

CRIMINAL TRESPASS - PEERING

[N.J.S.A. 2C:18-3(c)]

The indictment in this case charges the defendant with:

(Read indictment)

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

A person commits an offense if, knowing that he is not licensed or privileged to do so, he peers into a window or other opening of a dwelling or other structure adapted for overnight accommodation for the purpose of invading the privacy of another person and under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed.

In order for defendant to be convicted of this offense, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant peered into a window (or other opening) of a dwelling (or other structure adapted for overnight accommodation);
2. That the defendant did so knowing that (he/she) had no right to peer at that time;
3. That the defendant did so for the purpose of invading the privacy of another person;
4. That the defendant did so under circumstances in which a reasonable person in the dwelling (or other structure adapted for overnight accommodation) would not expect to be observed.

The first element that the State must prove beyond a reasonable doubt is that the defendant peered into a window (or other opening) of a dwelling¹ (or other structure² adapted for

¹ State v. Crutcher, 313 N.J. Super. 203, 208 (App. Div. 1998). See also Id. at 211, noting that the “structure lost its character as a dwelling when it sat vacant for a substantial period.”

² See the definition of “structure” in N.J.S.A. 2C:18-1. “In this chapter, unless a different meaning plainly is required, “structure” means any building, 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.”

overnight accommodation). The State need not prove that the defendant actually entered the dwelling (or other structure adapted for overnight accommodation).

A dwelling (or other structure adapted for overnight accommodation) means a place which human beings regularly use for sleeping. A dwelling (or other structure adapted for overnight accommodation) is no longer a dwelling when its occupants leave it without any intention to return.

The second element that the State must prove beyond a reasonable doubt is that the defendant so peered knowing that (he/she) had no right to do so at that time. "Knowing" under this statute means that defendant was aware that (he/she) was not licensed or privileged to peer in the window (or other opening) or that defendant was aware of the high probability that (he/she) was not so licensed or privileged.

The third element that the State must prove beyond a reasonable doubt is that the defendant peered for the purpose of invading the privacy of another person. Acting with "purpose" under the statute means it was the defendant's conscious object to invade the privacy of another person. Whether this was the defendant's purpose is a question of fact for you to decide. A person acts purposely with respect to the nature of (his/her) conduct or a result thereof if it (his/her) conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if (he/she) is aware of the existence of such circumstances or believes or hopes that they exist. "With purpose," "designed," "with design," or equivalent terms have the same meaning. Purpose is a condition of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's conduct, words or acts. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he had a particular purpose. It is within the power of the jury to find that the proof of purpose has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and the circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.

The State is not obligated to prove that the person(s) being observed knew that they were being observed or that the defendant actually observed anyone. Rather, the State must prove that the defendant peered for the purpose of invading the privacy of another person.

The fourth element that the State must prove beyond a reasonable doubt is that the defendant peered under circumstances in which a reasonable person in the dwelling (or other structure adapted for overnight accommodation) would not expect to be observed.

(NO AFFIRMATIVE DEFENSE) ADD

If you find that the State has proven to you all of these elements beyond a reasonable doubt, then you must find the defendant guilty. If the State has failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty.

(AFFIRMATIVE DEFENSES) ADD

The defendant _____ as part of (his/her) denial of guilt asserts that **[CHOOSE APPLICABLE AFFIRMATIVE DEFENSE(S) FROM ALTERNATIVES BELOW]:**

A.) The dwelling (or other structure adapted for overnight accommodation) was open to members of the public and (he/she) complied with all lawful conditions imposed on access to or remaining in the dwelling (or other structure adapted for overnight accommodation) at the time that (he/she) peered into the window (or other opening).³ It is the burden of the State to prove beyond a reasonable doubt that the dwelling (or other structure adapted for overnight accommodation) was not open to members of the public or that defendant did not comply with all lawful conditions imposed on access to or remaining in the dwelling (or other structure adapted for overnight accommodation) at the time that (he/she) peered into the window (or other opening). Therefore, if you conclude that the State has proved all of the elements of the criminal trespass beyond a reasonable doubt, but you are still not satisfied beyond a reasonable doubt that the State has disproved the defendant's claim that the dwelling (or other structure adapted for overnight accommodation) was open to members of the public and defendant complied with all lawful conditions imposed on access to or remaining in the dwelling (or other structure adapted for overnight accommodation) at the time that (he/she) peered into the window (or other opening), then you must find the defendant not guilty. However, if you find that the State has proved all of the elements of the criminal trespass and has also proved beyond a reasonable

³ N.J.S.A. 2C:18-3d(2).

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doubt that the dwelling (or other structure adapted for overnight accommodation) was not open to members of the public or that defendant did not comply with all lawful conditions imposed on access to or remaining in the dwelling (or other structure adapted for overnight accommodation) at the time that (he/she) peered into the window (or other opening), then you must find the defendant guilty of criminal trespass.

OR

B.) (He/she) reasonably believed that the owner of the premises, (or other person authorized to give permission thereto), would have permitted (him/her) to peer into the window (or other opening).⁴ It is the burden of the State to prove beyond a reasonable doubt that the defendant did not reasonably believe that (he/she) would have been permitted by the owner (or other person empowered to permit access thereto) to peer into the window (or other opening). Therefore, if you conclude that the State has proved all of the elements of the criminal trespass beyond a reasonable doubt, but you are still not satisfied beyond a reasonable doubt that the State has disproved the defendant's claim that (he/she) did have a reasonable belief that (he/she) would have been permitted or privileged to peer into the window (or other opening), then you must find the defendant not guilty. However, if you find that the State has proved all of the elements of the criminal trespass and has also proved beyond a reasonable doubt that the defendant could not have reasonably believed that (he/she) would be permitted or privileged to peer into the window (or other opening), then you must find the defendant guilty of criminal trespass.

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N.J.S.A. 2C:18-3d(3).