

ADA ELLIOTT - AGGRAVATED BURGLARY

There are three kinds of burglaries:

1. Commercial burglary - (fourth degree)
2. Residential burglary - (third degree)
3. Aggravated burglary. - (second degree)

Aggravated burglary consists of the unauthorized entry of any . . . structure . . . with intent to commit any felony or theft therein and the person either:

- a. is armed with a deadly weapon;
- b. after entering, arms himself or herself with a deadly weapon;
- c. commits a battery upon any person while in such place, or in entering or leaving such place. NMSA 1978, Section 30-16-4.

Subsection b. - an unloaded firearm is sufficient

Subsection b is violated by a person who in the commission of a burglary becomes armed with an unloaded firearm.

State v. Luna (1982).

Subsection c. - a confusing area

How would you decide the following fact pattern? A finds out that his long-time good buddy B has been seeing A's girlfriend without A's knowing about it. A is angry and goes to B's house. A opens the unlocked door, enters, and smacks B in the face. Some people believe we have an aggravated burglary. What do you think?

ANSWER: We don't have an aggravated burglary. The confusing thing is the battery was committed in B's house. But it's not enough. We must show that A, upon entering B's house, intended to commit a felony or theft therein. We cannot show that A intended or did commit a felony or theft therein - only a misdemeanor battery.

If A had said, "I'm going to kill B," and had entered through the unlocked door, we might have an aggravated burglary. If A had kicked the door in to enter B's house, appropriate charges might be breaking & entering/ criminal damage to property and misdemeanor battery.

