

NMDPS - BURGLARY – VEHICLE

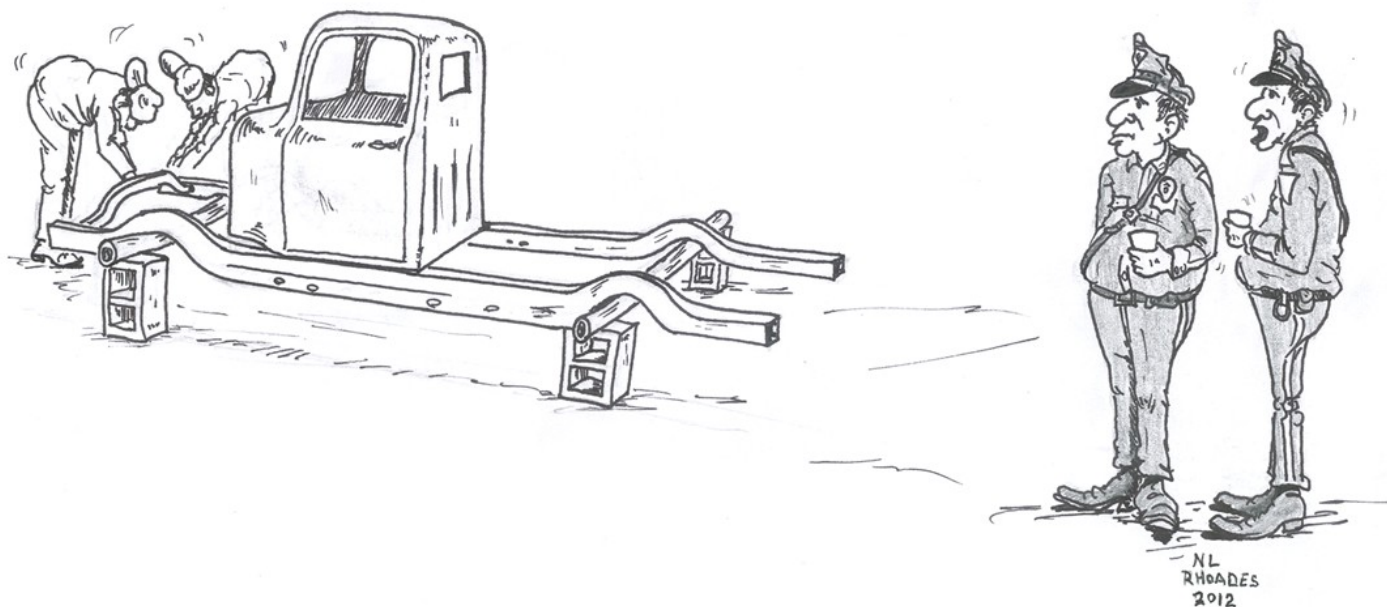
An Albuquerque Police Officer located Defendant under a vehicle. He was stealing gas! A nail had been used to puncture (enter) the gas tank. Across town, another Defendant removed two rear wheels of a vehicle and the lug nuts of the front wheels. Both Defendants were charged with burglary.

The reason for charging burglary was the belief that entry of a part of a vehicle (gas tank, wheel wells) is the same as entry of the vehicle itself. Supreme Court of New Mexico felt it was time to redefine “entry” of a vehicle. They felt if the legislature wanted the burglary statute to say that entering “part” of a vehicle is the same as entry of the vehicle itself, it could do so.

Burglary, they added, is about an enclosed space, where one has privacy. It is not about something in the open like a wheel well or a gas tank. Nor is burglary taking tools from the open bed of a pickup or reaching under an engine to take a starter. Burglary applies, however, for an open window since it provides entry to an enclosed space.

This case overturns a number of previous cases. For siphoning gas, a more appropriate charge is Tampering with a Motor Vehicle. NMSA 1978, Section 30-16D-5. Taking wheels from a vehicle can be charged as larceny of tires. NMSA 1978, Section 30-16-1. State v. Muggdin (mugh-DEEN) (2012).

- - - Elliott Guttman, Law Enforcement Academy



If they get inside the cab, they're ours!