

NMDPS - BURGLARY - FENCE

Defendant made an unauthorized entry while climbing a six-to-eight foot “chain link” fence which encloses the premises of a business in Socorro, New Mexico. Once inside, he committed a misdemeanor larceny. The business was engaged in mobile home sales and had a number of mobile homes within the fence.

Burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or **other structure**, movable or immovable, with the intent to commit any felony or theft therein. NMSA 1978, Section 30-16-3. Since Defendant was also charged with burglary, the question became: is a fence a “structure”?

One problem is that neither the burglary statute nor the Criminal Code provides a definition of “structure.” A dictionary might help but the Court of Appeals had to make the final decision. They noted that the legislature did not intend to protect space within every physical structure created. They felt a structure should require an enclosure similar to a vehicle, watercraft, aircraft, or dwelling. These enclosures – unlike a fence – are all capable of completely confining people and their property.

Court of Appeals held that a fence is not a structure. Other charges are available: if someone unauthorized climbs over a fence, that person can be charged with criminal trespass. If they take an item, it’s larceny. And if they make an unauthorized entry into an office or mobile home, with the intent to commit a felony or theft therein, it’s burglary. State v. Folunfont (1995). - - ADA Elliott



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