



Discharging a Firearm Into Occupied Property: If People Are on the Porch, It's Occupied

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G.S. 14-34.1 makes it a Class E felony to discharge a barreled weapon or firearm into occupied property. The offense is elevated to a Class D felony if the property is an occupied dwelling or occupied conveyance in operation, and to a Class C felony if the defendant causes serious bodily injury. Although the statute doesn't define the term "occupied," it's been generally understood, by analogy to burglary, that property is occupied if someone actually is present there. In the recent case [State v. Miles](#), the court of appeals clarified that a house is occupied if folks are on the porch when the weapon is discharged.

In *Miles*, Clara Durham was on her porch with several family members when she heard gunshots and saw her grandson, Shawn Stamper, running toward the house. The defendant was following Stamper, firing at him. When Stamper reached the house, he ran behind it and reemerged on the other side, returning fire at the defendant. The defendant fired back towards the house at Stamper three times, striking the house twice. As the defendant fired towards the house, Durham and her family members tried to escape the gunfire by entering the house through the front door. Once inside, they called the police.

The defendant was charged with discharging a firearm into an occupied dwelling. At trial he moved to dismiss, arguing that because the family was on the porch when the shots were fired, the house wasn't occupied. In support of his argument, he asserted that the definition of the term "building," as stated in *State v. Gamble*, 56 N.C. App. 55 (1982), with respect to the crime of breaking or entering should apply to the offense of discharging a barreled weapon or firearm into occupied property. *Gamble* defined a building as "a constructed edifice designed to stand more or less permanently, covering a space of land, usu. covered by a roof and more or less completely enclosed by walls." According to the defendant, since the porch wasn't enclosed by walls, it wasn't part of the house. The court disagreed, noting, among other things, that the purpose of G.S. 14-34.1 is to protect occupants of the building, vehicle or other property described in the statute. In light of this purpose, it could find no reason why the porch shouldn't be considered part of a dwelling.

Some of you might be wondering why the defense didn't argue that the evidence was insufficient because the State failed to prove that the defendant intended to shoot into the dwelling. That argument would have been a loser as well because the State isn't required to prove that the defendant intentionally discharged the firearm at the occupied property. The crime is a general intent crime and the intent element applies to the discharging of the firearm, not the eventual destination of the bullet. *State v. Canady*, 191 N.C. App. 680, 685–86 (2008); *State v. McLean*, ___ N.C. App. ___, 712 S.E.2d 271 (2011) (as a general intent crime, this offense does not require the State to prove any specific intent to shoot into the vehicle; rather, the State need only show that the defendant intentionally fired a weapon under circumstances where he or she had reason to believe the conveyance that ended up being shot was occupied).