NMDPS - BREAKING & ENTERING

Breaking & Entering, which consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, can occur in three ways:

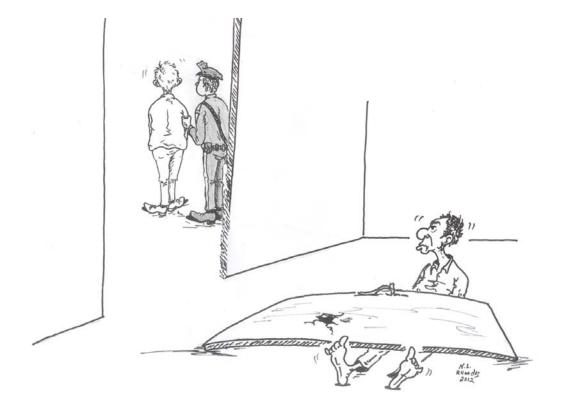
- 1. Entry by fraud or deception, or
- 2. The breaking or dismantling of any part of the vehicle, watercraft, . . . dwelling . . ., or
- 3. The breaking or dismantling of any device used to secure the vehicle, . . . dwelling. .

In San Juan County, Defendant knocked on a door and asked for cigarettes. The resident told him to leave. Defendant became angry and kicked and pushed the door as the resident struggled to keep him out. Defendant pushed the resident about a foot back, stepping into the apartment, before he left. Is there enough for Breaking & Entering?

The state argued the Defendant entered the apartment without permission by breaking the door (the door being used to secure the house) and entering. The state has to prove two different things: a (1) breaking and (2) entering.

Was there a breaking of the door? Yes, Defendant's intent was to enter the apartment by physical force. In pushing the door open, in using physical force, he was "breaking" the door. Was there entry? Once his foot entered the door, entry was obtained; only the slightest penetration is needed to obtain entry. Court of Appeals upheld Defendant's conviction.

State v. Sorrelhorse (2011). --- ADA Elliott Guttmann, Law Enforcement Academy



I may have Broke,.. but I never Entered!!!