

## EXPLORING CASE LAW

### *People v. Ramos*, 52 Cal. App. 4th 300, 60 Cal. Rptr. 2d 523 (1997)

Ramos challenged his conviction of burglary, arguing that the home did not meet the definition of a dwelling.

1. What were the issue and holding of the case?
2. Define “dwelling” according to the California statute.
3. Of what could he be charged and convicted?

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### THE PEOPLE v. EDMOND JAMES RAMOS

52 Cal. App. 4th 300, 60 Cal. Rptr. 2d 523 (1997)

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#### [Opinion]

Is a dead man “temporarily absent” from his house? Since we doubt that he will ever return, we think not. We therefore reduce Edmond James Ramos’s conviction of first degree burglary to second degree burglary and remand for resentencing.

#### FACTS

On November 23, 1994, Virgil Wagner died at home from natural causes. His daughter-in-law, Marilyn Ball, was notified of his death, and when she went to Wagner’s house two days later, she found that a microwave and a VCR were missing. Although Ball locked the house when she left, there were at least two more unauthorized entries into the house and other items were taken. When the police investigated, they found Ramos’s fingerprints inside Wagner’s house. When he was arrested, Ramos told the police that he went to Wagner’s house on November 23, knocked on the front door and, when no one answered, walked around to the back of the house. Since it appeared that no one was home, Ramos decided to go in and take something he could sell to obtain money to buy drugs. Ramos broke a window, entered the house, walked by Wagner’s bedroom, looked in and saw a body on the bed. The body did not move, so Wagner entered the bedroom to get a closer look. When he saw Wagner’s stiff body and his face “turned to the left with the eyes

open,” Ramos ran out the door, grabbing the VCR on his way.

Ramos was charged with five counts of first degree burglary. At trial, the People presented evidence of the November 23 entry plus others occurring before and after Wagner’s death. During argument, the prosecutor conceded the later entries were second degree burglaries but argued that the November 23 entry was a first degree burglary because the house was “occupied” until Wagner’s remains were removed. The jury convicted Ramos of three counts, finding the November 23 entry was a first degree burglary and two other entries (after Wagner’s death) were second degree burglaries. Ramos appeals.

#### DISCUSSION

(1) Ramos contends the evidence is insufficient to support his first degree burglary conviction because it shows that Wagner was dead at the time Ramos entered his house on November 23. We agree.

To prove first degree burglary of an inhabited dwelling, the People must present evidence that the house is “currently being used for dwelling purposes, whether occupied or not.” What this means is that a dwelling is inhabited if the occupant is absent but intends to return and to use the house as a dwelling. . . . To put it plainly, a dead body is not using a house for a “dwelling” and there is no way to say that a dead

man is going to return or that he has an “intent” of any kind. It follows that, at the time of Ramos’s entry on November 23, the house was not occupied within the meaning of section.

We reject as metaphysical sophistry the Attorney General’s suggestion that the house was inhabited because Wagner “went to sleep, fully intending to remain in his house.” By the time Ramos got there, Wagner was dead and, to the best of our knowledge, unable to entertain any intent of any kind. The house was no longer occupied . . . “a house left unoccupied by its occupant’s death is not an ‘occupied’ dwelling”; . . . the inhabitant’s death renders a dwelling uninhabited “since someone must ‘live’ in a dwelling for it to be ‘inhabited’ . . . “

It follows that Ramos’s first degree burglary conviction must be reduced to second degree burglary.

## DISPOSITION

The judgment is modified by reducing Ramos’s conviction of first degree burglary to second degree burglary and, as modified, is affirmed and remanded to the trial court for resentencing, with directions to not impose the two 5-year enhancements pursuant to section 667, subdivision (a), to reconsider Ramos’s presentence conduct credits, to exercise the discretion granted . . . and, after resentencing, to issue a corrected abstract of judgment.

*[Concurring and dissenting opinions omitted. Footnotes and citations omitted.]*

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