

NMDPS - BURLGARY – FENCE/STRUCTURE

If someone climbs a fence and steals items from a yard within, it's larceny, not burglary. That's because a chain-link fence around a business is not a structure under the burglary statute. But what would you charge in the following situation?

An open-air cement pad was attached to a hardware store in Roswell, New Mexico. The open-air pad was covered by a corrugated metal roof supported by metal posts. From the cement pad a door led directly into the store. The covered area- the pad – was surrounded by an open yard and a chain-link fence topped with barbed wire.

Offender cut a hole in the fence, entered the yard, and removed items from the covered area. Burglary could be charged if the open-air pad with roof is a structure. A legal definition of structure includes (1) any construction . . . artificially build up or composed of parts joined in some definite manner and (2) a building of any kind.

Had this involved only the fence, we would only have a larceny. But entering the covered pad area, even though it was open-air on three sides, was entering a structure. And entering the “prohibited space” of the structure with the intent to steal made this a burglary. Court of Appeals affirmed conviction for burglary. State v. Gonzales (2008).

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SURE HE LOOKS FUNNY, BUT HE'S MY BEST DISPATCHER.

