

ADA ELLIOTT - RESIDENTIAL BURGLARY

An important issue in a burglary is whether a structure is a dwelling house or not. If it is a dwelling house, the crime is residential burglary, a third degree felony. Commercial burglaries are fourth degree felonies. NMSA 1978, Section 30-16-3.

Definition of "dwelling house".

Any structure, any part of which is customarily used as living quarters. Uniform Jury Instruction 14-1631.

When does a garage become part of a "dwelling house" or residence?

Defendant made an unauthorized entry into victim's garage and stole some tools. The garage had no openings to the house.

Court of Appeals affirmed conviction of residential burglary. It held that the burglary of the garage was a burglary of a dwelling house because the garage was part of the structure or residence in which victim lived. It was directly contiguous (adjacent) to and a functioning part of the residence. One wall of the garage was also a wall of one of the rooms of the residence.

State v. Lara (1978).

When is an unoccupied house a dwelling house?

A house that had not been occupied for over a year was burglarized. Gas, water and electricity had been shut off; mattresses were stacked against the walls and windows. The lady who lived there was advanced in years and not likely to return in the foreseeable future. Despite this, there was no indication that she did not hope to return.

Court of Appeals affirmed conviction of residential burglary. A structure is not a dwelling until the first person moves in; it does not lose this status until the last tenant has abandoned the structure with no intention of returning. This was a residential burglary because there was no evidence that the lady did not eventually expect to return. State v. Ervin (1981).

