and was sufficient to submit attempted second-degree burglary to the jury where there was evidence that defendant searched for homes for sale, approached the homeowners to learn about the house, returned at night for a credit card entry, and was seen at this house at night standing on a doorsill before leaving.

## **Burglary and Unlawful Breaking or Entering -- Allegation of Specific Felony for Burglary -- Fatal Variance**

*State v. Farrar, 179 N.C. App. 561 (2006)*

The trial court committed plain error by instructing the jury that in order to convict defendant of the offense of first-degree burglary, the State had to prove he committed the burglary with the intent to commit the felony of robbery with a dangerous weapon when the indictment alleged that defendant committed burglary with the intent to commit larceny.

## **Burglary and Unlawful Breaking or Entering-Entry Beyond Public Area-Initial Consent Void Ab Initio**

*State v. Brooks, 178 N.C. App. 211 (2006)*

An entry with the owner's consent cannot be punished, even if it is with felonious intent, but subsequent conduct can render the consent void ab initio. The trial court here correctly denied motions to dismiss charges of felonious breaking or entering and felonious larceny where defendant entered a law firm which had a reception area open to the public, went beyond that area to commit a theft, and lied to a member of the firm about his reason for being there.

**(1) Burglary and Unlawful Breaking or Entering -- window opened by 13 year- old -- authority to consent to entry**

**(2) Burglary and Unlawful Breaking or Entering -- constructive breaking -- window opened by 13 year-old on defendant's instructions**

*State v. Brown, 176 N.C. App. 72 (2006)*

**(1)** There was sufficient evidence to prove burglary or felonious breaking or entering where a 13-year-old allowed defendant (45 years old) into her parent's home for illicit sex while her parents were sleeping. There was sufficient evidence to allow a jury to find that defendant could not have reasonably believed that the child had authority to allow him entry for this purpose. **(2)** A reasonable jury could find that defendant committed a constructive breaking where a 13-year-old girl followed defendant's instructions in opening her bedroom window so that he could enter her parents' home at night for illicit sex with her. Defendant's behavior showed that he knew she lacked authority to consent to his entry.

## **Burglary and Unlawful Breaking or Entering -- evidence of breaking -- sufficient**

*State v. Reid, 175 N.C. App. 613 (2006)*

There was sufficient evidence of a breaking in a burglary prosecution where the victim testified that he opened his front door, was forcibly grabbed and dragged outside, and one or two of the assailants then rushed past him into his home.

### **Burglary and Unlawful Breaking or Entering -- motion to dismiss -- sufficiency of evidence**

*State v. Garcia, 174 N.C. App. 498 (2005)*

The trial court did not err by denying defendant's motions to dismiss the charge of breaking or entering, because: (1) defendant testified that he went into a company's building through the front door that had previously been closed after a companion entered the building through a skylight and let him in, thus meeting the entering a building element; and (2) the evidence viewed in the light most favorable to the State showed that defendant committed the offense with the intention to steal property from the company.

### **Burglary and Unlawful Breaking or Entering; Indictment and Information-- Breaking or Entering--Intent--Amended at Close of Evidence**

*State v. Silas, 360 N.C. 377 (2006); Modified & affirmed 168 N.C. App. 627 (2005)*

**There is no requirement that an indictment for felonious breaking or entering contain specific allegations of the intended felony.** However, **if an indictment does specifically allege the intended felony**, N.C.G.S. § 15A-923(e) mandates that **such allegations may not be amended**. Here, an indictment for breaking or entering with intent to commit murder was orally changed by the prosecutor at the end of all of the evidence to allege an intent to commit an assault. The trial court gave the State a second bite of the apple when there was no further opportunity for defendant to prepare or present contrary evidence.

### **Burglary -- Breaking and Entering During Nighttime -- Sufficiency of Evidence -- Victim Found Near Nightclothes**

*State v. Elliott, 360 N.C. 400 (2006)*

There was sufficient evidence of a nighttime breaking and entry in a burglary prosecution. Evidence that the victim was in or near her nightclothes when she was murdered is not dispositive, but it is relevant and can be considered with the other evidence.

### **(1) Burglary and Unlawful Breaking or Entering; Larceny -- Breaking and Entering -- Larceny -- Possession of Stolen Goods -- Motion to Dismiss -- Sufficiency of Evidence**

**(2) Possession of Stolen Property -- Found Not Guilty of Underlying Breaking and Entering Charge -- Possession Conviction Vacated**

*State v. Goblet, 173 N.C. App. 112 (2005)*

(1) The trial court did not err by denying defendant's motion to dismiss multiple charges for felony breaking and entering, felony larceny, and felony possession of stolen goods at the close of the State's evidence, because: 1) **although the evidence on the charges of felony breaking and entering and felony larceny was almost entirely circumstantial, this fact does not preclude it from being substantial evidence**; and 2) the evidence presented by the State, including testimony from a witness who drove defendant to the pertinent houses, was sufficient to support a reasonable inference that defendant committed the offenses charged. (2) Defendant's conviction on the charge of felony possession of stolen goods in case number 02 CRS 4610 is vacated because the jury found defendant not guilty of the underlying breaking and entering charge.

**Indictment and Information -- Amendment -- Intent of Breaking and Entering**

*State v. Silas, 168 N.C. App. 627 (2005); Modified & affirmed State v. Silas, 360 NC 377 (2006)*

Judgment was arrested on defendant's conviction for felonious breaking and entering where the original indictment alleged that defendant entered a residence to commit murder and an amendment at the close of all of the evidence alleged an intent to commit an assault with a deadly weapon inflicting serious injury or assault with a deadly weapon with intent to kill inflicting serious injury. Research does not reveal a case specifically stating that these assaults are lesser included offenses of first degree murder; in order to convict on a charge of assault and battery or assault with a deadly weapon in a murder case, the murder indictment should include the elements of assault or it should contain a separate count of assault. However, this indictment sufficiently charged defendant with misdemeanor breaking and entering, and the case is remanded for entry of such a judgment.

**(1) Larceny; Personal Property--Larceny--Injury to Personal Property--  
Indictment—Entity Capable of Owning Property**

**(2) Burglary and Unlawful Breaking or Entering--Breaking into Coin-Operated  
Machine--Indictment--Allegation of Ownership Unnecessary**

*State v. Price, 170 N.C. App. 672 (2005)*

(1) Defendant's convictions for larceny of parking meters and injury to personal property **are vacated** because the indictments named "City of Asheville Transit and Parking Services" as the owner of the property which did not clearly indicate

an entity capable of owning property. (2) Defendant's convictions for breaking into a coin-operated machine under N.C.G.S. § 14-56.1 is upheld even though ownership was not alleged in the indictment, because an **allegation of ownership is not necessary to sustain this charge.**

### **Burglary and Unlawful Breaking or Entering–Breaking in to Sleep–Instructions on Lesser Included Offenses**

*State v. Friend, 164 N.C. App. 430 (2004)*

Evidence in a felonious breaking and entering prosecution that defendant had admitted breaking into a house to sleep but not to commit a larceny or another felony should have resulted in an instruction on the lesser included offense of misdemeanor breaking and entering. However, defendant was not entitled to an instruction on misdemeanor larceny because any larceny that occurred pursuant to a breaking and entering is a felony regardless of the value of what was stolen.

### **Burglary–Lesser Offense of Non-Felonious Breaking or Entering–No Instructions**

*State v. Mangum, 158 N.C. App. 187 (2003)*

There was no plain error in refusing to instruct on non-felonious breaking or entering in a first degree burglary prosecution where there was substantial evidence that defendant entered the residence in order to rape the victim and none of the acts committed by defendant in the residence were in furtherance of his stated intent to use the telephone or the restroom.

### **Burglary and Unlawful Breaking or Entering–Inference of Intent–Intoxication**

*State v. Keitt, 153 N.C. App. 671 (2002)*

The trial court did not err by denying a motion to dismiss a first-degree burglary charge for insufficient evidence where defendant fell within the scope of the McBryde inference of intent to commit larceny in that he entered the dwelling place of another at night, attempted to stop the victim from screaming, and tried to flee. Defendant did not rebut the presumption of intent with evidence of intoxication, given his behavior inside the house.

### **Burglary and Unlawful Breaking or Entering--Misdemeanor Breaking or Entering--First-Degree Trespass**

*State v. Williams, 150 N.C. App. 497 (2002)*

The trial court erred by sentencing a defendant for both first-degree trespass and misdemeanor breaking or entering, and defendant's conviction for first-degree trespass must be vacated and his conviction for resisting a public officer that was

consolidated with his conviction for first-degree trespass must be remanded for resentencing, because: (1) first-degree trespass is a lesser included offense of misdemeanor breaking or entering; and (2) whether defendant's conviction of resisting a public officer warrants the sentence imposed in connection with the two consolidated crimes is a matter for the trial court to reconsider.

### **Burglary and Unlawful Breaking or Entering--First-Degree--Variance Between Indictment and Instructions--No Effect on Felony Murder Convictions--Harmless Error**

*State v. Scott, 150 N.C. App. 442 (2002)*

Any error by the trial court's instruction on first-degree burglary allowing defendant to be convicted if the evidence proved he intended to commit murder or rape when he broke into the victims' home when the indictment alleged only the intent to commit murder was harmless because (1) the trial court properly arrested judgment on the first-degree burglary conviction since burglary was the underlying felony for two convictions of defendant for felony murder, and (2) any variance between the burglary indictment and the trial court's instructions had no effect on defendant's felony murder convictions since the State was not required to secure a separate indictment for the underlying felony in a felony murder prosecution, and the short-form indictment was sufficient to charge felony murder. \*\*\*See Farb P. 11\*\*\*

### **(1) Burglary and Unlawful Breaking or Entering--Breaking and Entering--Ownership of Property**

### **(2) Burglary and Unlawful Breaking or Entering--Variance--Identity of Corporate Agent--Immaterial**

*State v. Norman, 149 N.C. App. 588 (2002)*

(1) The trial court correctly denied a motion to dismiss a felonious breaking and entering charge that was based upon the argument that the indictment was insufficient in specifying the ownership of the property. The building broken into was sufficiently identified; it was not necessary to allege ownership of the building or ownership of the property defendant intended to steal. (2) A variance between an indictment for felonious breaking and entering and the evidence concerning the agent for the corporate victim was immaterial and not fatal. The variance did not prevent defendant from preparing his defense or leave defendant vulnerable to another prosecution for the same incident.

### **(1) Burglary and Unlawful Breaking or Entering--intent at time of breaking and entering--infliction of serious injury--sufficiency of evidence**

**(2)Burglary and Unlawful Breaking or Entering--first-degree burglary--lesser included offense--misdemeanor breaking and entering**

*State v. Hannah, 149 N.C. App. 713 (2002)*

(1) Substantial evidence was presented that defendant possessed the requisite felonious intent at the time of a breaking and entering to inflict serious injury and thus to support his conviction of first-degree burglary where the victim testified that defendant had threatened to kill her if she ever left him; defendant told her that she had made him hate her, that he had not realized how much he could hate someone, and that he could snap her neck in a minute; immediately prior to the assault, the two had a heated argument over the phone which ended with defendant hanging up; defendant “shattered” the victim’s door when she refused to open it; and defendant immediately ran to the victim, picked her up, threw her on her bed, and began to strangle her, saying “die, bitch, die.” (2) There was no plain error in the trial court’s failure to instruct on misdemeanor breaking and entering as a lesser included offense of first-degree burglary where there was no evidence of the lesser offense.

**Burglary and Unlawful Breaking or Entering; Larceny--Motion to Dismiss-- Sufficiency of Evidence**

*State v. Gilmore, 142 N.C. App. 465 (2001)*

Although defendant failed to make a motion to dismiss the charges of breaking or entering or larceny at the close of the State's evidence or at the close of all the evidence to preserve the issue of the sufficiency of the evidence of these charges for appellate review, the Court of Appeals exercised its discretionary authority under N.C. R. App. P. 2 to conclude that the charges against defendant as to the break-in at a golf store should have been dismissed because: 1) the State did not present any evidence, other than fingerprint evidence, that defendant was the perpetrator of the break-in; 2) defendant was a customer in the store near or on the day of the break-in; 3) defendant's print may have been impressed on the glass prior to the time the crime was committed; and 4) there are no additional circumstances tending to show defendant's fingerprint was impressed at the time of the break-in.

**Burglary and Unlawful Breaking or Entering--First-Degree Burglary--Breaking-- Sufficiency of Evidence**

*State v. Cunningham, 140 N.C. App. 315 (2000)*

The trial court **erred by denying defendant's** motion to dismiss the charge of first-degree burglary based on insufficient evidence of a breaking, because: (1) defendant was one of several individuals involved in the alleged burglary, warranting a jury instruction on constructive breaking or acting in concert; (2) the trial court did not instruct the jury as to acting in concert but only on a theory of

actual breaking; (3) defendant's confession did not include an admission that he broke down or otherwise opened any of the exterior or interior doors; and (4) a witness's testimony used to establish that defendant committed a breaking was based on the theory of a constructive breaking, and a defendant may not be convicted of burglary under a constructive breaking theory unless that instruction is given.

**(1) Burglary and Unlawful Breaking or Entering--first-degree burglary and discharging a firearm into an occupied dwelling--occupancy of dwelling not alleged--second-degree burglary**

**(2) Burglary and Unlawful Breaking or Entering; Firearms and Other Weapons--weapon fired with barrel inside house--burglary and discharging a weapon into an occupied dwelling--mutually exclusive**

*State v. Surcey, 139 N.C. App. 432 (2000)*

(1) A defendant was not properly indicted for first-degree burglary where the State failed to allege that the dwelling house was occupied at the time of the breaking and entering, although the caption of the indictment referred to the offenses of "First Degree Burglary" and "Discharge [of a] Firearm Into [an] Occupied Building." The indictment alleged only second-degree burglary and the first-degree burglary conviction was reversed in part upon these grounds. (2) A first-degree burglary conviction was reversed where defendant pushed a shotgun barrel through a window in the victim's house before firing. Defendant was convicted and sentenced for first-degree burglary and discharging a firearm into an occupied dwelling, but was not properly indicted for first-degree burglary, and the two offenses were mutually exclusive in that defendant must enter the dwelling for burglary (for which the gun may be an implement of the person), but is required to shoot into the dwelling while remaining outside (even if the gun is inside) for discharging the firearm into an occupied dwelling.

**Burglary and Unlawful Breaking or Entering--First-Degree Burglary --Dwelling House of Another--Sufficiency of Evidence**

*State v. Blyther, 138 N.C. App. 443 (2000)*

The trial court did not err by denying defendant's motion to dismiss the first-degree burglary charge and by denying his request to submit to the jury the issue of whether defendant had a claim of right to enter his grandmother-victim's residence because: (1) the victim had exclusive possession of her residence at the time defendant broke and entered into it; (2) the victim expressly refused to allow defendant entry into her house, and the screen door had been locked to keep others, including defendant and his girlfriend, outside; and (3) the facts that defendant had a key, paid rent, kept personal belongings in the house, and had recently lived there, do not change this result.

### **Burglary and Unlawful Breaking or Entering--Sexual Intent--Evidence Insufficient**

*State v. Cooper, 138 N.C. App. 495 (2000)*

A burglary conviction based upon the intent to commit a sexual offense was vacated where the complainant heard a noise from her son's bedroom, she found the screen missing from the window when she went to investigate, the lock on the window was broken and items from the sill were on the floor, and defendant grabbed the complainant through the window from the outside. The fact that a defendant has broken into and entered a dwelling at night permits an inference of intent to commit felonious larceny, but the State must prove sexual intent when it proceeds on that theory. The State's proffer consisted of defendant's failure to flee when complainant appeared in the bedroom, his act of grabbing her arms above the elbows for five seconds, and his flight when she screamed; however, defendant did not speak in a sexual manner, nothing about his clothes or demeanor was suggestive of sexual intent, and defendant did not remove his clothing or attempt to remove complainant's clothing. The case was remanded for judgment and sentence on non-felonious breaking and entering.

### **Burglary and Unlawful Breakings - Constructive Breaking - Evidence Sufficient**

*State v. Oliver, 334 N.C. 513 (1993) 434 S.E.2d 202*

There was sufficient evidence of burglary where defendant contended that the victim consented to defendant's entry into the apartment but testimony from the State's witnesses disclosed that defendant knocked on the door of the apartment while holding a loaded gun in his hand, gave his name when asked, entered when the door was opened, ordered Luis Ortega to "give it up" once inside, and then shot and killed Ortega. This evidence supports constructive breaking in that defendant induced the occupant to open the door by knocking at the door under the pretense of business.

### **Burglary and Unlawful Breakings -- Second-Degree Burglary - Condo Available for Rent -Unoccupied**

*State v. Hobgood, 112 N.C. App. 262 (1993) 434 S.E.2d 881*

The trial court correctly denied defendant's motion to dismiss charges of second-degree burglary where it was not disputed that defendant broke and entered a condominium at night with intent to commit a felony therein

### **Burglary and Unlawful Breakings - First-Degree Burglary - Instructions – Felonious Intent - Felony Not Named in Indictment**

*State v. Roten, 115 N.C. App. 118 (1994) \_\_\_ S.E.2d \_\_\_*

The trial court did not err by instructing the jury that it could find defendant guilty of first-degree burglary if it found that he broke into the victim's home with the intent to commit a second-degree sexual offense when the indictment alleged that defendant intended to commit a first-degree sexual offense since the indictment is required to allege only that defendant intended to commit a felony, and any language in the indictment which states with specificity the felony defendant intended to commit is surplusage and may be disregarded.

### **Burglary and Unlawful Breakings -- First-Degree Burglary - Intent to Commit Murder - Conflicting Evidence - Necessity for Instruction on Misdemeanor Breaking or Entering**

*State v. Barlowe, 337 N.C. 371 (1994) \_\_\_ S.E.2d \_\_\_*

In a prosecution for first-degree burglary wherein the State presented evidence that defendant intended to murder the victim, his mother-in-law, at the time he broke and entered her home while looking for his wife and son, defendant presented sufficient evidence that the killing of the victim was accidental and that he did not possess the requisite intent to murder at the time he entered her home so that the trial court erred by refusing to instruct the jury on misdemeanor breaking or entering

### **Burglary and Unlawful Breakings -- Second-Degree Burglary Absence of Evidence of Nighttime**

*State v. Rick, 342 N.C. 91 (1995) \_\_\_ S.E.2d \_\_\_*

The evidence was insufficient to support defendant's conviction of second-degree burglary where it failed to show that defendant broke into the victim's home during the nighttime.

### **Burglary and Unlawful Breakings -- Unoccupied Dwellings Elderly Residents Absent Due to Ill Health Sufficiency of Evidence**

*State v. Smith, 121 N.C. App. 41 (1995) \_\_\_ S.E.2d \_\_\_*

Homes owned by the elderly victims were "dwelling houses of another" within the meaning of the burglary statute, even though the victims were living elsewhere due to health problems when the burglaries occurred, since a dwelling house does not lose its character merely because its elderly owner/occupant is residing elsewhere due to ill health; in this case the owners expressed an intent to return to their homes when they were able; and all of the homes contained appliances, furniture, and various personal effects belonging to the owners.

**Larceny -- Attempted Larceny Indictment Allegation of Particular Goods not Required**

*State v. Chandler, 342 N.C. 742 (3-8-1996) \_\_\_ S.E.2d \_\_\_*

It is not necessary in an attempted larceny indictment to specify the particular goods and chattels the defendant intended to steal.

**(1) Burglary and Unlawful Breakings -- Premises in Wife's Possession Burglary by Husband**

**(2) Burglary and Unlawful Breakings -- Apartment Possessed by Wife Burglary by Husband**

*State v. Singletary, 344 N.C. 95 (1996) 472 S.E.2d 895*

(1) Where the premises are in the sole possession of the wife, the husband can be guilty of burglary if he makes a nonconsensual entry into her premises with the intent to commit a felony therein. The controlling question in burglary cases is one of possession or occupation rather than ownership or property interests. (2) The State's evidence was sufficient to establish the element of first-degree burglary that defendant wrongfully entered the dwelling house "of another" where it tended to show that defendant's wife had left Winston-Salem, where she had been living with defendant, and obtained an apartment on her own in Greensboro; she was the sole lessee of the apartment; defendant moved in with his wife in the Greensboro apartment one month later; defendant thereafter moved out of the apartment following an argument, took all or most of his belongings, and returned his apartment key to his wife; and defendant's wife had exclusive possession of the apartment when defendant broke into and entered the apartment two days later.

**Burglary and Unlawful Breakings -- First-Degree Burglary Intent to Commit Felonious Assault Instruction on Misdemeanor Breaking and Entering not Required**

*State v. Singletary, 344 N.C. 95 (1996) 472 S.E.2d 895*

**Burglary and Unlawful Breakings -- First-Degree Burglary Constructive Breaking Intent to Commit Larceny Sufficiency of Evidence**

*State v. Ball, 344 N.C. 290 (1996) 474 S.E.2d 345*

There was sufficient evidence of a constructive breaking and an intent to commit larceny at the time of the breaking to support defendant's conviction of first-degree burglary where the evidence tended to show that defendant, armed with a concealed knife, rang the doorbell of a minister's home at 4:00 a.m.; when the minister went to the door, defendant stated that the minister had told him that he

would be there if defendant ever needed to talk with someone; the minister acknowledged that he had made such a statement and let defendant into his home; within minutes of entering the home, defendant attacked the minister and then his wife with the knife; and defendant demanded money from the wife prior to stabbing her to death.

### **Burglary and Unlawful Breakings -- Burglary -- Intent to Commit Felony -- Sufficiency of the Evidence**

*State v. Little, 126 N.C. App. 262 (1997)*

The State presented substantial evidence that defendant had the requisite intent to commit a felony necessary for a burglary conviction where there was evidence that the defendant was discovered with his foot on the victim's window sill at 1:00 a.m. and subsequently ran away, and defendant's flight was not accompanied by explanatory facts or circumstances.

### **Burglary - Doctrine of Possession of Recently Stolen Property - Application**

*State v. Rich, 130 N.C. App. 113 (1998)*

The trial court did not err by instructing the jury that it could consider the doctrine of possession of recently stolen property in deciding defendant's guilt of first-degree burglary as well as common law robbery.

### **Burglary -- Constructive Breaking -- Modus Operandi -- Sufficiency of Evidence**

*State v. Thomas, 350 N.C. 315 (1999)*

Sufficient evidence was presented of a constructive breaking accomplished by deception or trick to support defendant's conviction of first-degree burglary where the State relied on the testimony of a witness who had been assaulted and robbed by defendant after he tricked his way into her house to establish defendant's modus operandi; the witness testified that defendant rang her doorbell and asked to use the phone to get help because his car had broken down; once inside the kitchen, defendant asked for the telephone book and a glass of water; in the present case, defendant testified that, although he did not know the victim, he had been in the victim's kitchen because he had asked the victim for a drink of water; a cab company had received a call at about the time of the murder of the victim requesting that a cab come to the victim's address, and police found a telephone book opened to the taxicab pages; the witness testified that defendant had stabbed her in the neck with a knife taken from her kitchen, and in the present case, the victim was stabbed in the neck with a knife taken from his kitchen; in both offenses, the victim's wallet or pocketbook had been stolen; and defendant's palm print was found on the stove in the victim's kitchen. This evidence permitted the

inference that defendant tricked his way into the victim's house in the same manner that his tricked his way into the witness's house.

**Burglary and Unlawful Breaking or Entering -- First-Degree Burglary -- Nighttime Element -- Sufficiency of Evidence**

*State v. Bowers, 135 N.C. App. 682 (1999)*

Viewing the evidence in the light most favorable to the State, the trial court did not err in a first-degree burglary case by concluding the State presented sufficient evidence of the burglary occurring at night because: 1) the victim testified her clock displayed 6:50 a.m. when the assailant entered her room and the room was still dark; and 2) with the proper adjustments of the National Climate Data Center's sunrise time in light of Daylight Savings Time, sunrise occurred at 7:33 a.m. on the day of the crime.