You Decide

9.5 Anthony Holt attempted to remove a window screen from Carolyn Stamper's home. The window was open roughly four inches, and the curtains over the window were drawn other than for a gap of about four inches. Stamper saw Holt at the window as he attempted to remove the aluminum window screen. Holt removed the screen halfway from the window and attempted to get the screen free of the track at the bottom of the window frame. Stamper testified that "while holding the screen, the man's 'fingers were . . . in that area between the window and the screen.'" Holt, after noticing Stamper, stated, "Oh, I'm sorry," and turned and left the premises without opening the window and was convicted of one count of breaking and entering. Stamper reported that the screen was "'pretty well destroyed'" and had to be replaced.

The defendant claimed that this was not burglary because he did not penetrate the structure of the home. The New Mexico Statute, UJI 14-1410 NMRA, requires the jury to find that (1) "[t]he defendant entered [the structure] without permission" and (2) "[t]he entry was obtained by breaking or dismantling a part of the structure." Holt "contends that only penetration of an interior protected space, not the outermost plane of a structure, constitutes an 'entry' for purposes of the breaking-and-entering statute" and that his conviction should be overturned.

Would you convict Holt of breaking and entering into Stamper's home? See *State v. Holt,* 352 P.3d 702 (NMCA 2015).

You can find the answer at study.sagepub.com/lippmaness2e