

ADA ELLIOTT ON BURGLARY

About twenty years ago the US spy ship Pueblo was off the coast of North Korea. The Koreans hijacked the ship, beat the crew, and obtained "confessions." North Korea insisted the ship was in their waters; the US strongly denied it.

In their "confessions" - did they or did they not enter North Korean waters - the sailors used this phrase: "Penetration, however slight, is sufficient to complete the offense." In this manner the US was alerted that the confessions were coerced. The phrase is the classic and well-known definition of rape. It also applies to burglary, NMSA 1978, Section 30-16-3. Some examples follow:

Burglary, not attempted burglary

A police officer, shortly before midnight, found defendant lying under a pickup truck. While talking with defendant, the officer heard a "thunk" from the pickup, looked, and saw a starter on the ground. The officer also saw wrenches consistent with those used in removing starters. Defendant gave about three conflicting stories. He was convicted of burglary. Court of Appeals said once defendant's hand penetrates an engine compartment, its burglary. State v. Reynolds (1991).

The bed of a pickup truck - its burglary

Defendant took a tool box from the open and uncovered bed of a pickup truck. Court of Appeals said the open bed of a pickup truck, as part of the vehicle, falls within the burglary statute. Burglary conviction upheld. State v. Rodriguez (1984).

One-half inch penetration is enough

The premises involved was an auto store. It had a burglary alarm activated by a beam of light which was located one-half inch inside a garage door.

The alarm was triggered and officers responded within minutes. There was a four-by-eight inch hole in the door. The piece of door missing was found next to defendant who was hiding nearby. Evidence indicated an unidentified instrument penetrated one-half inch inside the building.

Defendant was convicted of burglary. Any penetration, however slight, of the interior space is sufficient to constitute entry. That penetration was done with an instrument is also sufficient. State v. Tixier (1976).

