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ONE MINUTE BRIEF

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NUMBER: 2019-03 **DATE:** 01-24-19 **BY:** Devallis Rutledge **TOPIC:** Burglary of Non-public Room

ISSUE: Is larcenous entry into off-limits rooms of a commercial establishment during business hours “shoplifting,” or burglary?

Among other things, Proposition 47 created the misdemeanor offense of “shoplifting,” defined as entry into an open commercial establishment during regular business hours, with intent to steal, where the property taken or intended to be taken is valued at \$950 or less. PC § 459.5. (See 1MBs 2014-22, 2017-08.) But what if a person goes from the area of an establishment where the public is invited to do business and, with the requisite intent, enters a **room** of the establishment that is **off-limits** to public entry? Is the entry into such a room punishable as burglary?

- One appellate opinion, *People v. Hallam* (2016) 3 Cal.App.5th 905, ruled that a thief only committed shoplifting, and not burglary, when he entered an employee restroom of a computer store to steal an air compressor, even though the restroom was not open to the public. The California Supreme Court has now unanimously disapproved this ruling in *Hallam*.

- Mark Anthony Colbert and an accomplice went into convenience stores and a gas station, created diversions, and entered **back offices** to steal money. Convicted of commercial burglary before the passage of Proposition 47, Colbert sought resentencing under its retroactive provisions. Failing to obtain relief from lower courts, he appealed to the California Supreme Court, arguing that as in *Hallam*, the back offices he entered were part and parcel of the “commercial establishment,” entitling him to reduce his felony burglary convictions to misdemeanor shoplifting. The Supreme Court rejected this argument and the *Hallam* opinion.

*“[T]he core of the crime of burglary is not theft but intrusion, and owners and employees have every reason to expect that members of the public will enter **where they have been invited.***

*But it is different when members of the public venture into **private back offices, employee locker rooms, or other interior rooms** that are objectively identifiable as off-limits.*

*... [W]e conclude that entering an interior room that is objectively identifiable as off-limits to the public with intent to steal therefrom is **not punishable as shoplifting** under section 459.5, but instead remains **punishable as burglary.***

*... **People v. Hallam** is **disapproved** insofar as it is inconsistent with this opinion.”*

People v. Colbert (2019) ___ Cal.5th ___, No. S238954, Slip opn. at 15-17; fn. 5.

- Read the full opinion here: <http://www.courts.ca.gov/opinions/documents/S238954.PDF>

BOTTOM LINE: Larcenous entry into *off-limits rooms* of a commercial establishment during business hours is *burglary*—not “shoplifting.”

(Citations omitted and emphases added in quoted material.)

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