

# ADA ELLIOTT - BURGLARY (LEAVING)

Aggravated Burglary consists of the unauthorized entry of any . . . dwelling or other structure, movable or immovable, with intent to commit any felony or theft therein and the person . . .

- c. commits a battery upon any person while in such place, or in entering or leaving such place.

NMSA 1978, Section 30-16-4. (second degree felony)

The owner of the Playtime Lounge in Tucumcari, New Mexico, was working alone in the lounge area. Her purse was in her office which was located in the back of the lounge. The office was not open to the public. The entryway to the office was partially covered by a drape. A sign above the office entryway read, "Private-Keepout".

The owner saw the defendant coming out of her office, carrying her purse, and going toward the exit. She grabbed her purse and held onto it as he pulled her towards the exit. When he reached the exit, he twisted the purse to one side and broke free. Unfortunately, her arm was injured.

Defendant was convicted of Aggravated Burglary. He argued that Aggravated Burglary was inappropriate because he was several feet away from the office area, and therefore no longer entering or leaving the office when the battery occurred.

Court of Appeals said this was an Aggravated Burglary - a battery had been committed while defendant was leaving. It held that where the burglarized area is an area of restricted access in an otherwise public building, a person will be deemed to be leaving the area so long as that person is still in the public portion of the building. State v. Romero (1994).

