

**STATE of New Mexico, Plaintiff-Appellee,
vs.
Primitivo ORTEGA and Marcelino Ortega,
Defendants-Appellants.**

No. 1441

COURT OF APPEALS OF NEW MEXICO

1974-NMCA-060, 86 N.M. 350, 524 P.2d 522

June 26, 1974

COUNSEL

Robert H. Scott, Wollen, Segal & Scott, Albuquerque, for defendant-appellants.

David L. Norvell, Atty. Gen., Bill Primm, Asst. Atty. Gen., Santa Fe, for plaintiff-appellee.

JUDGES

SUTIN, J., wrote the opinion. WOOD, C.J., and LOPEZ, J., concur.

AUTHOR: SUTIN

OPINION

SUTIN, Judge.

{1} Defendants were convicted of three charges of burglary. Section 40A-16-3, N.M.S.A. 1953 (2d Repl. Vol. 6). The structure entered without authority was Vest Pocket Storage. Three separate counts of burglary were charged in the indictment: (1) Vest Pocket Storage, (2) a storage locker rented to Gene's Janitorial Service, and (3) a storage locker rented to J.M. Livingston.

{2} Defendants contend the trial court erred in overruling defendants' motion to dismiss counts 2 and 3 of the indictment because they are included in count 1; that there was one unauthorized entry of one structure; that the statute does not include inner storage space as separate structures.

{3} This is a matter of first impression in New Mexico.

{4} Section 40A-16-3 reads:

Burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the intent to commit any felony or theft therein.

{5} Gene's Janitorial Service and J. M. Livingston each rented separate office spaces {351} in the Vest Pocket Storage building. There were separate entrances into each office. Gene's office had an outside window which was broken and the bars bent. A window next to the entrance door of the building was broken.

{6} The burglary of several businesses in one building at approximately the same time constitutes not one offense, but several, and a defendant may be prosecuted for all such offenses. State v. Casey, 4 Or. App. 243, 478 P.2d 414 (1970). Where there is lawful entry into a building, an unauthorized entry into an inner door of any unit with the necessary intent may be prosecuted for burglary. State v. Burke, 462 S.W.2d 701, 43 A.L.R.3d 1137 (Mo. 1971); Annot. 43 A.L.R.3d 1147 at 1150.

{7} Affirmed.

{8} It is so ordered.

WOOD, C.J., and LOPEZ, J., concur.