

## Defending Santa: Is It a "Breaking" to Enter Through an Open Chimney?

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Now that Christmas is over, Santa's cases are coming on for trial. He's accused of multiple counts of burglary. We already know the facts: He entered dwellings at night, using the chimney to gain entry, while the residents slept soundly in bed. The indictments charge that once inside, he stole milk and cookies. Being a good guy, Santa wanted to help out the unemployed so he hired a newly minted law school graduate to serve as defense counsel. Santa's lawyer is all hot under the collar about these charges. Not only is she angry that Santa's being held on a very high bond (the magistrate wasn't able to verify his address and he couldn't produce ID), but also she's giving media interviews claiming that the charges are unfounded. Defense counsel claims that because the chimneys were open Santa didn't commit a breaking. But counsel is wrong. Let's review the law.

For purposes of burglary and related offenses, the term "breaking" means the making of some kind of opening, however slight, in the building. *State v. Shaw*, 106 N.C. App. 433 (1992). It may be through a usual opening, such as a door, or an unusual opening, such as a chimney. *State v. Willis*, 52 N.C. 190 (1859) (the defendant removed boards covering a chimney and entered the house by descending the chimney to the fireplace). Although merely going through an open door or window is not breaking, going through an open chimney constitutes a burglary. *State v. Boon*, 35 N.C. 244 (1852). The explanation for different treatment of chimneys is that a chimney, unlike a window or door, "is as much shut as the nature of the thing will admit." *Willis*, 52 N.C. at 191. Although not relevant to Santa's case, it's worth noting that opening a door or window, even if unlocked, is breaking. *State v. Simpson*, 299 N.C. 335, 349 (1980); *State v. Henderson*, 285 N.C. 1, 22 (1974). Also, a breaking does not require any destructive force. *Henderson*, 285 N.C. at 17. Thus, opening a partly opened door is a breaking, *State v. Jaynes*, 342 N.C. 249, 278 (1995), and as noted above, opening an unlocked door or window constitutes a breaking. Finally, the breaking of an inner door of a house or apartment can satisfy this element. *State v. Freeman*, 313 N.C. 539, 549 (1985).

As should be clear from this discussion, Santa's lawyer needs a new argument. Lucky for her, she's got a winner. What is it? Consent! Burglary requires, among other things, that the breaking and entering be done without consent. So save those "Dear Santa" letters, defense counsel is getting her trial exhibits in order!