CH. 8 BURGLARY & RESIDENTIAL BURGLARY 1

§8-1 Burglary 1

§8-1(a) Entry with Intent 1

§8-1(b) Remaining Within 7

§8-1(c) "Without Authority" 8

§8-1(d) Accountability 11

§8-1(e) Residential Burglary 12

§8-2 Charging the Offense 17

§8-3 Attempt 18

§8-4 Possession of Burglary Tools 19

§8-5 Conviction Based on Possessing Stolen Property 20

§8-6 Trespass/Lesser-Included Offenses 22

CH. 8
BURGLARY & RESIDENTIAL BURGLARY

§8-1
Burglary

§8-1(a)
Entry with Intent

Illinois Supreme Court

United States v. Glispie, 2020 IL 125483 The limited authority doctrine provides that a person's authority to enter a building for a lawful purpose is vitiated when he or she departs from that purpose and commits a felony or theft. In Illinois, residential burglary is committed when an individual knowingly and without authority enters, or knowingly and without authority remains within, the dwelling place of another with the intent to commit a felony or theft therein. In response to a certified question from the Seventh Circuit, the Illinois Supreme Court concluded that burglary in Illinois includes the limited authority doctrine, citing a line of cases dating back to **People v. Weaver**, 41 Ill. 2d 434 (1968), and recently reaffirmed in **People v. Johnson**, 2019 IL 123318. In answering the certified question, the Supreme Court held, "the limited authority doctrine applies to residential burglary by entry."

People v. Beauchamp, 241 Ill.2d 1, 944 N.E.2d 319 (2011) An entry for purposes of the burglary statute does not require intrusion by a person's entire body; an intrusion by part of the body into the protected enclosure is sufficient, even if the intrusion is slight. An entry may be accomplished by breaking the close, i.e., crossing the planes that enclose the protected space. An entry may also be made by breaking the close with an instrument, rather than the defendant's person, but only if done with the intention of using the instrument to commit the intended felony or theft.

Here, the State proved that defendants entered the vehicle when they removed its rear hatchback window. The rear window was closed and the lock on the rear door undamaged when complainant parked her vehicle. Two hydraulic arms affixed to the interior of the vehicle lift the window outward when a button on the rear door is pressed. When the rear window was recovered in defendants' possession, the lock on the rear door had been punched out, one of the hydraulic arms was dangling from the vehicle, and the other was on the ground.

A reasonable inference exists that defendants were able to open the rear window by either prying it open or pressing the button after the lock was punched. Although touching the inside of the window would not constitute an entry where the window opened away from the vehicle, given the size of the window (4 feet by 3 to 3½ feet), the court found that it was physically impossible to remove the window without gaining at least minimal entry into the protected interior or close of the vehicle.

People v. Steppan, 105 Ill.2d 310, 473 N.E.2d 1300 (1985) The intent element for burglary of a motor vehicle ("intent to commit therein a felony or theft") includes the intent to steal the entire vehicle, and is not limited to intent to steal property from inside the vehicle. The Court rejected the contention that the burglary from a motor vehicle statute violates due process because it is a Class 2 felony whereas the theft of the entire vehicle is only a Class 3 felony. The purposes of the burglary and theft statutes are different; thus, the classification

of burglary as a Class 2 felony is reasonable. See also **People v. Pitsonbarger**, 142 Ill.2d 353, 568 N.E.2d 783 (1990).

People v. Toolate, 101 Ill.2d 301, 461 N.E.2d 987 (1984) The defendant was convicted of residential burglary with the intent to commit rape. Defendant entered the complainant's bedroom while she was sleeping. He had no weapon, did not harm the complainant, did not make any sexual contact with her and did not attempt to undress her. Defendant was fully clothed and made no threats or demands. When the complainant yelled for defendant to leave, he did so. The Court found that the evidence was insufficient to prove intent to commit rape.

People v. Blair, 52 Ill.2d 371, 288 N.E.2d 443 (1972) A car wash is a building under the burglary statute. Authority to enter a business or public building extends only to those who enter with a purpose consistent with the reason the building is open. Thus, entering a public building with the intent to commit a theft is burglary. See also **People v. Drake**, 172 Ill.App.3d 1026, 527 N.E.2d 519 (4th Dist. 1988) (defendant properly convicted of burglary for entering a retail store with the intent to commit a forgery therein.)

Illinois Appellate Court

People v. Allen, 2024 IL App (1st) 221681 Defendant was charged with residential burglary for entering a condominium unit without authority and with the intent to commit a theft therein. At his trial, the written jury instructions stated that the jury could find defendant guilty if they concluded that he "knowingly and without authority entered or knowingly and without authority remained within" the residence. The appellate court found plain error.

The residential burglary statute describes two mutually exclusive theories of culpability: burglary by unauthorized entry or burglary by unauthorized remaining. And the pattern jury instructions reflect those two separate theories in two separate sets of instructions – IPI Criminal Nos. 14.13 and 14.14 for unauthorized entry and IPI Criminal Nos. 14.13A and 14.14A for unauthorized remaining. Here, the court mistakenly grafted the unauthorized-remaining language into the unauthorized-entry instructions when it should have simply provided IPIs 14.13 and 14.14 without modification.

Further, the fact that the court's oral instructions were properly confined to unauthorized-entry residential burglary, was insufficient to overcome the defect in the written instructions. Because the jury was given conflicting instructions, it was impossible to know whether they followed the oral instructions or the written instructions. And if the jury followed the written instructions, defendant may have been found guilty of an uncharged offense, or the jury may not have been unanimous at all. Accordingly, defendant's residential burglary convictions were reversed and remanded for a new trial.

People v. Acklin, 2020 IL App (4th) 180588 The Appellate Court reversed defendant's conviction for residential burglary, finding insufficient proof of defendant's intent to commit a theft or felony upon his entry into the dwelling.

The homeowner testified that he invited defendant to spend the night after a party. When the homeowner left for work in the morning, defendant asked to remain in the house until his ride came, and the homeowner agreed. Left alone, defendant proceeded to steal several items.

The court rejected the State's argument that it had proven residential burglary under the limited authority doctrine. The authority granted by the homeowner did not cover

criminal activity committed once inside, and therefore the State did prove an unauthorized entry. But the State also had to prove defendant's intent to commit theft at the time of that entry. The State presented no evidence of defendant's intent when he entered the dwelling. The reasonable inference from defendant's inculpatory statements indicated that defendant developed the intent to steal after he woke up and the homeowner left for work.

People v. Holt, 2019 IL App (3d) 160504-B Evidence was sufficient to sustain defendant's conviction of burglary of Walmart based upon entry "without authority" when he entered during regular business hours, concealed a backpack behind a coin machine in the vestibule, and removed merchandise from the store without paying for it and hid it in the backpack. The evidence showed defendant had the intent to commit retail theft when he entered the premises, which is all that is required to sustain a burglary conviction.

Likewise, defendant's retail theft conviction was upheld. While the State did not introduce evidence that the specific items were missing from Walmart's inventory, defendant was seen concealing the items in the backpack in the Walmart vestibule, the items had Walmart tags on them, and a manager scanned the items and determined they were items offered for sale at that Walmart.

People v. Johnson, 2019 IL 123318 The Supreme Court majority upheld the "limited authority" doctrine in burglary cases involving entry without authority. The limited authority doctrine states that the authorization public establishments extend to prospective customers does not cover those who intend to commit crimes on the premises. Thus, when a defendant enters a retail establishment during normal business hours with the intent to commit theft, defendant lacks authority to enter and has committed burglary.

The Appellate Court erred in finding that **People v. Bradford**, 2016 IL 118674 changed the law and required reversal of defendant's burglary conviction. **Bradford** rejected the limited authority doctrine only in the context of *remaining*-without-authority burglary. The Supreme Court refused to extend **Bradford** to *entering*-without-authority burglary, finding none of the reasons given by the **Bradford** Court applicable to entry as opposed to remaining within. The Court also rejected the idea that the legislative history of the retail theft statute evinced an intent to punish shoplifting exclusively under that statute to the exclusion of the burglary statute. The legislature could have found defendants who enter with intent to commit theft more culpable, though it noted that "the vast majority" of shoplifting cases will still be prosecuted as retail theft given the difficulty of proving intent at the time of entry.

The two dissenting justices read the legislative history of the retail theft statute as indicative of the need for a measured and proportionate response to the problem of shoplifting, not as a supplement to the burglary statute. It further found the majority's culpability argument unavailing, noting that it is absurd to find that a person who enters a store with intent to steal commits a Class 2 felony while a person who actually commits the theft is guilty of a Class A misdemeanor.

People v. Johnson, 2018 IL App (3d) 150352 Defendant's shoplifting of clothing from Wal-Mart could not support a burglary conviction as a matter of law. Burglary requires that a person either enter or remain within a building without authority. Under **People v. Bradford**, 2016 IL 118674, the State cannot charge shoplifting under the "remains within" theory of burglary, because the legislature intended for the retail theft statute to cover shoplifting. The Appellate Court here extended **Bradford** to shoplifting charged as "enters

without authority" burglary. Defendant did not exceed his authority to enter Wal-Mart despite his intent to steal, where he entered during business hours and remained in public areas. Criminal statutes should not be interpreted so as to allow a prosecutor unbridled discretion to arbitrarily charge some shoplifting crimes as Class 2 felony burglary and others as Class A misdemeanor retail theft. The retail theft statute "occupies the field" of shoplifting crimes.

People v. Henson, 2017 IL App (2d) 150594 Where the indictment alleged that defendant committed burglary in that he knowingly entered a motor vehicle with the intent to commit a theft, theft was sufficiently identified to be a lesser included offense under the charging instrument approach. The court stressed that the burglary charge alleged that defendant intended to obtain unauthorized control over property, which is the essence of theft.

Even where a crime is a lesser included offense, the defense is entitled to a lesser included offense instruction only if the evidence would permit a jury to rationally convict of the lesser offense while acquitting of the greater offense. This standard was satisfied here. The evidence showed that on the night in question, trucks at a business had been entered and items removed. Defendant was seen a short distance away from the business premises while in possession of items that had been taken from the trucks. There was no direct evidence that defendant entered into the business's property, and there was no security video from the lot or fingerprints indicating that defendant was at the business.

Although it could be inferred that defendant actually entered the property and removed the items, it could also be rationally inferred that defendant found the items after they had been taken by someone else and intended to keep them. Because the evidence would have allowed the jury to acquit of burglary and convict of theft, defendant was entitled to a lesser included offense instruction.

People v. McCann, 2016 IL App (1st) 142136; **People v. Harris**, 2016 IL App (1st) 141746 The purpose of the burglary statute is to protect the security and integrity of certain enclosures. In the context of the burglary statute, a "building" is a structure or edifice designed for habitation or for the shelter of property. Structures that have been found to constitute a "building" under the burglary statute include a partially built tool shed consisting of a roof and one wall, a tent, an open-ended car wash, and a telephone booth. Furthermore, trailers used to store property have been held to qualify as buildings under the burglary statute.

A 36-foot enclosed two-car racing trailer was used to store and transport property which the owner used at racetracks. The trailer was locked and parked on a lot that was near the owner's shop. The trailer had been parked on the lot for a few days, and was not connected to a vehicle.

The trailer was broken into and several items removed. Defendant and his co-defendant were arrested as they tried to sell some of the property at a body shop.

Noting that the trailer was immobile at the time of the entry, was large enough to allow a person to walk in, and contained cabinets, storage areas, and working electric outlets and light switches on the walls, the court found that the trailer was a structure designed and used to store property. Therefore, it constituted a "building" within the meaning of the burglary statute.

People v. Gharrett, 2016 IL App (4th) 140315 Under 720 ILCS 5/19-1(a), the offense of burglary occurs where, without authority, the defendant knowingly enters or remains in a building "or any part thereof, with intent to commit therein a felony or theft." The court

concluded that the plain language of the statute applies where a person with authority to be in part of a building leaves that part and enters a separate area which he does not have authority to enter.

The evidence was sufficient to show that defendant committed burglary where he accompanied his recently-married wife to the public area of a Secretary of State facility so his spouse could change her name, and subsequently entered a separate area which contained an office in which the facility stored cash receipts. An employee of the facility testified that the office area was not open to the public and that in the ten years she worked at the site no member of the public had ever entered that area. Furthermore, video from a surveillance camera showed that defendant entered the office twice. The first time was to retrieve his two-year-old daughter, who had run into the office. The second time, defendant reached toward the desk and then left carrying something in his hand. A short time later, currency and checks were found to be missing.

The court concluded that there was sufficient evidence to permit a rational jury to infer that the defendant noticed the cash and checks during the first entry, and entered the office a second time with intent to steal the items.

People v. Parham, 377 Ill.App.3d 721, 879 N.E.2d 1024 (2d Dist. 2007) Defendant was leaving a parking lot when he was accosted by two men. A stereo fell from under defendant's shirt, and one of the men identified the stereo as having come from his uncle's Grand Am. There was no evidence that a stereo was missing from the vehicle, no evidence that defendant had been inside the vehicle, and no sign of forced entry. Because there was no evidence except that a nondistinctive electronic device fell from defendant's shirt, the burglary conviction concerning the Grand Am was reversed.

People v. Boose, 326 Ill.App.3d 867, 761 N.E.2d 1285 (2d Dist. 2002) The evidence was insufficient to prove that defendant entered a dwelling place "with the intent to commit criminal sexual assault" where: (1) the complainant felt someone touch the inner part of her mid-thigh, under her shorts, for "a quick second," and (2) the intruder fled when the complainant screamed. The court noted that defendant did not express a desire to have intercourse, used no force, made no threats, and did not touch the complainant's genitals. In addition, defendant made no attempt to hide his identity and fled as soon as the victim awakened.

People v. Boguszewski, 220 Ill.App.3d 85, 580 N.E.2d 925 (3d Dist. 1991) State failed to prove defendant entered the premises with the intent to commit a theft. Defendant's actions were consistent with her claim she intended to leave a note; calling "hello" and asking to leave a note would be "very strange" behavior for one who intended to commit a theft.

People v. Perruquet, 173 Ill.App.3d 1054, 527 N.E.2d 1334 (5th Dist. 1988) Defendant went into a used furniture store and looked at an air conditioner, but did not buy it. The next day he returned with co-defendant, measured the air conditioner, then purchased it. One of the defendants drove a car to the door of a storage room and the air conditioner was loaded into the trunk. The defendants and the employee then went to the counter, where defendant paid for it. Defendant asked the employee for wire to tie down the trunk. The employee and co-defendant went into the storage room, while defendant remained at the counter. After the defendants left the store, the employee discovered that money had been stolen from the cash drawer and her purse.

The Court held that the evidence was insufficient to prove burglary because it failed

to prove that defendants intended to commit a theft when they entered the store. The defendants could have entered the store for the sole purpose of buying the air conditioner, and formed the intent to take the money after they entered.

People v. Ramirez, 151 Ill.App.3d 731, 502 N.E.2d 1237 (5th Dist. 1986) The defendant, Teresa Ramirez, was convicted of burglary (by accountability). The evidence showed that a drug store was burglarized. Police entered the store about 4:25 a.m. and found two offenders, one of whom was named Elizabeth Ramirez. There was a hole in the roof, and various tools nearby. An officer ran a license check on cars parked in the mall lot, and found that only one car was registered outside the area. This car was registered in the Chicago area and a man and two women - one of whom was the defendant - were seen entering this vehicle after leaving a grocery store in the mall. Upon being questioned, defendant gave the officer a false name. The three people were instructed to follow the police to the station where defendant telephoned a person in Chicago. Later, Elizabeth Ramirez telephoned the same person. The Court held that although the evidence established a strong suspicion that defendant acted as a lookout or otherwise assisted the principal offenders, "suspicions and probabilities are not enough to convict." The connection between the defendant and the principal (i.e., common last name and a common acquaintance in Chicago) was insufficient to establish guilt.

People v. Boose, 139 Ill.App.3d 471, 487 N.E.2d 1088 (1st Dist. 1985) Defendant was found sleeping in a storeroom of Marshall Field's at about 8:00 a.m. wearing clothing with the store's tags still on. When asked why he was in the store, defendant said that he had been in the store all night. The defendant testified that he entered the department store at 9:45 a.m. He walked around for three or four hours, went in the restaurant, and walked around again. About 7:30 p.m., he realized the store was closed and thought that if he tried to explain that he was locked in, the guards would suspect him of burglary, so he found a storeroom and went to sleep. The Appellate Court noted the 'well settled" rule that a building open to the public can be the subject of a burglary where it is proven that the defendant entered such building or store for the purpose of stealing. Here, however, the Court found that the uncontroverted evidence suggested that defendant entered without the intent to commit a theft. The Court concluded, "A criminal intent formulated after a lawful entry . . . will not . . . satisfy the offense of burglary by illegal entry."

People v. Ruiz, 133 Ill.App.3d 1065, 479 N.E.2d 1195 (2d Dist. 1985) A semi-tractor trailer that is unattached to a truck is neither a "motor vehicle" nor a "house trailer" under the burglary statute. However, since it was being used for the temporary storage of scrap material, it was a "building" within the meaning of the burglary statute.

People v. Dail, 139 Ill.App.3d 941, 488 N.E.2d 286 (3d Dist. 1985) Opening the hood of a car, and removing the battery constituted an "entry" under the burglary statute. The engine compartment of a motor vehicle is an integral part thereof, and intrusion of the whole body is not required.

People v. Frey, 126 Ill.App.3d 484, 467 N.E.2d 302 (5th Dist. 1984) The defendant was convicted of burglary for reaching into the open bed of a parked pick-up truck and taking a sledgehammer. Defendant contended that an "entry" to an open bed of a pick-up truck does not constitute burglary. The Court held that "an unauthorized, knowing entry into the bed of a pick-up truck with intent to steal something therefrom is an act properly characterized and

chargeable as burglary."

In re E.S., 93 Ill.App.3d 170, 416 N.E.2d 1233 (2d Dist. 1981) The defendant was convicted of burglary for entering the fenced-in lot of an auto body shop. The Court reversed the conviction, holding that a fenced area is not a "building" within the meaning of the burglary statute.

§8-1(b)
Remaining Within

Illinois Supreme Court

People v. Bradford, 2016 IL 118674 Burglary may be committed in two ways: (1) by entering a building without authority with the intent to commit a felony or theft, or (2) by remaining within a building without authority with the intent to commit a felony or theft. 720 ILCS 5/19-1(a).

Here defendant was charged with the second type of burglary, remaining within a building without authority. Defendant entered a retail store during regular business hours and at all times stayed in areas of the store that were open to the public. Once inside the store, defendant stole several items. The trial court convicted defendant of burglary and sentenced him to three years imprisonment.

The Supreme Court reversed defendant's conviction. A defendant commits burglary by remaining within only where he exceeds his physical authority to be on the premises by: (1) hiding and waiting for the building to close; (2) entering unauthorized areas within the building; or (3) remaining on the premises after his authority is explicitly revoked. By contrast, a defendant who enters a building lawfully, shoplifts items in areas that are open to the public, then leaves during business hours, is only guilty of ordinary retail theft.

Here defendant never entered areas which were off-limits to the public, remained in the store after it closed, or in any other manner exceeded the scope of his physical authority as a member of the public to be in the store. The State thus failed to prove defendant guilty of burglary.

Illinois Appellate Court

People v. Allen, 2024 IL App (1st) 221681 Defendant was charged with residential burglary for entering a condominium unit without authority and with the intent to commit a theft therein. At his trial, the written jury instructions stated that the jury could find defendant guilty if they concluded that he "knowingly and without authority entered or knowingly and without authority remained within" the residence. The appellate court found plain error.

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Further, the fact that the court's oral instructions were properly confined to unauthorized-entry residential burglary, was insufficient to overcome the defect in the written instructions. Because the jury was given conflicting instructions, it was impossible to know whether they followed the oral instructions or the written instructions. And if the

jury followed the written instructions, defendant may have been found guilty of an uncharged offense, or the jury may not have been unanimous at all. Accordingly, defendant's residential burglary convictions were reversed and remanded for a new trial.

People v. McDaniel, 2012 IL App (5th) 100575 "A person commits burglary when without authority he knowingly enters or without authority remains within a building . . . with intent to commit therein a felony or theft." 720 ILCS 5/19-1(a).

Defendant was convicted of burglary on the theory that he remained within a store after forming an intent to commit a theft of the store's merchandise. The evidence was that he entered the general customer area of a retail store during normal business hours, did not exceed the physical scope of that authority, and left the store after about six minutes, immediately after committing the theft. The Appellate Court reversed.

The Appellate Court agreed with the argument made by defendant in his brief: "If the police and prosecutors of Illinois believe that harsher penalties should be available to punish retail theft, they could put the issue before the legislature and seek change in the laws through legislative amendment. This [c]ourt should not assist the prosecution in creating a *de facto* amendment to the criminal law by reading 'remaining within' so broadly that common shoplifting becomes burglary."

People v. Richardson, 2011 IL App (5th) 090663 The burglary statute provides two alternative ways to commit the offense – by unlawful entry or unlawfully remaining after lawful entry. The offense of burglary by remaining is proved by evidence that defendant lawfully entered a store during business hours and then secreted himself in the store until it closed with intent to steal, but evidence of hiding and secreting until a store closes is not necessary to a conviction of burglary by remaining. Evidence that defendant formed a criminal intent after a lawful entry suffices.

The State conceded that defendant entered a liquor store with authority, and was therefore required to prove that he subsequently remained there without authority and with intent to commit a theft to convict defendant of burglary by remaining. It satisfied this burden with evidence that defendant entered a clearly marked employees-only area where he stole lottery tickets and cash. This evidence proved that with intent to commit a theft, he unlawfully remained in the liquor store by moving to an area of the store where he was not authorized to be. The implied authority to be in a store during business hours does not extend to areas designated as private or employees only.

People v. Green, 83 Ill.App.3d 982, 404 N.E.2d 930 (3d Dist. 1980) The Court held that "burglary by remaining" applies only when a defendant lawfully enters a building and then conceals himself with the intent to commit a felony. See also **People v. Boone**, 217 Ill.App.3d 532, 577 N.E.2d 788 (3d Dist. 1991) (the "unlawfully remaining" provision of the burglary statute applies only where the initial entry was lawful).

§8-1(c)
"Without Authority"

Illinois Supreme Court

People v. Bradford, 2016 IL 118674 Burglary may be committed in two ways: (1) by entering a building without authority with the intent to commit a felony or theft, or (2) by

remaining within a building without authority with the intent to commit a felony or theft. 720 ILCS 5/19-1(a).

Here defendant was charged with the second type of burglary, remaining within a building without authority. Defendant entered a retail store during regular business hours and at all times stayed in areas of the store that were open to the public. Once inside the store, defendant stole several items. The trial court convicted defendant of burglary and sentenced him to three years imprisonment.

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Here defendant never entered areas which were off-limits to the public, remained in the store after it closed, or in any other manner exceeded the scope of his physical authority as a member of the public to be in the store. The State thus failed to prove defendant guilty of burglary.

People v. Bush, 157 Ill.2d 248, 623 N.E.2d 1361 (1993) Under the "limited-authority" doctrine, consent to enter premises is vitiated if, at the time of the entry, the invitee secretly intends to commit a criminal act once he is inside. The doctrine is based on the premise that had the invitee's true purpose been known, he would not have been invited to enter. The limited-authority doctrine does not apply where defendant enters with innocent intent, but later commits a crime that was not contemplated at the time of the entry. Therefore, in appropriate cases, juries should be instructed that a consensual entry to a dwelling is unauthorized where "the defendant has, at the time of entry, an intent to commit criminal acts within the dwelling."

People v. Blair, 52 Ill.2d 371, 288 N.E.2d 443 (1972) Authority to enter a business building, or other public building, extends only to those who enter with a purpose consistent with the reason the building is open. Thus, entering a public building with the intent to commit a theft is burglary.

Illinois Appellate Court

People v. Johnson, 2019 IL 123318 The Supreme Court majority upheld the "limited authority" doctrine in burglary cases involving entry without authority. The limited authority doctrine states that the authorization public establishments extend to prospective customers does not cover those who intend to commit crimes on the premises. Thus, when a defendant enters a retail establishment during normal business hours with the intent to commit theft, defendant lacks authority to enter and has committed burglary.

The Appellate Court erred in finding that **People v. Bradford**, 2016 IL 118674 changed the law and required reversal of defendant's burglary conviction. **Bradford** rejected the limited authority doctrine only in the context of *remaining*-without-authority burglary. The Supreme Court refused to extend **Bradford** to *entering*-without-authority burglary, finding none of the reasons given by the **Bradford** Court applicable to entry as opposed to remaining within. The Court also rejected the idea that the legislative history of the retail theft statute evinced an intent to punish shoplifting exclusively under that statute to the exclusion of the burglary statute. The legislature could have found defendants who enter with

intent to commit theft more culpable, though it noted that "the vast majority" of shoplifting cases will still be prosecuted as retail theft given the difficulty of proving intent at the time of entry.

The two dissenting justices read the legislative history of the retail theft statute as indicative of the need for a measured and proportionate response to the problem of shoplifting, not as a supplement to the burglary statute. It further found the majority's culpability argument unavailing, noting that it is absurd to find that a person who enters a store with intent to steal commits a Class 2 felony while a person who actually commits the theft is guilty of a Class A misdemeanor.

People v. Johnson, 2018 IL App (3d) 150352 Defendant's shoplifting of clothing from Wal-Mart could not support a burglary conviction as a matter of law. Burglary requires that a person either enter or remain within a building without authority. Under **People v. Bradford**, 2016 IL 118674, the State cannot charge shoplifting under the "remains within" theory of burglary, because the legislature intended for the retail theft statute to cover shoplifting. The Appellate Court here extended **Bradford** to shoplifting charged as "enters without authority" burglary. Defendant did not exceed his authority to enter Wal-Mart despite his intent to steal, where he entered during business hours and remained in public areas. Criminal statutes should not be interpreted so as to allow a prosecutor unbridled discretion to arbitrarily charge some shoplifting crimes as Class 2 felony burglary and others as Class A misdemeanor retail theft. The retail theft statute "occupies the field" of shoplifting crimes.

People v. Burlington, 2018 IL App (4th) 150642 Defendant entered Menard's during business hours and stole a camera. The Appellate Court affirmed his conviction for burglary under section 19-1(a), entry of a building without authority with intent to commit a theft. Disagreeing with the Third District's decision in **People v. Johnson**, 2018 IL App (3d) 150352, the Court rejected defendant's argument that he committed mere retail theft under the Illinois Supreme Court's holding in **People v. Bradford**, 2016 IL 118674. The **Bradford** Court reversed a conviction under 19-1(b), holding that the legislature did not intend for the "remains within" burglary to cover retail theft. The Appellate Court distinguished **Bradford**, relying instead on the 50-year-old **People v. Weaver**, 41 Ill. 2d 434 (1968), which held that entry of an open laundromat with intent to steal from a vending machine, is covered by 19-1(a), because a store does not grant authority to enter to those intent on committing a crime.

People v. Moore, 2018 IL App (2d) 160277 Shoplifting was properly prosecuted as burglary under the "enters without authority" portion of the burglary statute. The Court held that entry to a retail store with the intent to commit a theft is entry "without authority" under **People v. Weaver**, 41 Ill. 2d 434 (1968). The Court declined to extend **People v. Bradford**, 2016 IL 118764, which held that the "remains within" form of burglary did not include acts of retail theft, because **Bradford** did not overrule **Weaver** and the concern at issue in **Bradford** regarding when an individual's authority to be present is revoked is not a concern for burglary by entering without authority.

While it is difficult to prove an individual's intent at the time of entering an establishment, the Court found defendant's intent to commit a theft was established here where defendant and another man entered Walmart together, the co-defendant carried a diaper bag but did not have a child with him, they went directly to the liquor department, and then defendant went on a "circuitous journey" through the front of the store acting as a lookout while the co-defendant secreted bottles of vodka in the diaper bag and left the store.

Defendant never appeared to be shopping, he fled on foot after exiting the store, and he gave conflicting stories to the arresting officer.

People v. Banks, 281 Ill.App.3d 417, 667 N.E.2d 118 (2d Dist. 1996) A minor child does not have authority to permit entry to the family home by a person whom her parents have specifically forbidden to enter. In view of the parents' "superior interest in the home . . . any authority [the daughter] might have had to allow the defendant in without their permission had been withdrawn."

People v. Bailey, 188 Ill.App.3d 278, 543 N.E.2d 1338 (5th Dist. 1989) Defendant's conviction for the burglary of his brother's van upheld where the brother had given defendant permission to use the van, but defendant's entry with the intent to steal the contents exceeded the authority granted.

People v. Meeker, 86 Ill.App.3d 162, 407 N.E.2d 1058 (5th Dist. 1980) A conviction for burglary of a church was reversed where the evidence failed to prove that the entry was unauthorized. Defendant was an inactive member of the church, which had an open-door policy and there was no testimony limiting defendant's authority to enter either as to time or purpose.

People v. Vallero, 61 Ill.App.3d 413, 378 N.E.2d 549 (3d Dist. 1978) The defendant entered the office area of a dairy company and requested a job application. He was seated near some payroll checks. He left the building, and subsequently participated in forging and cashing some of the payroll checks. The Court held that the evidence was not sufficient to prove burglary, because defendant's entry to the office was not shown to be coupled with an intent to commit theft. Instead, the evidence suggested that defendant lacked any knowledge of the payroll checks when he entered the office and that he formulated the intent to steal them after the entry.

People v. Baker, 59 Ill.App.3d 100, 375 N.E.2d 176 (2d Dist. 1978) Burglary conviction, based upon entry into a housing complex parking garage and theft of motor vehicle therein, was reversed since the evidence did not show that the entry was unauthorized. There was evidence that one of the defendants was a lessee of an apartment in the complex and parked his car in the garage.

§8-1(d)
Accountability

Illinois Appellate Court

People v. Durham, 252 Ill.App.3d 88, 623 N.E.2d 1010 (3d Dist. 1993) Evidence was insufficient to convict where defendant's conduct was that of an innocent shopper and he did nothing to aid another individual in taking clothing from the store. If defendant did indeed remove clothing from the store, it was as likely that he took advantage of an opportunity that arose after he entered the store as that he entered with the intent to commit a theft.

People v. Ramirez, 151 Ill.App.3d 731, 502 N.E.2d 1237 (5th Dist. 1986) The defendant, Teresa Ramirez, was convicted of burglary by accountability. Police entered a burglarized drug store at about 4:25 a.m. and found two offenders, one of whom was named Elizabeth

Ramirez. There was a hole in the roof, and various tools nearby. An officer ran a license check on cars parked in the mall lot, and found that only one car was registered outside the area. This car was registered in the Chicago area and a man and two women (one of whom was the defendant) were seen entering this vehicle after leaving a grocery store in the mall. Upon being questioned, defendant gave the officer a false name. The three people were instructed to follow the police to the station where defendant telephoned a person in Chicago. Later, Elizabeth Ramirez telephoned the same person. The Court held that although the evidence established a strong suspicion that defendant acted as a lookout or otherwise assisted the principal offenders, "suspicions and probabilities are not enough to convict." The connection between the defendant and the principal (i.e., common last name and a common acquaintance in Chicago) was insufficient to establish guilt.

§8-1(e)
Residential Burglary

Illinois Supreme Court

People v. Atkins, 217 Ill.2d 66, 838 N.E.2d 943 (2005) P.A. 91-920, which became effective, June 1, 2001 and provided that burglary is a lesser included offense of residential burglary, constituted a substantive change and therefore could not be applied to offenses which occurred before the act's effective date. Procedural amendments are those which embrace "pleading, evidence and practice," while substantive amendments involve the scope or elements of a crime. A statute making burglary a lesser included offense of residential burglary concerned a substantive change, as it altered the scope of the residential burglary statute and exposed the defendant to conviction for a crime which did not apply when his conduct occurred. Once the trial court found that the evidence was insufficient to prove the charged offense of residential burglary for conduct occurring prior to June 1, 2001, it had no choice but to acquit the defendant of that offense. The judge could not enter a judgment for burglary because that crime was not a lesser included offense of residential burglary before June 1, 2001. Prior to the enactment of P.A. 91-920 burglary and residential burglary were mutually exclusive offenses. See **People v. Childress**, 158 Ill.2d 275, 633 N.E.2d 635 (1994).

People v. Bales, 108 Ill.2d 182, 483 N.E.2d 517 (1985) The Court reversed a trial judge's order holding the residential burglary statute unconstitutional. The term "dwelling place of another" is not vague and sufficiently distinguishes the offense of residential burglary from the offense of burglary. The legislative classification of residential burglary as a Class 1 felony does not violate equal protection - there is a reasonable basis for distinguishing between an unlawful entry to a dwelling and an unlawful entry to a place of business.

People v. Toolate, 101 Ill.2d 301, 461 N.E.2d 987 (1984) Defendant was convicted of residential burglary with the intent to commit rape. He entered the complainant's bedroom while she was sleeping. He had no weapon, did not harm the complainant, did not make any sexual contact with her and did not attempt to undress her. Defendant was fully clothed and made no threats or demands. When the complainant yelled for defendant to leave, he did so. The Court found that the evidence was insufficient to prove intent to commit rape.

Illinois Appellate Court

People v. Sanderson, 2016 IL App (1st) 141381 Defendant was convicted of armed habitual criminal based on having a prior conviction for attempted residential burglary. The

attempted residential burglary, which was not a specifically enumerated forcible felony, also did not fall within the residual clause since it was "neither by definition nor by circumstance a forcible felony."

First, the elements of the offense do not include a specific intent to carry out a violent act. Residential burglary is defined as entering or remaining within a dwelling place with the intent to commit a felony or theft. 720 ILCS 5/1903(a). A defendant could be guilty of attempted residential burglary by simply testing the window of a home that he knew was vacant, or by casing a home, finding it unexpectedly occupied and leaving precisely to avoid a violent confrontation. In both examples, the defendant did not contemplate using force or violence, and yet would still be guilty.

Second, since the State presented no evidence about the circumstances of defendant's prior conviction, there was no showing that defendant contemplated the use of force in this particular offense.

The court reversed defendant's conviction for armed habitual criminal.

People v. Larry, 2015 IL App (1st) 133664 Defendant and the complaining witness, Shalonda Harris, were in a romantic relationship for three or four years. During that time, "excluding stints in jail," defendant stayed with Harris at her apartment. Defendant did not have keys, but he had access "whenever he wanted" through Harris. Harris testified that defendant lived in the apartment and left his clothing there.

On the morning of the incident, Harris was angry with defendant and would not let him into the apartment. She told him not to return and to send someone to get his clothes. Defendant broke into the apartment through a window. Once inside, defendant pulled Harris' hair and then left with her computer. The police arrested defendant nearby carrying the computer.

The Appellate Court reversed outright defendant's conviction for residential burglary, holding that the State failed to prove defendant entered "the dwelling place of another." Since the evidence showed that defendant actually resided at the dwelling place he entered, it could not by definition be the dwelling place of another.

The court rejected the State's argument that defendant did not actually reside in the apartment since he had no. The possession of a key is not "automatically indicative" of residency status. Some people, such as friends and neighbors, have keys to dwellings they do not inhabit. Others, such as family members and romantic partners, do not have keys to dwellings where they actually reside.

The court further noted that the State presented no evidence of who signed the lease or paid the rent. The court thus would not assume that defendant had not signed the lease or did not pay rent.

People v. Rankin, 2015 IL App (1st) 133409 The evidence in this case was insufficient to sustain a residential burglary conviction. The only evidence against defendant was testimony by a person who lived in an apartment that as he drove past his building, he saw defendant carrying clothes in a gangway on the side of the building where the entrance to the witness's apartment was located. Approximately six hours later, the witness returned to his apartment and found that it had been broken into and that all of his clothes were missing. The witness stated that he had known defendant all of his life and recognized him coming out of the gangway. However, he did not inform police of defendant's identity for some two-and-a-half weeks after he was first interviewed because he was "going to deal with the situation himself."

The court noted that the witness testified that he saw the defendant coming out of the gangway, not out of the witness's apartment, and did not testify that he recognized any of the clothes defendant was carrying as being his property. In addition, although the police were called immediately, there was no evidence that defendant's fingerprints were found at the scene. Furthermore, there was no evidence that any of the clothes taken from the witness's apartment were found in defendant's possession.

The court stressed that the only evidence even remotely connecting defendant to the alleged burglary was the witness's uncorroborated testimony that he saw the defendant in the gangway carrying clothes and later found that his apartment had been burglarized and his clothes stolen. Because there was no evidence that defendant entered the witness's apartment, took the witness's clothes, or had possession of those clothes, there was no basis to find that the elements of residential burglary had been proven beyond a reasonable doubt.

People v. Moore, 2014 IL App (1st) 112592 Where defendant entered the rear portion of the basement of a multi-unit residence, and the only testimony concerning the building was from a developer who stated that he owned vacant units on the first, second, and third floors, there was insufficient evidence to show that the premises were occupied or were intended to be occupied within a reasonable time. The developer did not claim that he lived in his units or that at the time of the offense tenants or buyers were planning on living in those units. Furthermore, there was no evidence at all concerning the ownership or expected occupancy of the basement, which the developer did not own. Under these circumstances, the evidence was insufficient to prove that defendant burglarized a residence.

The conviction for residential burglary was reduced to burglary.

People v. Burnley, 2014 IL App (5th) 120486 The house defendant entered with intent to commit a felony was a "dwelling place" where the owner originally purchased the house for her parents, and had lived there "on and off for a year" although her primary residence was elsewhere. The owner kept personal property in the house, including clothing, a bed, a television, a kitchen table, business papers, and a new washer and dryer. The owner was in the process of moving most of this property to her primary residence, but the utilities were still connected and the home was maintained and kept neat. The owner described her feelings upon discovering the burglary as "extremely angry and . . . even vengeful."

The court contrasted the facts with those of **People v. Roberts**, 2013 IL App (2d) 110524, where the burglarized house was vacant and the owners had moved out of state with no plans to return. Here, even if the owner was moving from the house, "[t]he unique protections afforded by the residential burglary statute are not lost at some point during the moving process, well before the home is completely vacated."

People v. Roberts, 2013 IL App (2d) 110524 At the time of the offense, the owners of the burglarized house had moved out of state and had put the house up for sale. They did not intend to return and resume occupancy and the house was unoccupied. Because no owner or occupant resided in the house and neither intended to do so within a reasonable period of time, the house did not qualify as a "dwelling." It is not enough under the plain language of §2-6(b) that the owners intended that an eventual purchaser reside there.

The house was not a dwelling, but it was a building. A burglary is committed when one enters a building knowingly and without authority with intent to commit therein a felony or theft. 720 ILCS 5/19-1(a). Burglary is an included offense of residential burglary. The Appellate Court therefore reduced defendant's conviction from residential burglary to burglary, and remanded for resentencing.

People v. McGee, 398 Ill.App.3d 789, 924 N.E.2d 612 (1st Dist. 2010) A house which had been damaged by fire qualified as a "dwelling place" where the first floor of the building was used to store clothes, furniture, appliances and other personal belongings, the owners of the house checked on the premises and the belongings every day, and one of the owners testified that at the time of the burglary she was planning to move back into the house. By attempting to secure the premises and checking daily on the condition of the house and its contents, the owners took actions which created a reasonable inference that they left their belongings in the building with the intent of returning to reside there.

The fact that the property was later lost through foreclosure did not negate the intent of the owners - at the time the defendant entered - to use the building as a residence. Defendant's conviction for residential burglary was affirmed.

People v. Edgeston, 396 Ill.App.3d 514, 920 N.E.2d 467 (2d Dist. 2009) Under Illinois and federal law, a court decision which narrows the application of a substantive criminal statute is applied retroactively to convictions in which the direct appeal has been exhausted. **People v. Childress**, 158 Ill.2d 275, 633 N.E.2d 635 (1994), which held that burglary and residential burglary are mutually exclusive offenses and that the former is not a lesser included offense of the latter, narrowed the applicability of the burglary statute. Thus, it should be applied retroactively in collateral proceedings. (See also **COLLATERAL REMEDIES**, §§9-1(i)(1),(2), 9-5(d)).

People v. Stewart, 377 Ill.App.3d 715, 880 N.E.2d 183 (1st Dist. 2007) The court found that on the afternoon of November 15, 2002, Apartment 603 in a multi-apartment building was entered and a television and a VCR removed. When defendant was arrested more than a year later on an unrelated burglary, he was asked to point out any buildings he had burglarized. Defendant pointed to the apartment building in question, and said that sometime between October and November of 2002 he had entered an apartment and taken a television and a VCR. At trial, defendant testified that he had not entered Apartment 603. The television and VCR were never found. The court concluded that the defendant's oral admission was insufficient to establish that he entered Apartment 603.

People v. Torres, 327 Ill.App.3d 1106, 764 N.E.2d 1206 (5th Dist. 2002) A "dwelling" includes a mobile home or trailer "in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside." Where the owners vacated their burned trailer but left their personal belongings behind, locked the doors, and intended to return, the evidence permitted a reasonable trier of fact to find that the trailer was a "dwelling place" although it was subsequently determined that it had been "totaled" by the fire.

People v. Boose, 326 Ill.App.3d 867, 761 N.E.2d 1285 (2d Dist. 2002) The evidence was insufficient to prove that defendant entered a dwelling place "with the intent to commit criminal sexual assault" where: (1) the complainant felt someone touch the inner part of her mid-thigh, under her shorts, for "a quick second," and (2) the intruder fled when the complainant screamed. The court noted that defendant did not express a desire to have intercourse, used no force, made no threats, and did not touch the complainant's genitals. In addition, defendant made no attempt to hide his identity and fled as soon as the victim awakened.

People v. Hawkins, 311 Ill.App.3d 418, 723 N.E.2d 1222 (4th Dist. 2000) Residential burglary is committed where a perpetrator enters a dwelling place with the intent to commit a felony or theft. A residential burglary occurred when the defendant entered the residence with the intent to commit criminal sexual assault, "regardless of whether defendant took a substantial step toward such act."

People v. Willard, 303 Ill.App.3d 231, 707 N.E.2d 1249 (2d Dist. 1999) The Court held that an uninhabitable building is not a "dwelling" within the meaning of the residential burglary statute.

People v. Maskell, 304 Ill.App.3d 77, 710 N.E.2d 449 (2d Dist. 1999) Where the evidence showed that defendant made two nonconsensual entries - one to an apartment building and one to an apartment within the building - and both entries were with the intent to commit a felony, the State could choose to charge either residential burglary or burglary. Thus, a conviction for burglary could stand even where the charge alleged that defendant "entered a building of" the tenant who lived in the apartment. The court rejected the argument that defendant was charged with entering the apartment and could therefore be convicted only of residential burglary.

People v. Borgen, 282 Ill.App.3d 116, 668 N.E.2d 234 (2d Dist. 1996) A garage attached to a single family residence and leading directly to a room in the house is part of the "dwelling." **People v. Thomas**, 137 Ill.2d 500, 561 N.E.2d 57 (1990), did not abrogate this general rule, but merely adopted an exception -- that a garage which is part of a multiple unit building is "not necessarily" a dwelling. Here, the evidence clearly showed that the garage was attached to a single family residence and led directly to a room of the house.

People v. Mata, 243 Ill.App.3d 365, 611 N.E.2d 1235 (1st Dist. 1993) A residential burglary conviction was improper because the building in question, an attached garage, was not a "dwelling." Compare **People v. Cunningham**, 265 Ill.App.3d 3, 637 N.E.2d 1247 (2d Dist. 1994) (in the case of a single-family home, an attached garage leading directly into a room of a single-family home is part of the "dwelling place" even if no one actually lives in the garage). Under the plain language of the statute a "residence" is a "relatively permanent habitat." An unattached garage that no one "inhabits" does not qualify as a "residence." See also **People v. Bonner**, 221 Ill.App.3d 887, 583 N.E.2d 56 (1st Dist. 1991) (a house, unoccupied for seven years, was not a "dwelling" under the residential burglary statute, where there was no showing that anyone intended to reside there in the foreseeable future).

People v. Benge, 196 Ill.App.3d 56, 552 N.E.2d 1264 (4th Dist. 1990) A cabin used as a vacation home on weekends is a "dwelling" for purposes of the residential burglary statute.

People v. Pearson, 183 Ill.App.3d 72, 538 N.E.2d 1202 (5th Dist. 1989) Vacant rental property to which a new tenant is planning to move within a reasonable period of time is a "dwelling."

People v. Jackson, 181 Ill.App.3d 1048, 537 N.E.2d 1054 (3d Dist. 1989) The evidence was insufficient to establish residential burglary where defendant was a handyman who came to the apartment to fix a toilet and took money that he saw in the residence.

People v. Wiley, 169 Ill.App.3d 140, 523 N.E.2d 1344 (2d Dist. 1988) An enclosed porch

constitutes a part of the dwelling under the residential burglary statute. See also **People v. McIntyre**, 218 Ill.App.3d 479, 578 N.E.2d 314 (4th Dist. 1991) (a porch was part of the dwelling where the floor, walls, and roof were attached to the house; there were solid walls to a height of three feet and screens from that height to the roof, a metal and glass door with a lock led to the backyard and a wood and glass door with locks connected the porch to the house.

People v. Suane, 164 Ill.App.3d 997, 518 N.E.2d 458 (1st Dist. 1987) The residential burglary statute applies to structures intended for use as residences, even if the structure is not being actively used as a residence at the time of the burglary. See also **People v. Silva**, 256 Ill.App.3d 414, 628 N.E.2d 948 (1st Dist. 1993) (property was a "dwelling" where it was unoccupied but was in the process of being remodeled; furthermore, an unoccupied apartment used as storage for another apartment was analogous to a closet, and was therefore part of the occupied "dwelling").

People v. King, 135 Ill.App.3d 152, 481 N.E.2d 1074 (3d Dist. 1985) Defendant was convicted of residential burglary of a house and burglary of an unattached garage. The house and garage in question were broken into sometime during the night. An expert testified that defendant had made fresh fingerprints found on a car in the garage. In addition, the owner of the car testified that it had been washed the day before. Smeared fingerprints were found in the house but the expert determined that they could not have been made by defendant. Defendant testified and denied that he had been in the house or garage or touched the car. The Court held that the evidence was sufficient to convict defendant of the burglary of the garage based on defendant's fingerprint on the car in the garage and the fact that the car had been recently washed. However, the Court held that the evidence was insufficient to prove defendant guilty of the residential burglary of the house.

People v. Wilson, 176 Ill.App.3d 358, 531 N.E.2d 134 (2d Dist. 1982) A residential burglary instruction was defective where it defined the offense as entering a "dwelling" without authority, rather than entering a "dwelling place of another."

§8-2
Charging the Offense

Illinois Supreme Court

People v. Rothermel, 88 Ill.2d 541, 431 N.E.2d 378 (1982) Burglary indictment did not contain a fatal variance where it alleged that the premises in question were owned by two persons, but the evidence at trial proved ownership in a third person. Ownership is not an element of burglary; the gravamen of burglary is not that the building entered belonged to certain persons, but that "the defendant broke and entered into a building not his own with the intent to commit a felony or theft."

Illinois Appellate Court

People v. Hopkins, 2020 IL App (1st) 181100 An "intermodal shipping container" is not a "railroad car" for purposes of the burglary statute, even if the container is bolted onto a train platform for purposes of transporting the container by train. By its plain language, railroad cars refer to compartments with wheels, and the State's evidence established that the container in question is simply a large box without wheels that must be attached to a railroad

platform or semi truck for transporting. Including such containers in the definition of "railroad car" would also contradict the legislative intent to protect certain types of enclosures; a shipping container is unlike the other types of enclosures protected by the statute - buildings, boats, housetrailers, etc. Finally, the rule of lenity required any ambiguity to be resolved in the defendant's favor.

As a result, the court reversed defendant's burglary conviction and vacated his seven-and-a-half-year sentence.

People v. Henson, 2017 IL App (2d) 150594 Where the indictment alleged that defendant committed burglary in that he knowingly entered a motor vehicle with the intent to commit a theft, theft was sufficiently identified to be a lesser included offense under the charging instrument approach. The court stressed that the burglary charge alleged that defendant intended to obtain unauthorized control over property, which is the essence of theft.

Even where a crime is a lesser included offense, the defense is entitled to a lesser included offense instruction only if the evidence would permit a jury to rationally convict of the lesser offense while acquitting of the greater offense. This standard was satisfied here. The evidence showed that on the night in question, trucks at a business had been entered and items removed. Defendant was seen a short distance away from the business premises while in possession of items that had been taken from the trucks. There was no direct evidence that defendant entered into the business's property, and there was no security video from the lot or fingerprints indicating that defendant was at the business.

Although it could be inferred that defendant actually entered the property and removed the items, it could also be rationally inferred that defendant found the items after they had been taken by someone else and intended to keep them. Because the evidence would have allowed the jury to acquit of burglary and convict of theft, defendant was entitled to a lesser included offense instruction.

§8-3
Attempt

Illinois Appellate Court

People v. Williams, 189 Ill.App.3d 17, 545 N.E.2d 173 (1st Dist. 1989) The complaining witness heard his car alarm and looked out the window. He saw defendant standing next to the car with his hand on the trunk, but saw nothing in defendant's hand. Defendant had started to walk away when the complainant ran up to him and asked what he had done to the trunk. Defendant claimed he had not touched the car but had been vomiting near the vehicle. The complaining witness then discovered the key to his trunk would not work. A nearby officer was summoned and he brought defendant back to the car. The complainant testified the defendant agreed to fix the trunk if no criminal charges were pressed against him. The Court found it difficult to believe an officer standing nearby heard and saw nothing, and that defendant would try to pry open a trunk at lunchtime on a busy street with an officer nearby but would not flee when the complainant came outside. No instrument suitable for tampering with the lock was found and the lock was not physically damaged. Though the complainant relied on defendant's "admission" and offer to pay, the only evidence of this was complainant's own self-serving testimony. Conviction reversed.

People v. Rangel, 104 Ill.App.3d 695, 432 N.E.2d 1141 (1st Dist. 1982) Defendant was charged with burglary; however, over defense objection the jury was instructed on both

burglary and attempt burglary. The jury convicted of attempt burglary. It was error to give the attempt burglary instruction because all the evidence showed that defendant entered the premises without authority, and the sole question for the jury was the defendant's intent (defendant testified that he was in a drunken stupor and mistakenly thought he was entering his own house). If defendant had the necessary intent, he was guilty of burglary; if not he should have been acquitted.

People v. Delp, 85 Ill.App.3d 463, 406 N.E.2d 903 (5th Dist. 1980) A police officer observed the defendant near a Mustang automobile in a parking lot. The defendant was "crouching over the Mustang and had a thin piece of steel protruding from his body." When the officer entered the lot, the defendant fled into a corner of the lot. The officer found a screwdriver and a broken antenna on the ground near the defendant. The officer examined the Mustang and observed scratch marks on the driver's side window and rubber molding. The officer did not see the defendant in actual possession of either the screwdriver or the antenna. The owner of the Mustang testified that there was no damage of any type to her car, and defendant claimed that he was in the parking lot to urinate. The Court held that this evidence, particularly in light of the alleged victim's testimony that her auto was not damaged, was insufficient to establish defendant's guilt of attempt burglary.

People v. Peters, 55 Ill.App.3d 226, 371 N.E.2d 156 (2d Dist. 1977) Conviction for attempt burglary reversed where no substantial step toward entering the building was shown despite the fact that ladders had been placed leading to the roof of a tavern after closing hours, footsteps were heard on the roof, and defendant was found in an area near the building.

People v. Anderson, 22 Ill.App.3d 679, 318 N.E.2d 238 (1st Dist. 1974) Conviction for attempt burglary reversed. Various factors contradict an inference defendant intended to commit a theft; he previously lived at the residence, he had a duffel bag containing toilet articles, he had no burglary tools, he gave no thought to the noise he was making during entry, and he had been drinking.

People v. Davis, 3 Ill.App.3d 738, 279 N.E.2d 179 (5th Dist. 1972) Pounding a hole through a wall, causing plaster to fall inside, was not sufficient to show entry into premises by either defendant's person or an instrument. Burglary was reduced to Attempt.

§8-4
Possession of Burglary Tools

Illinois Appellate Court

People v. Bibbs, 60 Ill.App.3d 878, 377 N.E.2d 559 (2d Dist. 1978) Conviction reversed because the evidence was insufficient to prove that tools were possessed with the intent to commit a felony or theft. Defendants were seen in a shopping center parking lot, during morning business hours, either looking at or trying the door of a car. The tools found in their vehicle could be used to break into cars, but possession of the tools was explained by one defendant and his employer. Furthermore, there was no evidence of any "furtive activity."

People v. Stafford, 4 Ill.App.3d 606, 279 N.E.2d 395 (1st Dist. 1972) Mere possession of a screwdriver and a bent coat hanger was not sufficient to prove the intent required for the

offense of possession of burglary tools. See also, People v. Ramirez, 151 Ill.App.3d 731, 502 N.E.2d 1237 (5th Dist. 1986).

Illinois Supreme Court

People v. Faginkrantz, 21 Ill.2d 75, 171 N.E.2d 5 (1960) The elements of possession of burglary tools are: possession of tools adapted and designed for breaking and entering, knowledge of the tools' character, and intent to use the tools for breaking and entering. See also, People v. Waln, 169 Ill.App.3d 264, 523 N.E.2d 1318 (5th Dist. 1988).

§8-5
Conviction Based on Possessing Stolen Property

Illinois Supreme Court

People v. Housby, 84 Ill.2d 415, 420 N.E.2d 151 (1981) At defendant's trial for burglary, the jury was properly instructed on the inference arising from the possession of recently stolen property (IPI 13.21). Although the inference arising from the possession of recently stolen property is not, standing alone, sufficient to support a conviction for burglary, it may be relied upon in conjunction with other evidence of guilt. Here, the instruction was proper because: (1) there was a rational connection between defendant's recent possession of property stolen in the burglary and his participation in the burglary, (2) defendant's guilt of burglary was more likely than not to flow from his recent, unexplained and exclusive possession of burglary proceeds, and (3) there was evidence corroborating defendant's guilt. See also **People v. Klein**, 115 Ill.App.3d 582, 450 N.E.2d 1268 (4th Dist. 1983); **People v. Gonzalez**, 292 Ill.App.3d 280, 685 N.E.2d 661 (2d Dist. 1997).

Illinois Appellate Court

People v. Padilla, 2021 IL App (1st) 171632 A defendant's exclusive and unexplained possession of recently stolen property without more is insufficient to prove burglary beyond a reasonable doubt. But it will permit an inference that the defendant committed a burglary if there is (1) a rational connection between defendant's possession of stolen property and his participation in the burglary, (2) a showing that defendant's guilt of burglary is more likely than not to flow from his unexplained possession of burglary proceeds, and (3) evidence corroborating the defendant's guilt. **People v. Housby**, 84 Ill. 2d 415, 423 (1981)

In this case, a Walgreens was burglarized and multiple safes were removed. These safes contained, among other things, hundreds of CTA bus passes and $40,000 of bundled currency directly from the Federal Reserve. When bundled currency and hundreds of CTA passes were found on defendant's person, and more of this unique contraband, plus a safe and tools that could have been used to gain entry into the Walgreens and its safes, were found in his apartment, which was less than a mile from the Walgreens (a fact of which the Appellate Court took judicial notice), the evidence satisfied the **Housby** test.

The Appellate Court also rejected the argument that the State presented insufficient evidence to tie defendant to the apartment. The contraband was found in a basement apartment, which contained a piece of mail addressed to someone else, and defendant presented a SORA letter showing his apartment was on the first floor. But the State presented another piece of mail addressed to defendant at the basement apartment, and the unique proceeds found on defendant's person matched the contraband found in the basement. These ties were sufficient to show defendant constructively possessed the items in the basement apartment.

People v. Murphy, 2015 IL App (4th) 130265 Defendant purchased stolen property "on the street," and admitted that he knew or at least strongly suspected the property was stolen. He then took the property to a pawn shop and pawned it in exchange for money. Defendant was convicted of burglary based on the State's theory that he committed burglary by entering the pawn shop with the intent to commit a theft. According to the State, the theft occurred inside the pawn shop because, although defendant had taken control of the property prior to entering the pawn shop, he permanently deprived the owner of his property through the act of pawning it inside the pawn shop.

The Appellate Court reversed defendant's conviction. It held that defendant obtained control over the property knowing it was stolen when he purchased it on the street and thus the theft had already occurred before defendant entered the pawn shop. Accordingly, defendant did not enter the pawn shop with the intent to commit a theft.

The dissent would have affirmed the burglary conviction since the burglary was only complete when defendant acted to permanently deprive the owner of his property by pawning it; it was not complete when defendant merely obtained control over the property by purchasing it on the street.

People v. Smith, 2014 IL App (1st) 123094 (1-12-3094, 6/13/14) The trier of fact may infer that possession of recently stolen property resulted from a burglary if: (1) there was a rational connection between defendant's recent possession of stolen property and his participation in the burglary; (2) defendant's guilt of burglary more likely than not flowed from his recent, unexplained and exclusive possession of the proceeds of a burglary; and (3) there was corroborating evidence of defendant's guilt. **People v. Housby**, 84 Ill. 2d 415, 420 N.E.2d 151 (1981). Although **Housby** concerned an instruction issue rather than the sufficiency of the evidence, the same factors are applicable when determining whether the evidence is sufficient to satisfy the reasonable doubt standard.

Here, a witness testified that he saw defendant go through a hole in a fence behind an auto part store which had been closed for several months. About 10 minutes later, defendant threw several items over the fence into the alley. He then returned to the alley and placed the items in a garbage can. He was stopped by police a short time later as he was pushing the garbage can down the street. The can contained a large number of auto parts.

The owner of the store testified that the store was no longer in use but that he checked it periodically. He was last in the store about a week before defendant's arrest. At that time, there was a hole in the fence behind the store. The owner did not conduct an inventory after defendant's arrest, but noticed that some items were missing.

Officers who examined the premises after defendant's arrest discovered that a garage door had been kicked in and a window broken, but they could not determine if the damage occurred recently.

The court concluded that the evidence was insufficient to sustain defendant's conviction for burglary. Although defendant was in possession of auto parts when he was arrested, there was no evidence to link the items in his possession to the store. Thus, any inference that defendant was in possession of property that had been recently stolen from the store was based on conjecture rather than evidence.

Although defendant admitted to police that the parts in his possession did not belong to him, his guilt did not "flow" from his possession where there was no evidence that defendant ever entered the part store. Nor was there evidence to suggest that defendant entered the store with intent to commit a theft. The officers testified that there was no way to tell whether the damage to the door and window had been inflicted recently. In addition,

the witness who observed the defendant did not testify that he heard a door being kicked in or a window breaking.

The court concluded that the State's case was based merely on defendant's exclusive possession of property that was in close proximity to a burglary, and that no rational trier of fact could have found that the elements of burglary had been proven beyond a reasonable doubt. The conviction for burglary was reversed.

People v. Natal, 368 Ill.App.3d 262, 858 N.E.2d 923 (1st Dist. 2006) Under **People v. Housby,** 84 Ill.2d 415, 420 N.E.2d 151 (1981), mere possession of recently stolen property is insufficient to sustain a burglary conviction. At most, the evidence in this case showed a rational connection between the defendant's recent possession of stolen property and his participation in the burglary. The court concluded that the evidence failed to support the other two elements of **Housby**, however. Fingerprint samples from the burglarized premises matched neither the defendant nor the occupants, and supported defendant's claim that he merely found the stolen property on the sidewalk. The court also noted that the property which defendant found was of minimal value and could have been abandoned by the burglar as he was fleeing. Finally, even if the trial court did not believe defendant's claim that he found the items on a street, in the absence of corroborating evidence such disbelief was insufficient to establish guilt of residential burglary, even when combined with possession of recently stolen property.

People v. Phoenix, 96 Ill.App.3d 557, 421 N.E.2d 1022 (4th Dist. 1981) The State presented evidence that defendants were in possession of stolen property. The defendants testified that they had purchased the property at a ridiculously low price. The Court held that defendants' possession of recently stolen property, without corroborating evidence of guilt, was insufficient to justify a burglary conviction. The Court concluded that "the reasonable possibility that the property had been taken by others and sold to defendants precluded defendants' guilt of burglary from being inferred."

People v. Johnson, 96 Ill.App.3d 1123, 422 N.E.2d 19 (2d Dist.1981) The complainant returned to her apartment and discovered most of her property missing. She did not testify about any forced entry, but thought that her landlord took her property since she was in arrears on her rent. (The landlord denied taking the property). The next day the defendant was arrested while selling the complainant's property. The Court held that it was improper to convict the defendant for burglary based solely upon the presumption arising from the unexplained possession of stolen property.

People v. Sanders, 77 Ill.App.3d 115, 395 N.E.2d 1242 (3d Dist. 1979) Unexplained possession of stolen property may raise an inference of guilt and be sufficient to support a burglary conviction; however, such an inference is not permissible in this case since there was an eyewitness to the burglary who testified that the defendant was not one of the burglars. Because the inference was "clearly rebutted," it was no longer available.

§8-6
Trespass/Lesser-Included Offenses

Illinois Supreme Court

People v. Atkins, 217 Ill.2d 66, 838 N.E.2d 943 (2005) P.A. 91-920, which became effective, June 1, 2001 and provided that burglary is a lesser included offense of residential burglary, constituted a substantive change and therefore could not be applied to offenses which occurred before the act's effective date. Procedural amendments are those which embrace "pleading, evidence and practice," while substantive amendments involve the scope or elements of a crime. A statute making burglary a lesser included offense of residential burglary concerned a substantive change, as it altered the scope of the residential burglary statute and exposed the defendant to conviction for a crime which did not apply when his conduct occurred. Once the trial court found that the evidence was insufficient to prove the charged offense of residential burglary for conduct occurring prior to June 1, 2001, it had no choice but to acquit the defendant of that offense. The judge could not enter a judgment for burglary because that crime was not a lesser included offense of residential burglary before June 1, 2001. Prior to the enactment of P.A. 91-920 burglary and residential burglary were mutually exclusive offenses. See **People v. Childress**, 158 Ill.2d 275, 633 N.E.2d 635 (1994).

People v. Duda, 84 Ill.2d 406, 419 N.E.2d 909 (1981) To support a conviction of criminal trespass to State-supported land, State must prove: 1) notice to depart, (2) remaining after such notice, and (3) interference with another person's lawful use or enjoyment of land. State failed to prove the third element, where there was no interference with official activities or public access to the grounds, and no evidence that grounds keepers or other personnel were delayed or interfered with in their duties.

Illinois Appellate Court

People v. Gaines, 2019 IL App (3d) 160494 Defendant was not proved guilty beyond a reasonable doubt of criminal trespass to residence. The only substantive evidence presented was the testimony of defendant's parents who had primary authority over the residence in question. Neither testified that defendant remained without authority, and the court found both parents not credible, regardless. Recording of 911 call did not provide any insight into the element of whether defendant remained without authority. And, responding officer's testimony was admitted only to impeach defendant's mother's testimony and was not substantive evidence.

People v. Henson, 2017 IL App (2d) 150594 Where the indictment alleged that defendant committed burglary in that he knowingly entered a motor vehicle with the intent to commit a theft, theft was sufficiently identified to be a lesser included offense under the charging instrument approach. The court stressed that the burglary charge alleged that defendant intended to obtain unauthorized control over property, which is the essence of theft.

Even where a crime is a lesser included offense, the defense is entitled to a lesser included offense instruction only if the evidence would permit a jury to rationally convict of the lesser offense while acquitting of the greater offense. This standard was satisfied here. The evidence showed that on the night in question, trucks at a business had been entered and items removed. Defendant was seen a short distance away from the business premises while in possession of items that had been taken from the trucks. There was no direct evidence that defendant entered into the business's property, and there was no security video from the lot or fingerprints indicating that defendant was at the business.

Although it could be inferred that defendant actually entered the property and removed the items, it could also be rationally inferred that defendant found the items after they had been taken by someone else and intended to keep them. Because the evidence would

have allowed the jury to acquit of burglary and convict of theft, defendant was entitled to a lesser included offense instruction.

People v. Quiroga, 2015 IL App (1st) 122585 To convict a defendant of criminal trespass to state-supported land, the State must prove: (1) state or federal funds supported the land; (2) defendant received notice forbidding his entry; and (3) defendant's conduct interfered with another person's use or enjoyment of the land. 720 ILCS 5/21-5(a). An individual interferes with the use or enjoyment of land if he engages in the "kind of conduct which by its nature tends to hinder, disrupt or obstruct the orderly function of the official enterprise being carried out" on the land.

After receiving notice that he needed permission before he entered school property, defendant came to the school and approached parents on the playground asking them to sign a petition to remove the school's principal. Based on this evidence he was convicted of criminal trespass to state-supported land.

The court held that the State failed to prove that defendant's actions interfered with any of the parent's use or enjoyment of the school property. The State did not show that defendant caused any interference with official or public access to the school grounds, or otherwise negatively impacted the use or enjoyment of the land. Although the principal testified that several parents complained about defendant's behavior, this hearsay evidence was admitted solely to show its effect on the principal. It was not and could not be used as substantive evidence of defendant's guilt.

People v. Chai, 2014 IL App (2d) 121234 To obtain a conviction for criminal trespass to real property under 720 ILCS 5/21-3(a)(2), the State must establish beyond a reasonable doubt that the defendant entered the land of another after receiving notice "from the owner or occupant" that such entry was forbidden. A "knowing" mental state applies to all of the elements of the offense.

Here, the evidence was insufficient to establish guilt beyond a reasonable doubt where the notification that defendant was barred from the property came not from an owner or occupant, but from a police officer who had been called to remove defendant after he lost his temper at the Department of Motor Vehicles. Defendant returned to the DMV office nearly three months later, and became angry when his wife was not allowed to take a road test for her driver's license. The manager of the facility recognized defendant as the man who had caused the earlier incident, called police, and asked that defendant be arrested.

If an owner or occupant of the property asks an officer to inform the defendant not to return, the notification requirement of §5/21-3(a)(2) is satisfied. Here, however, there was no indication that any occupant of the facility instructed police to give defendant such notice. The court declined to find that whenever a public employee calls police to assist in removing an angry patron from a public facility, there is an implied request that police inform the patron that he or she is not to return.

People v. Edgeston, 396 Ill.App.3d 514, 920 N.E.2d 467 (2d Dist. 2009) Under Illinois and federal law, a court decision which narrows the application of a substantive criminal statute is applied retroactively to convictions in which the direct appeal has been exhausted. **People v. Childress**, 158 Ill.2d 275, 633 N.E.2d 635 (1994), which held that burglary and residential burglary are mutually exclusive offenses and that the former is not a lesser included offense of the latter, narrowed the applicability of the burglary statute. Thus, it should be applied retroactively in collateral proceedings. (See also **COLLATERAL REMEDIES**, §§9-1(i)(1),(2), 9-5(d)).

People v. Washington, 326 Ill.App.3d 1089, 762 N.E.2d 698 (4th Dist. 2002) There is an affirmative defense to criminal trespass to real property where defendant was living on land with the permission of the owner or invited to the premises by a person who was living on the land with permission of the owner. Because the State presented no evidence to disprove the defense evidence, the trial court erred by finding defendant guilty beyond a reasonable doubt. The court also erred by placing the burden on defendant to prove that his cousin was a resident of the complex.

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