

Aggravated Burglary

In this case, aggravated burglary involves

- entering a building (such as a house) as a trespasser; and
- at the time having with him a firearm or imitation firearm, any weapon of offence or any explosive; and
- stealing property belonging to another.

Entering as a trespasser means entering without the owner's permission.

As a matter of law, the *** which the police found is a firearm.

Stealing means dishonestly taking something (in this case the ***) with the intention of permanently depriving the owner.

In this case there is no doubt that someone committed a burglary. The prosecution case is that D** committed that burglary and had a gun with him at the time. They say that ***.

The defendant denies that he had anything to do with the burglary. He says that***.

So, the key questions for you to answer in relation to Count *, having regard to all the evidence and the directions which I give you, are these

1. Was D** the person who W** saw inside the house? and
2. At that time did he have the *(gun) with him?

If you are sure that the answer to both questions is "yes", the defendant is guilty of Count * (aggravated burglary). If you are sure that the answer to question 1 is "yes", but the answer to question 2 may be "no" (i.e. he committed the burglary, but you are not sure that he had the **gun with him at that time), he is not guilty of Count 1, but guilty of "simple" burglary without a weapon, an alternative which is not on the indictment.

If the answer to both questions may be "no", he is not guilty of aggravated burglary or burglary.