

## **LAW REVIEW**

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### **BURGLAR “BURGS” A VW JETTA**

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Law school is a drag. Anyone that tells you otherwise is – different and certainly in the minority.

One of the few bright spots, if you can call it that, about law school is the mandatory first-year class of Criminal Law, every first-year law student’s favorite course, as unlikely as that sounds.

Criminal law, at least at the law school level, is largely defining a crime element by element, and then breaking down those pieces to see if the accused committed the offense. It’s neat and tidy, and with common sense you can pull off a good grade. Practicing criminal law is a completely different deal.

#### Burglary

The common law definition of Burglary that every law school student throughout the country learns is: “The breaking and entering of a dwelling in the nighttime.”

Was it really a dwelling, was anyone living there at the time and is that important, does nighttime include dusk, do you “enter” if you use a key, is the garage a dwelling? That’s easy enough, but with hundreds of cases defining each of those specific elements, it gets tedious and sometimes confusing.

And what constitutes a burglary is *still* not fully defined, as you can see below.

(Should any of you question my qualifications to write a column about burglary, please be informed that I used to practice quite a bit of criminal law. In fact, my last criminal case, sometime in the late 1980's, was a burglary case where I simultaneously quit and was fired by a burglar/would-be client because I didn't know what he meant when he said he "burged" this place and "burged" that place. We definitely weren't suited for an attorney-client relationship).

*People v. Thorn*

Jose Hernandez and his wife lived at an apartment building at 50 Hillcrest Drive in Daly City. The apartments in the complex were directly above a carport enclosed on three sides.

Hernandez saw a man getting into one of the parked cars and called the police who quickly arrested suspect Richard Thorn who was walking away from the scene with a backpack with stereo parts and a plastic Safeway bag with beers and items of clothing taken from the Volkswagen Jetta he had just broken into with a screwdriver.

16 Priors

Thorn was convicted of burglary of an inhabited dwelling house, being under the influence of a controlled substance and possession of drug paraphernalia. It was not Thorn's first brush with the law. He had 16 prior felony convictions. 16.

Thorn did not have much of a defense to the drug charges—he was used to that, but he contested the residential burglary conviction claiming the carport area where he broke into the car did not fall within the ambit of California's burglary statutes, even though they are much broader and more comprehensive than the common law definition of burglary familiar to law students.

### Burglary Statutes

California penal codes and court cases define burglary as “breaking and entering an inhabited dwelling house...a structure where people ordinarily live and which is currently being used for dwelling purposes...even if not occupied at the time of the burglary.” In determining whether a structure is part of an inhabited dwelling, the essential inquiry is whether the structure is “functionally interconnected with and immediately contiguous to other portions of the house.” Functionally interconnected means “used in related or complementary ways” and contiguous means “adjacent, adjoining, nearby or close.”

That string of definitions, defined by hundreds of court cases, is how a judge or court analyzes a charge of burglary. Tents have qualified as inhabited dwellings as have boats and a host of other structures.

The “Thorny” issue for the Court of Appeal was not whether the specific area is used for sleeping or everyday living, but whether the area was functionally interconnected to and immediately contiguous to the residence.

The Court of Appeal, I would say easily, convicted Thorn finding that the carport where the burglary was committed was contiguous and functionally interconnected with the apartments above.

## Second Argument

Thorn had a second basis for throwing out his burglary conviction: The purpose of the burglary statutes is to “criminalize entry into places in which people have a reasonable expectation from intrusion,” and carports are not that type of place. I.e. a carport is more like a street, not a protected area one could enter and burglarize.

Again, the Court of Appeal rejected Thorn’s arguments noting that a carport is an enclosed area into which a member of the general public may not pass without authorization, a protected area that to enter constitutes first degree burglary.

Goodbye Richard Thorn. See you in eight years.

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