What Does It Mean to "Enter"?

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I'll willing to bet that most of you sang these lyrics as a child: "You put your right hand in, You put your right hand out, You put your right hand in, And you shake it all about, . . ." But I'm also willing to bet that you never pondered this: What about putting the butt of a shotgun in? Is that entry for purposes of burglary? Well, the issue came in a recent case, State v. Watkins, giving us a great opportunity to review the rules about the meaning of the term "enter" as used in burglary and related offenses.

In *Watkins*, the defendant used the butt of a shotgun to break a window of a townhome. The defendant had heard that there were drugs inside, and he planned to steal the drugs, money or both. When the defendant broke the window the end of the shotgun "breached the threshold" of the premises, which is just a fancy way of saying that part of the shotgun entered the window. The defendant then heard a noise inside the townhome and fled. The defendant was charged with and convicted of first-degree burglary. On appeal, he argued that the evidence was insufficient on the issue of entry. The State countered, arguing that the simultaneous breaking and entering by the end of the shotgun into the window of the residence was sufficient to support the conviction. The Court of Appeals agreed with the defendant, in an opinion that's right in line with existing law.

Even before *Watkins,* North Carolina law was clear that the term "entering" for purposes of burglary and related crimes does not require that the defendant put his or her whole body inside the premises. State v. Surcey, 139 N.C. App. 432, 435 (2000) (quoting State v. Gibbs, 297 N.C. 410, 428 (1979)). Rather, this element is satisfied "by inserting into the place broken the hand, the foot, or any instrument with which it is intended to commit a felony." *Id.* Thus, when the defendant put a shotgun through a window and fired the gun into the premises, there was sufficient evidence of this element. *Id.* at 435–36; *see also Gibbs*, 297 N.C. at 418–19 (the defendant stood at the window with his hand holding a small pistol extended into the victim's den). However, case law also was clear that inserting a tool into the building is not entering if the insertion is only for the purpose of breaking (for example, when a crowbar is shoved an inch or two into the building for the purpose of forcing a window open). But as noted, if the tool is inserted for the purpose of committing a felony (for example, when a hook for stealing something or the barrel of a gun for killing an occupant is thrust through a window opening), an entering occurs. Rollin M. Perkins & Ronald N. Boyce, Criminal Law 253 (3d ed. 1982); *see also Surcey*, 139 N.C. App. at 435–36 (shotgun put through a window to fire into the house).

As mentioned, *Watkins* is right in line with this law. In that case the court concluded:

[T]here is no entry if the breach was accomplished only by an instrument inserted simultaneously during the course of the break. Accordingly, where the State's evidence seeks to establish an entry by the defendant's use of an instrument, the defendant can only be guilty of burglary if the instrument that crossed the threshold was itself used to commit a felony within the residence. Thus, the defendant must either physically enter the residence, however slight, or commit the burglary "by virtue of the [instrument]."

The result? The defendant's burglary conviction was overturned. But it wasn't an outright win for the defense. The court went on to find the evidence sufficient to support a conviction for felonious breaking or entering, which unlike burglary requires only a breaking *or* an entering, not both.