CH. 48
THEFT AND OTHER PROPERTY OFFENSES

§48-1
Generally

Illinois Supreme Court

People v. Brand, 2021 IL 125945 Section 4-103(a)(1) of the Illinois Vehicle Code states that it is a felony for a person not entitled to the possession of a vehicle to possess it, knowing it to have been "stolen or converted." Where defendant is the original taker of the vehicle, the State can prove him guilty by establishing either that he had a permanent intent to deprive or that he took unauthorized control of it temporarily. The State met its burden under either standard here where the evidence showed that defendant took his ex-girlfriend's car keys without her permission, drove away in her vehicle, and sent her a message several days later which directed her to the location of her vehicle (which she then recovered using a spare set of keys).

People v. Bochenek, 2021 IL 125889 Defendant was convicted of identity theft based on the unauthorized use of another person's credit card information to purchase cigarettes. The underlying transaction occurred at a gas station in Lake County, but defendant was charged in DuPage County under a provision in the venue statute which allows for the charge to be brought in the county where the victim resides. 720 ILCS 5/1-6(t)(3).

Defendant argued that section 1-6(t)(3) of the venue statute is unconstitutional under Article I, section 8 of the Illinois Constitution which provides that an accused has the right to be tried by a jury of the county in which the offense is alleged to have been committed. The Court disagreed.

Article I, section 8 does not limit venue to a single location. The legislature has the authority to define the place where a crime is committed and to enact specific venue statutes when warranted by the nature of the crime. Identity theft is committed where a person knowingly "uses any personal identifying information or personal identification document of another person to fraudulently obtain credit, money, goods, services, or other property." Identity theft involves the misappropriation of an individual's personal identifying information. A victim has a possessory interest in that information, and the legislature has deemed that interest to be located where the victim resides. At least part of the offense of identity theft has been committed where the victim lives because the victim's personal identifying information is located there.

The Court also rejected the assertion that a crime is committed only where the accused commits a physical act. It is the location of the offense, not the location of the offender, that controls. Defendant's position would have the absurd result of allowing an out-of-state individual to escape criminal liability in Illinois for identity theft committed against an Illinois resident.

Based on the nature of the offense of identity theft, Section 1-6(t)(3) does not violate the constitutional mandate that venue be set in the county where the offense is alleged to have been committed. Identity theft is committed both in the county where a defendant's acts occur and in the county where the victim resides.

People v. Gutman, 2011 IL 110338 720 ILCS 5/29B-1(a) defines the offense of money laundering as engaging in certain transactions with "criminally derived property." "Criminally derived property" is defined as "any property constituting or derived from

proceeds obtained, directly or indirectly, pursuant" to certain criminal activity. The term "proceeds" is not statutorily defined.

The Supreme Court found that the term "proceeds" could refer to either the gross receipts of a criminal enterprise or merely to the "profits" of that enterprise. The court concluded that the legislature intended the term "proceeds" to include the "gross receipts," rejecting defendant's argument that under the rule of lenity the interpretation most favorable to the defendant should be applied. The court stressed that the rule of lenity "must not be stretched so far or applied so rigidly as to defeat the legislature's intent"; examination of legislative history and application of principles of statutory construction lead to the conclusion that the Illinois legislature intended to include the gross receipts of the criminal activity within the definition of the term "proceeds."

People v. Perry, 224 Ill.2d 312, 864 N.E.2d 196 (2007) Defendant was charged with theft by deception of property in excess of $10,000. 720 ILCS 5/16-1(a)(2)(A) provides that a person commits theft when he knowingly obtains by deception control over "property" of the owner, with the intent to permanently deprive the owner of the use or benefit of the property. 720 ILCS 5/15-1 defines "property" as:

> "anything of value. . . includ[ing] real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor, or services, or otherwise of value to the owner; things growing on, affixed to, or found or land, or part of or affixed to any building; electricity, gas and water; telecommunications services; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink; samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, computer programs or data, prototypes or models thereof, or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect or record a secret scientific, technical, merchandising, production or management information, design, process, procedure, formula, invention, or improvement."

The Supreme Court found that use of a hotel room qualifies as "property" under §15-1. Because §15-1 defines "property" for purposes of Part (C) of the Illinois Compiled Statutes, which is entitled "Crimes Against Property," the court concluded that the definition is intended to be broad in scope and not limited to theft offenses. The Court concluded that the phrase "anything of value" is unambiguous, and was intended by the legislature to "expand the definition of property to include not only items of tangible personal property but also other things of value." Because the "hospitality industry provides lodging to the public for profit" and the "market for hotel and motel rooms is vast . . . [t]he use of a hotel room does have value." The court found that the unauthorized use of a hotel room may be the basis of a conviction for theft by deception.

People v. Pierce, 226 Ill.2d 470, 877 N.E.2d 408 (2007) The Criminal Code of 1961 defines theft as knowingly obtaining or exerting unauthorized control over the property of the owner, with intent to permanently deprive. 720 ILCS 5/16-1 provides that theft of property "from

the person" is a Class 3 felony even where the value is less than $300. Otherwise, theft of less than $300 in value is a misdemeanor. The Supreme Court concluded that under Illinois law, the phrase "from the person" includes taking from the "presence" of another. While our legislature could have included the phrase "or presence" in the theft statute, it was not necessary to do so because, in Illinois the well-defined meaning of "from the person" includes a taking from the presence of another. Therefore, defendant was properly convicted of theft "from the person" where he grabbed money sitting on a bar in front of the complaining witness.

People v. Kotlarz, 193 Ill.2d 272, 738 N.E.2d 906 (2000) The Court upheld a theft by deception conviction of a former State legislator who, while acting as counsel for the purchaser, obtained a portion of the seller's brokerage commission for the sale of Illinois Tollway Authority property. The court found that the parties to the sale had not known that defendant was being paid a portion of the brokerage fee, the element of "deception" was present because defendant and the director of the Tollway manipulated the purchase price to divert funds to themselves, and defendant falsely represented that a legitimate broker had arranged the sale. Such evidence proved beyond a reasonable doubt that defendant "orchestrated and conducted a theft of $240,000" by "creating, confirming, and failing to correct false impressions," and by preventing the parties "from acquiring information pertinent to the disposition of the sale proceeds."

People v. Anderson, 188 Ill.2d 384, 721 N.E.2d 1121 (1999) For a person to be convicted of possession of a stolen motor vehicle, the State must prove that he or she possessed the vehicle, was not entitled to do so, and knew that the vehicle was stolen. Here, there was no dispute that defendant knew the automobile was stolen; the only issue was whether, as a mere passenger, he possessed the vehicle. Because defendant was not merely a passive occupant without knowledge that the car was stolen, but along with the driver used the vehicle in furtherance of other criminal activity, the evidence was sufficient for the trier of fact to conclude that defendant possessed the vehicle.

People v. Jones, 149 Ill.2d 288, 595 N.E.2d 1071 (1992) Defendant was acquitted of armed robbery, the only offense with which he was charged, but was convicted of theft as a lesser included offense. After noting a conflict between appellate districts, the Supreme Court concluded that the armed robbery information in this case impliedly alleged the elements of theft so as to permit the conviction to stand. By charging that defendant took another's property by threatening to use force, the information "clearly informed" defendant that he was being charged with obtaining unauthorized control of the property. In addition, the charge "implicitly set out the required mental states" for theft, that defendant knowingly obtained the property of another and intended to permanently deprive the victims of that property. Furthermore, intent to permanently deprive was implied because "common sense dictates" that a person who commits an armed robbery does not intend to return the property.

People v. Schmidt, 126 Ill.2d 179, 533 N.E.2d 898 (1988) Defendant was charged with residential burglary with intent to commit theft. He testified he did not enter the residence, but obtained the stolen property when it was dropped outside the residence. The jury was instructed on theft at defendant's request. The Court affirmed the residential burglary conviction and vacated the theft conviction, holding that the latter conviction was improper since defendant was not charged with theft and theft is not a lesser included offense of residential burglary. See also, **People v. Melmuka**, 173 Ill.App.3d 735, 527 N.E.2d 982 (1st

Dist. 1988) (defendant could not be convicted of attempt theft where he was only charged with attempt burglary).

People v. Tarlton, 91 Ill.2d 1, 434 N.E.2d 1110 (1982) Defendant was convicted under the Illinois Credit Card Act for using another's credit card in an unsuccessful attempt to obtain property. He contended that his conviction was void since the statute fails to provide a penalty for the unsuccessful use of a credit card. The Court held that the legislature "clearly and without ambiguity made the fraudulent use of a credit card a crime regardless of whether goods were actually obtained. The ambiguity is only whether the unsuccessful use of a credit card is a misdemeanor or a felony, and such an ambiguity "must be resolved in defendant's favor." Thus, "fraudulent use of a credit card, where nothing of value is obtained, is a Class A misdemeanor regardless of the value of goods sought to be obtained."

People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629 (1982) Defendants contended that indictments charging them with violations of the Securities Act were defective for failing to allege specific intent to defraud. The Court held that the indictments were sufficient where they alleged that defendants acted "knowingly" or "deliberately." The Court rejected the State's contention that securities law violations are absolute liability offenses. Absolute liability applies to felonies only where there is clear legislative intent to create such offenses. Here, there is no indication that the legislature intended to impose absolute liability for securities law offenses.

People v. Buffalo Confectionery, 78 Ill.2d 447, 401 N.E.2d 546 (1980) Retailers under the Illinois Use Tax Act, could not be prosecuted for theft for the alleged failure to pay a use tax. Under the Use Tax Statute the relationship between the retailer and the State is that of debtor and creditor and the State can not institute a prosecution for theft merely to collect a debt.

People v. Carraro, 77 Ill.2d 75, 394 N.E.2d 1194 (1979) The Court upheld defendant's conviction for criminal damage to property in excess of $150, holding that testimony concerning the cost of repairs to the vehicle ($391) was sufficient to prove value. Since no evidence was offered in regard to any alternate measure of damage, the Court found it unnecessary to "evaluate the propriety of any such (alternate) measure."

Illinois Appellate Court

People v. Synowiecki, 2023 IL App (4th) 220834 Defendant was proved guilty beyond a reasonable doubt of theft of a coin collection that was recovered from the basement of a home defendant owned. While another man, Daniels, lived in the basement, defendant made statements indicating that he knew the coins were there and knew that they were likely stolen. Defendant had control over the entire premises by virtue of the fact that he owned the house, and that, coupled with his knowledge, was sufficient to establish constructive possession of the stolen coins in accordance with **People v. Adams**, 161 Ill. 2d 33 (1994), and **People v. Jones**, 295 Ill. App. 3d 444 (1998).

People v. Davis, 2023 IL App (1st) 220231 Defendant was proved guilty of aggravated possession of a stolen motor vehicle where he was positively identified by a police officer as the individual seen driving the stolen vehicle during a police pursuit. The officer testified that he was next to the vehicle when he first saw defendant driving it. And, he had a second

opportunity to view the driver when the stolen vehicle turned in front of the police vehicle and took off at a high rate of speed. While he only saw the driver for a few moments, the officer later identified defendant at the location where the vehicle ultimately crashed and again positively identified him in court. The officer's identification of defendant as the driver was not undermined by his inability to identify the passenger of the stolen vehicle given that the passenger was farther away from the officer's line of sight. Accordingly, defendant's conviction was affirmed.

Defendant's conviction of aggravated fleeing or attempting to elude a peace officer was also affirmed over his challenge to the State's proof that the officer was wearing a "police uniform," an essential element of the offense. The officer and his partner were in an unmarked police vehicle, which had its emergency lights and sirens activated. While they were in plain clothes, the officer testified that he was wearing a bulletproof vest with "designators" on it and was wearing his badge. The court followed **People v. Cavitt**, 2021 IL App (2d) 170149-B, and held that a vest with police markings can constitute a police uniform under the statute, and thus the proof was sufficient here.

People v. Brand, 2020 IL App (1st) 171728 Section 4-103(a)(1) of the Illinois Vehicle Code states that it is a felony for a person not entitled to the possession of a vehicle to possess it, knowing it to have been "stolen or converted." If the charging instrument includes only the "stolen" language, the State must prove the initial taker had an intent to permanently deprive. Here, however, the State included the "converted" language, so it did not matter if the State proved an intent to permanently deprive. Conversion requires only wrongful deprivation of property, which was established here when the complainant testified that defendant took her car keys and drove her car without her permission.

People v. Bensen, 2017 Ill App (2d) 150085 Aggravated identify theft occurs when a person commits identify theft against a person who is 60 or older. 720 ILCS 5/16-30(b)(1). A person commits identity theft by knowingly using the personal identifying information of "another person" to fraudulently obtain credit, money, goods, services, or other property. 720 ILCS 5/16-30(a)(1). "Personal identifying information" includes the number assigned to a credit card. 720 ILCS 5/16-0.1.

The gravamen of the crime of identity theft is misrepresenting oneself as someone else. Thus, to be guilty of identity theft, the defendant must knowingly misappropriate someone's identity, not just obtain goods in an unauthorized manner.

A defendant who used a company credit card that was issued in her name to obtain property for herself did not commit identity theft although she acted beyond the scope of the authority given to her by her employer. Even if defendant was not authorized to use the company card for personal purchases, she did not exercise control over a credit card issued in someone else's name. In other words, defendant did not use the "personal identifying information" of another where she used a company credit card issued in her own name.

Defendant's conviction for aggravated identity theft was reversed. The cause was remanded for the trial court to enter convictions on counts which had merged with the reversed conviction.

People v. Tepper, 2016 IL App (2d) 160076 720 ILCS 5/33E-17 provides that the offense of unlawful participation occurs where without the informed consent of the employer and with intent to defraud, a local government or school district employee "participates, shares in, or receiv[es] directly or indirectly" any money, property or benefit through a contract between the employer and a vendor. As a matter of first impression, the Appellate Court concluded

that the offense does not require an affirmative act of deceit or that the employer suffered a pecuniary loss. Thus, a Forest Preserve IT manager who failed to disclose that he was an employee of a company with whom the Forest Preserve contracted for computer services, and that he received commissions from the contract, committed the offense of unlawful participation.

However, the court also concluded that defendant was improperly convicted of 29 counts of unlawful participation because he received monthly commission payments for 29 months. Holding that the statute was ambiguous, the court concluded that the "unit of prosecution" was the employer's act of making a contract without being informed that its employee was also an employee of the vendor. Thus, only one conviction could stand whether the defendant received payments from the vendor in a lump sum or over time.

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. Walton, 2013 IL App (3d) 110630 Defendant was charged under 720 ILCS 5/16-1(a)(4) with a single act of theft by obtaining control of multiple items of stolen property from various stores, having a total value of more than $500, but not exceeding $10,000. Under the joinder statute, the State can aggregate multiple acts of theft and their associated values into a single offense of theft where the separate acts of theft are in furtherance of a single intention and design (725 ILCS 5/111-4(c), but to do so, the charging instrument must allege that the acts were committed in furtherance of a single intention and design.

The information filed against defendant failed to include this allegation. It sufficiently charged defendant with felony theft under subsection (a)(4) only if defendant obtained control over the multiple items of property through a single act. If they were obtained through multiple acts, the State failed to allege a necessary element – that the multiple acts were in furtherance of a single intention and design. The record is silent on whether defendant obtained control over the stolen property through one or multiple acts.

The State could have charged defendant with a singular act of possession of all of the stolen items in violation of subsection (a)(1) because at the time of her arrest she possessed all of the stolen property in the trunk of her car. Had defendant been so charged, the charging instrument would have been sufficient, without any need to utilize the joinder statute.

Under the charging-instrument approach, theft under subsection (a)(4) is a lesser included offense of theft under subsection (a)(1). Charging that defendant obtained control over stolen property is included within the element of subsection (a)(1) that defendant obtain

or exert control over the property. It can be reasonably inferred from the allegation that defendant obtained the property knowing that it was stolen, that the control obtained or exerted by defendant was unauthorized.

Because the State proved that defendant committed all of the elements of the lesser-included offense of felony theft under subsection (a)(1), the Appellate Court reduced defendant's conviction under subsection (a)(4) to a conviction under subsection (a)(1).

People v. Sanchez, 2013 IL App (2d) 120445 To prove defendant guilty of identity theft, the State was required to prove that defendant knew that the information or document she used belonged to someone else.

The State failed to prove that defendant knew that the social security number she used to get a job belonged to another person. The only direct evidence was defendant's testimony that she purchased the number from someone and believed that it was a random, unassigned number that did not belong to anyone. This testimony was consistent with her statement to the police in which she expressed remorse and offered to pay restitution. The mere fact that she used the number to gain employment did not prove that it had to have been a valid number assigned to another person. Even if this were true, Sanchez would not have known that the number "worked" until after she used it to gain employment.

Evidence that the number actually belonged to Hernandez, a close friend of Sanchez's mother, and that Sanchez denied knowing Hernandez in her interview with the police did not supply proof of the requisite knowledge. The bare fact of Hernandez's friendship with Sanchez's mother does not support a reasonable inference that Sanchez knew that the number belonged to Hernandez. There was no evidence that the friendship allowed Sanchez to gain access to Hernandez's number. Hernandez denied having supplied the number to Sanchez. Suspicion and speculation is not the same as reasonable inference. Sanchez's denial that she knew Hernandez also does not necessarily support the inference that she lied. She may have simply drawn a blank or failed to recognize a fairly common name.

Even if Sanchez's testimony is disbelieved, disbelief does not amount to proof that she had the necessary knowledge. A false exculpatory statement can be evidence of consciousness of guilt. But since Sanchez admitted her guilt to the police and accepted responsibility for her conduct, there is no basis to interpret her statement that she did not know Hernandez as an attempt to evade criminal liability.

Possession of a fraudulent identification card is not a lesser-included offense of identity theft. Possession of a fraudulent identification card requires possession of an actual physical item. This is an additional element not included in identity theft or broadly described in the charge of identity theft. Therefore, the court refused the State's request to reduce the conviction to possession of a false identification card.

People v. Chenoweth, 2013 IL App (4th) 120334 Generally, a three-year statute of limitations applies to the offense of unlawful financial exploitation of an elderly person. (725/ILCS 5/3-5(b)) However, 720 ILCS 5/3-6 creates an extended statute of limitations for the prosecution of theft involving a breach of a fiduciary obligation. Under §3-6, such prosecutions may be commenced within one year after the "the discovery of the offense by an aggrieved person, . . . or in the absence of such discovery, within one year after the proper prosecuting authority becomes aware of the offense," provided that the statute of limitations is not extended by more than three years.

Defendant was convicted of unlawful financial exploitation of an elderly person for allegedly taking money from a woman for whom defendant held power of attorney. The court concluded that where more than three years had passed since the offense, the one-year-

extension under §3-6 began to run when the victim spoke to police during their investigation and told them that she had not given defendant permission to write several checks. Thus, the State had one year from the date of the conversation to bring criminal charges.

The court rejected the argument that the one-year extension did not begin to run until the victim knew that defendant had illegally misappropriated a specific sum of money in breach of her fiduciary duties. The extended statute of limitations commences upon "the discovery of the offense by an aggrieved person," and does not require that the aggrieved person have knowledge that each element of an offense has occurred. Because the victim discovered when she spoke to the officer that defendant had written unauthorized checks on the victim's account, she discovered at that time that defendant had misappropriated her money. Therefore, the extended statute of limitations began to run on that date.

The State had one year from the date of the conversation to commence the criminal prosecution. Because the indictment was not filed for more than one year after the conversation, the extended statute of limitations had expired. The conviction for unlawful financial exploitation of an elderly person was vacated.

People v. Sykes, 2012 IL App (4th) 111110 Defendant was convicted of misdemeanor theft for removing $100 from a cash register of a store where he was an employee. To prove that a theft occurred, a loss prevention manager testified that it was store policy to leave $200 in the register overnight as a starting fund for the next day during the holiday season and on busy days, but he had no knowledge that the register actually started with $200 and did not testify that the policy was consistently followed. He also testified that he "became aware" that the register was $100 short, but no evidence was introduced to show how this discrepancy was brought to his attention or that it was verified. The only remaining evidence was a videotape that was of such poor quality that it failed to demonstrate that defendant actually removed anything from the register.

The Appellate Court reversed defendant's conviction because the State failed to prove that the store was missing property over which defendant could have exercised unauthorized control.

People v. Hernandez, 2012 IL App (1st) 092841 An essential element of identity theft is that the defendant knew that the personal identifying information she used belonged to "another person." Here, the trial court misconstrued the identity theft statute by finding that the State was not required to show that defendant knew that the social security number she used to obtain credit at a car dealer belonged to "another person." Defendant told officers that she had made up the number, but the State argued that it belonged to a woman who had the same first name as the defendant, lived in the same general area, and had adequate credit to purchase a car.

The Appellate Court concluded that the trial court's misconstruction of the identity theft statute was subject to harmless error analysis, and that the trier of fact's omission of a required element is harmless if the same verdict would have been reached had the error not occurred. The court found that the verdict would not necessarily have been the same had the trial court accurately construed the statute - the omitted element was contested, and there was less than overwhelming evidence to show that defendant knew that the social security number belonged to another person.

Because the trial court's misapplication of an essential element of the offense was not harmless, the court reversed the conviction for identity theft and remanded the cause for a new trial.

People v. Parks, 403 Ill.App.3d 451, 934 N.E.2d 582 (1st Dist. 2010) The defendant was convicted of home repair fraud and insurance fraud. Home repair fraud occurs when a person enters into an agreement or contract for home repair and he knowingly misrepresents a material fact relating to the terms of the contract or agreement or creates or confirms another's impression which is false and which he does not believe to be true, or promises performance which he does not intend to perform or knows will not be performed. 815 ILCS 515/3(a)(1). Insurance fraud occurs when a person obtains, attempts to obtain, or causes to be obtained, by deception, control over the property of an insurance company, intending to deprive the company of the use and benefit of that property. 720 ILCS 5/46-1(a).

Defendant and another employee of Action Fire, a fire restoration business, solicited a homeowner's business shortly after her home experienced a fire. Defendant was employed by Action Fire as a salesperson and as a public adjustor. After the homeowner signed a contract with Action Fire, Action Fire received funds from the insurance company for the restoration project, but the project was never completed by persons hired by Action Fire to perform the work because they were not paid by Action Fire.

It was unclear from the evidence what role defendant played in the fire restoration project or what promises, if any, had been made by him to the homeowner. There was no evidence that defendant had agreed to act as a public adjustor on behalf of the homeowner. The court was unwilling to assume that defendant was responsible for oversight of the reconstruction project merely because he went to the home to solicit the homeowner's business. Nor was there any evidence that defendant was responsible for making any false or fraudulent claim on the homeowner's behalf with the insurance company that could support a conviction for insurance fraud.

The Appellate Court reversed defendant's convictions.

People v. Elcock, 396 Ill.App.3d 524 (2d Dist. 2009) 725 ILCS 5/111-4(c) provides that two or more acts or transactions in violation of certain criminal statutes may be charged as a single offense if: (1) the acts are in furtherance of a single intention or design, and (2) the property, labor or services obtained belong to the same person or to several persons who have a common interest in the property. The court found that the plain language of §111-4(c) does not permit the aggregation of multiple counts of aggravated identity theft (720 ILCS 5/16G-20) or identity theft (720 ILCS 5/16G-15).

Thus, the State erred by aggregating the identity thefts of separate victims to charge the Class X felony of aggravated identity theft over $100,000. Because neither theft standing alone reached the threshold of $100,000, the Class X charge was reversed.[1] The court affirmed convictions as to each victim for aggravated identity theft of between $10,000 and $100,000.

People v. Mills, 356 Ill.App.3d 438, 825 N.E.2d 1227 (2d Dist. 2005) The defendant's conviction for theft of labor or services was reversed. Defendant had been a repeat customer at a Maaco shop. He had the locks on his truck replaced, and months later returned complaining about how they were working. Over the telephone, he was told that they would have to be repaired. A verbal authorization for the repairs was made over the telephone.

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[1]The court also noted that even if §111-4(c) allowed the aggregation of separate acts of identity theft, the State failed to prove any common interest in the money and credit at issue, as is required for aggregation.

When the defendant came to pick up the truck, he was presented a bill and disputed whether he should pay. He drove away without paying. The court found the evidence only established that there was an honest dispute about the cost of the services, and no evidence beyond a reasonable doubt that defendant knew he was going to be charged for the repairs.

People v. Simpson, 268 Ill.App.3d 305, 643 N.E.2d 1262 (1st Dist. 1994) The defendant was convicted of financial exploitation of a disabled person. The evidence showed that the complainant suffered from "post-polio sclerosis" and lived on social security disability checks. The complainant gave defendant, who had been her insurance agent for five years, $14,000 of her personal savings. She contended that she intended to invest the money in programs sponsored by the insurance company that employed defendant; however, defendant claimed that the money was a personal loan.

The Court found that the evidence was sufficient to justify the conviction. First, there was a sufficient basis in the record to conclude that the complainant was a "disabled person," because polio is a disease symptomized by permanent disability, the complainant was forced to use a motorized scooter for mobility, and she had no income other than disability checks. The Court also concluded that because of her disability, the complainant was incapable of avoiding or preventing defendant from taking financial advantage of her. The Court found that defendant's position as the complainant's insurance agent, combined with her physical condition, created a situation in which she "was in a position of vulnerability relative to the defendant" and "was easy prey for . . financial exploitation. . . ."

People v. Sims, 245 Ill.App.3d 221, 614 N.E.2d 893 (3d Dist. 1993) Defendant was convicted of theft of property from the person based on evidence that he removed a purse from a shopping cart while the owner was looking at merchandise located two to three feet away. The Appellate Court held that to constitute theft from the person, the property must have been physically taken from the victim's actual person, the victim must have been detained or searched for property, or the victim's "privacy [must have] been directly invaded at the time the property is taken." Theft from the person does not occur where property is taken from the presence of a victim who is some distance away and unaware of the theft.

People v. Gordon, 204 Ill.App.3d 123, 561 N.E.2d 1164 (1st Dist. 1990) Defendant was convicted of possession of a stolen motor vehicle. A co-defendant, Jackson, was tried simultaneously at a bench trial. The owner of the car testified that he was a friend of Jackson's and often allowed Jackson to drive the car. On the day in question, however, he did not authorize Jackson or anyone else to use his car. When he saw that his car was missing, he called police. A police officer testified that he saw the car parked in a store parking lot. Both defendant and Jackson were in the car. The defendant told the officer that he had been hired to install a radio in the car and he was not sure who the owner was. Defense witnesses testified that they had seen Jackson drive the car on previous occasions and that defendant worked on cars. Defendant testified that he had previously ridden in the car with Jackson, and that on the day in question Jackson asked him to fix the radio. This evidence failed to prove that defendant knew the car was stolen. The defendant was in the car with Jackson's permission, and that they were in the car in broad daylight and in a public area where the car was known. Also, the keys were in the ignition and there was no evidence of forced entry. Jackson had been given permission to drive the car previously and neither defendant nor Jackson attempted to flee.

People v. Bryant, 128 Ill.App. 448, 539 N.E.2d 1221 (1989) The Supreme Court upheld the validity of Ch. 95½, §4-103, which makes possession of a stolen motor vehicle a Class 2 felony. The Court rejected the argument that §4-103(a)(1) violates due process and the proportionate penalties clause because it punishes possession of a stolen motor vehicle more severely (Class 2 felony) than the greater offense of theft (Class 3 felony).

In re T.A.B., 181 Ill.App.3d 581, 537 N.E.2d 419 (2d Dist. 1989) The respondent was adjudicated a delinquent upon a finding that he committed criminal damage to property and possessed a stolen motor vehicle. The complainant was the respondent's foster father, with whom respondent had lived for about six months. While the complainant was out of town, the respondent drove the automobile without permission. While traveling 70 mph in a 35 mph zone, the respondent ran into another vehicle and then hit a telephone pole. The driver of the other vehicle, a passenger in defendant's car, and an investigating police officer all testified that respondent attempted to avoid the collision. The complainant's automobile, valued at $9,800, was damaged beyond repair. Criminal damage to property requires that property be damaged "knowingly."

Here, the evidence showed that respondent attempted to avoid hitting the other car. Though the fact respondent was driving at 70 mph increased his chance of becoming involved in an accident, it did not make such an occurrence a practical certainty. Thus, even though respondent's conduct may have been negligent or reckless, the evidence failed to show that he knowingly or deliberately damaged either vehicle. The evidence was also insufficient to prove possession of a stolen vehicle. Where the respondent took his foster father's car and drove in an area in which he resided, the evidence failed to show intent to permanently deprive.

People v. Liner, 221 Ill.App.3d 578, 582 N.E.2d 271 (3d Dist. 1989) Police officers heard someone yell that his wallet had been stolen, and saw a man leave a drug store with something under his coat. The officers chased the man and saw him throw away a bottle of Seagram's whiskey. Eventually, defendant admitted that he and the other man were working together and that he had created a diversion so that the other man could steal the Seagram's. The Walgreen's clerk testified defendant and another man brought a bottle of gin to the counter, one man accused the other of taking his wallet, and an argument ensued. The bottle of gin remained on the counter, and the clerk did not see anyone take anything from the store. The Court held that the evidence was insufficient to prove defendant's guilt because "the State did not offer any evidence that the Walgreen's store was missing any merchandise." Although the officers saw a bottle of whiskey thrown to the ground, there was no evidence to connect the broken bottle to the store.

People v. Bartlett, 175 Ill.App.3d 686, 530 N.E.2d 90 (2d Dist. 1988) The defendant was convicted of criminal damage to State-supported property for damaging a holding cell at a police station. The Court reversed the conviction. Despite the allegation in the complaint that the holding cell was supported by State funds or Federal funds administered by State agencies, no evidence was presented to support that allegation. The Court declined the State's request that it take judicial notice of the manner in which police lockups are funded.

People v. Primmer, 111 Ill.App.3d 1046, 444 N.E.2d 829 (4th Dist. 1983) Defendant was convicted of armed violence based upon the underlying offense of criminal damage to property. The property in question was damaged in an amount greater than $150, but less than $300. At the time of the incident criminal damage exceeding $150 was a felony; however,

by the time of conviction the law had changed and the offense was a felony only where the damage exceeded $300. The defendant contended that the amendment on value must be given retroactive application, and that his charge was a misdemeanor that would not support an armed violence conviction. The Court rejected this contention; the subsequent amendment of the criminal damage statute may not be applied retroactively to prevent a conviction for an offense that was charged before the amendment's effective date.

People v. Pizzi & Johnson, 94 Ill.App.3d 415, 418 N.E.2d 1024 (1st Dist. 1981) The defendants were convicted of theft based upon an alleged scheme in which Pizzi manipulated and destroyed a carpeting company's records so that Johnson could receive merchandise without being billed. The Court held that the evidence against Johnson was insufficient because it did not exclude the reasonable conclusions that Johnson paid for the merchandise or that if he still owed for the merchandise, he was merely a debtor in a credit transaction. The mere fact that the company's records of Johnson's transactions are missing or doctored "is not proof that Johnson was in any way connected with these suspicious circumstances."

People v. Halterman, 45 Ill.App.3d 605, 359 N.E.2d 1223 (4th Dist. 1977) The offense of theft of a leased motor vehicle contains four elements: (1) a written agreement with specific terms for time and place of return, (2) failure to comply with those terms, (3) a demand to return the vehicle within 72 hours, and (4) a failure to comply with the demand. In a probation revocation the State failed to prove these elements by a preponderance of the evidence. No contract was introduced or proved by oral testimony, and there was no showing of any demand by the leasing company. See also, **People v. Harris**, 96 Ill.App.3d 536, 421 N.E.2d 574 (2d Dist. 1981) (certified mailing of demand to defendant's former address did not satisfy statute which requires "more than a mere perfunctory mailing, even though certified, which admittedly did not reach the defendant").

§48-2
Receiving Stolen Property

Illinois Appellate Court
People v. Walton, 2013 IL App (3d) 110630 Defendant was charged under subsection 720 ILCS 5/16-1(a)(4) with a single act of theft by obtaining control of multiple items of stolen property from various stores, having a total value of more than $500, but not exceeding $10,000. Under the joinder statute, the State can aggregate multiple acts of theft and their associated values into a single offense of theft where the separate acts of theft are in furtherance of a single intention and design (725 ILCS 5/111-4(c), but to do so, the charging instrument must allege that the acts were committed in furtherance of a single intention and design.

The information filed against defendant failed to include this allegation. It sufficiently charged defendant with felony theft under subsection (a)(4) only if defendant obtained control over the multiple items of property through a single act. If they were obtained through multiple acts, the State failed to allege a necessary element – that the multiple acts were in furtherance of a single intention and design. The record is silent on whether defendant obtained control over the stolen property through one or multiple acts.

The State could have charged defendant with a singular act of possession of all of the stolen items in violation of subsection (a)(1) because at the time of her arrest she possessed all of the stolen property in the trunk of her car. Had defendant been so charged, the charging instrument would have been sufficient, without any need to utilize the joinder statute.

Under the charging-instrument approach, theft under subsection (a)(4) is a lesser included of theft under subsection (a)(1). Charging that defendant obtained control over stolen property is included within the element of subsection (a)(1) that defendant obtain or exert control over the property. It can be reasonably inferred from the allegation that defendant obtained the property knowing that it was stolen, that the control obtained or exerted by defendant was unauthorized.

Because the State proved that defendant committed all of the elements of the lesser-included offense of felony theft under subsection (a)(1), the Appellate Court reduced defendant's conviction under subsection (a)(4) to a conviction under subsection (a)(1).

People v. Pollards, 367 Ill.App.3d 17, 854 N.E.2d 705 (1st Dist. 2006)Defense counsel was ineffective for failing to request an instruction on theft where the defendant was charged with possession of a stolen motor vehicle. Defendant contended that he found an abandoned car and did not know it had been stolen.

People v. Nelson, 336 Ill.App.3d 517, 784 N.E.2d 379 (3d Dist. 2003) The Appellate Court rejected the argument that §16-1(a)(4)(A), which prohibits a person from knowingly obtaining control over stolen property "under such circumstances as would reasonably induce him to believe that the property was stolen" and with the intent to permanently deprive the owner of the use or benefit of the property, is unconstitutionally vague.

§48-3
Value of Property

Illinois Supreme Court
People v. Jackson, 99 Ill.2d 476, 459 N.E.2d 1362 (1984) Defendant committed a theft of property valued at $251. At the time of the offense, theft of property exceeding $150 in value was a felony. However, before trial the statute was amended to raise the value for felony theft to $300. The Court held that since the amendment affected only sentencing, defendant was entitled to the benefit thereof and to be sentenced for a misdemeanor.

People v. Harden, 42 Ill.2d 301, 247 N.E.2d 404 (1969) Value of property is based on fair cash market value; the opinion testimony of a witness with sufficient knowledge to give an estimate is sufficient to prove value where there was no objection and no contrary evidence.

Illinois Appellate Court
People v. Henry, 2025 IL App (3d) 230137 The court reduced defendant's felony theft conviction to misdemeanor theft. The evidence established that defendant stole a cell phone, but the State did not present evidence as to the fair market value of the phone. The appellate court concluded that in the absence of such evidence, the "offense must be reduced to misdemeanor theft pursuant to Rule 615(b)(3)."

People v. Moore, 2021 IL App (1st) 172811 The State did not err in charging multiple acts of theft as a single felony charge in order to aggregate the value into a single Class X offense of theft of property over $1 million. 725 ILCS 5/111-4(c) provides that two or more transactions that constitute certain enumerated theft-related crimes may be charged as a single offense if they are "in furtherance of a single intention and design." The single-intention-and-design factor is an element of the aggregated offense which the State must prove beyond a reasonable doubt.

The State met its burden here where it introduced evidence that defendant took unauthorized possession of five separate residential properties by claiming an unfounded right of adverse possession. To accomplish this, defendant filed nearly-identical fraudulent papers with the Recorder of Deeds for each property, removed existing locks and For Sale signs from the properties and installed his own No Trespassing signs, and rented out the properties to third parties. While these actions took place over the course of more than two years, the evidence established that defendant acted pursuant to a single scheme with the intent to permanently deprive the owners of their properties.

Further, the State proved the value of each of the properties, and thus proved an aggregate value in excess of $1 million, where it offered evidence of the recent sale price of four of the properties. The State only offered the listing price of the fifth property, which alone was insufficient to establish the property's value. That deficiency was of no consequence, however, where the total sales price of the other four properties exceeded the $1 million threshold.

People v. Chambers, 2020 IL App (2d) 190041 State met its burden of establishing damage to property between $500 and $10,000, where it presented an estimate for the cost of repair to the scratched vehicle of $624. A repair estimate is sufficient proof, even though labor costs might fluctuate and even where other estimates might differ.

People v. Day, 2011 IL App (2d) 091358 Defendant was convicted of 10 counts of theft and 16 counts of forgery for taking money from her law practice without her partner's consent. On appeal, she argued that in determining whether she had committed Class 1 felony theft, which required theft of currency in excess of $100,000 but not exceeding $500,000, the court should have excluded defendant's rightful share of the firm's proceeds.

The court rejected this argument, finding that 720 ILCS 5/16-4(a) specifically provides that the offender's interest in property is not a defense to a charge of theft where a co-owner "also has an interest . . . to which the offender is not entitled." The Committee Comments accompanying §16-4(a) state that the provision is intended to remove "any doubt regarding the commission of theft by a co-owner, such as a partner, . . . who exercises unauthorized control with the intent to permanently deprive [a] co-owner of his interest in the property." Because the relevant provisions of the theft statute make it clear that a partner who claims an interest in property may be convicted of theft of the full value of the property, the court concluded that the finder of fact need not subtract the value of the defendant's interest in the property when determining the value element of theft.

People v. Burks, 304 Ill.App.3d 861, 710 N.E.2d 859 (1st Dist. 1999) Defendant was convicted of theft of property with a value greater than $300. The evidence showed he possessed a box containing 120 individually packaged "Old Navy T-shirts." No evidence was presented concerning the quality or value of the shirts. The court held that the State failed to show a value in excess of $300. The court rejected the argument that the trier of fact could infer that 120 T-shirts would be worth more than $300; cases in which courts have inferred that property had some value involve situations in "which it was readily apparent that the value of the property" exceeded the amount required for a felony conviction, or in which the State presented some evidence of value. Because clothing varies in price, it cannot be inferred that 120 T-shirts are necessarily worth more than $300.

People v. Josephine, 165 Ill.App.3d 762, 520 N.E.2d 745 (1st Dist. 1987) The trial court erred by refusing to allow the defense to cross-examine the complainant about the fair market

value of his VCR. The State presented no evidence of value except the complainant's testimony that he had paid $499 for it five months before the theft. Thus, defense counsel's questions "were clearly relevant to the basis for [the complainant's] opinion concerning the fair market value of the VCR." The Court noted that the State presented no evidence concerning the condition of the VCR at the time of the theft, such as whether it was still functional or its age. "We cannot say that the evidence of the value of the VCR was so overwhelming that defendant suffered no prejudice as a result of the improper restriction of his cross-examination."

People v. Davis, 132 Ill.App.3d 199, 476 N.E.2d 1311 (1st Dist. 1985) Where the State proves that the property in question was worth more than $300, it need not prove the exact dollar value in order to sustain a felony theft conviction.

People v. Burnside, 133 Ill.App.3d 453, 478 N.E.2d 884 (3d Dist. 1985) Defendant was convicted of felony theft for taking four tires from an automobile. The Court held that the evidence was sufficient to prove defendant took two tires, but not four. Since the value of the two tires was less than $300, the felony theft conviction was reduced to a misdemeanor.

People v. Stark, 59 Ill.App.3d 676, 375 N.E.2d 826 (5th Dist. 1978) Conviction for felony theft was reduced to a misdemeanor; the jury was not instructed on the value of the property and the verdict form did not specify that it was for felony theft. A general verdict of theft is not sufficient to sustain a felony conviction even if there is undisputed evidence that the value of the property exceeded $150. See also, **People v. Pugh**, 29 Ill.App.3d 42, 329 N.E.2d 425 (3d Dist. 1975).

§48-4
Ownership of Property

Illinois Supreme Court

People v. Tate, 87 Ill.2d 134, 429 N.E.2d 470 (1981) Defendant was charged by information with criminal damage to property, a door that was "the property of Michael Maycen." The evidence showed that the door was to a Convenient Food Mart and that Maycen was a security guard for that store. The Court held that as to proof of ownership, the State's evidence was sufficient because the property of the owner was entrusted to the security guard's care and it was his duty to secure the premises and to protect it during his hours of employment. There is little doubt that Maycen exercised control over and had a possessory interest in the premises.

In re W.S., 81 Ill.2d 252, 408 N.E.2d 718 (1980) The State is not required to prove the corporate existence of the theft victim. Corporate existence is not a material element of theft.

People v. Harden, 41 Ill.2d 301, 247 N.E.2d 404 (1969) Requiring an allegation of ownership enables an accused to prepare for trial and allows the conviction to be pleaded as bar to a subsequent prosecution. Here, no fatal variance occurred where the indictment alleged that the property was owned by a person and the proof showed it was owned by a partnership.

Illinois Appellate Court

People v. Day, 2011 IL App (2d) 091358 Defendant was convicted of 10 counts of theft and 16 counts of forgery for taking money from her law practice without her partner's consent. On appeal, she argued that in determining whether she had committed Class 1 felony theft, which required theft of currency in excess of $100,000 but not exceeding $500,000, the court should have excluded defendant's rightful share of the firm's proceeds.

The court rejected this argument, finding that 720 ILCS 5/16-4(a) specifically provides that the offender's interest in property is not a defense to a charge of theft where a co-owner "also has an interest . . . to which the offender is not entitled." The Committee Comments accompanying §16-4(a) state that the provision is intended to remove "any doubt regarding the commission of theft by a co-owner, such as a partner, . . . who exercises unauthorized control with the intent to permanently deprive [a] co-owner of his interest in the property." Because the relevant provisions of the theft statute make it clear that a partner who claims an interest in property may be convicted of theft of the full value of the property, the court concluded that the finder of fact need not subtract the value of the defendant's interest in the property when determining the value element of theft.

People v. Karraker, 261 Ill.App.3d 942, 633 N.E.2d 1250 (3d Dist. 1994) Defendant was charged with theft in that he knowingly "obtained control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen," and he either intends to deprive the owner of the use and benefit of the property or knowingly uses or conceals it in a way that deprives the owner of its use. During several tape-recorded conversations with a government informant, defendant made several references to his belief that the property in question had been stolen. However, the property was never reported to have been stolen, and the State produced no evidence of its true owner. The Court found that because the statute requires that the owner be permanently deprived of the property, the State was required to prove that someone other than the defendant either owned the equipment or had a superior interest in it. Because the State failed to establish a superior interest in the property, and presented no evidence that the property was stolen except defendant's suggestions to that effect, the theft conviction was reversed.

People v. Taylor, 207 Ill.App.3d 206, 565 N.E.2d 749 (3d Dist. 1991) Defendant was convicted of theft for taking aluminum from a lot near a roofing company. The Court reversed because there was insufficient proof that the aluminum belonged to the roofing company. An employee saw defendant dragging some aluminum from an area about three lots away. The employee identified the aluminum as the type that the company kept on its property, and he "guessed" that the roofing company was the only user of such aluminum in the area. The defendant testified that he found the aluminum on property belonging to a feed store and thought it was abandoned. The Court held that the State failed to prove any ownership in the aluminum. When property is of such a character that it cannot be positively identified, circumstantial evidence may be used to prove that it was taken from the victim. Here, the State failed to show that there was even any aluminum missing from the roofing company.

People v. Wyant, 171 Ill.App.3d 306, 525 N.E.2d 591 (3d Dist. 1988) Defendant was charged with criminal trespass to land for entering property in which he held joint title. Defendant and the complainant were previously married. In their divorce decrees, the complainant received sole possession of the marital home. However, pending sale of the home the title remained in joint tenancy. The Court affirmed the dismissal of this charge, noting that

defendant did no damage to the joint property interest of the complainant, but merely entered upon property in which he had an equal interest. The basic purpose of the criminal trespass statute is to prevent violence or threats of violence, and a joint tenant who is entering his own property "does not present the inherent threat of violence to his co-owners as does an interloper who refuses to leave."

People v. Stone, 75 Ill.App.3d 571, 394 N.E.2d 810 (5th Dist. 1979) Defendant's conviction for theft reversed because the State failed to prove that the auto possessed by the defendant was the auto stolen from the complainant, one Keith Sasek. The complainant testified about the year, make, model, color and license number of his auto. The only evidence concerning the auto possessed by the defendant came from a police officer, who testified concerning the color of the auto and that he ran a radio check on the license plates. The officer did not testify to the license plate number, but stated that the radio check revealed the auto was registered to "a Sasek." The Court held that absent the introduction of a certificate of title, vehicle identification number, or a license plate number the officer's testimony was insufficient to prove that the vehicle recovered was the vehicle owned by the complainant.

People v. Hope, 69 Ill.App.3d 375, 387 N.E.2d 795 (1st Dist. 1979) Defendant's conviction for theft of an automobile reversed because the State failed to prove that the automobile in defendant's possession was the automobile stolen from the victim. The State did not introduce a certificate of title, compare VIN's or satisfy a chain of custody. The only evidence purporting to establish ownership was the testimony of a police officer that he was "informed" the auto possessed by defendant was owned by the victim.

People v. Woods, 15 Ill.App.3d 221, 303 N.E.2d 562 (5th Dist. 1973) Theft is an offense against possession and not necessarily against legal title. Thus, an indictment need not allege the legal title holder as an "owner," but must allege an entity capable of possession as an "owner." An indictment that alleged the property was owned by St. Mary's Catholic Church was sufficient though legal title may actually have been in the Bishop.

§48-5
Inference From Possession of Recently Stolen Property

Illinois Supreme Court
People v. Funches, 212 Ill.2d 334, 818 N.E.2d 342 (2004) A theft need not be recent in order to justify an inference of knowledge arising from possession of a stolen vehicle.

People v. Greco, 204 Ill.2d 400, 790 N.E.2d 846 (2003) 625 ILCS 5/4-103.2(b), which permits the trier of fact to infer that a person who exercises exclusive, unexplained possession over a stolen vehicle has knowledge that the vehicle is stolen, without regard to whether the theft was recent or remote, violates due process as applied to "special mobile equipment." Under Illinois law, the unexplained, exclusive possession of recently stolen property gives rise to an inference that the possession was obtained by theft or burglary.

The court concluded that only when the theft is recent is there a rational connection between possession of stolen property and knowledge that it has been stolen. There is no substantial assurance that a person with unexplained possession of a piece of special mobile equipment stolen, for example 10 years ago, more likely than not has knowledge that the piece of equipment was stolen. In other words, by removing the recency requirement of the

permissive inference . . . the legislature has dramatically weakened the probability that the inference will be correct.

Because a rational connection exists only where the theft was recent, the presumption of §4-103.2(b) is unconstitutional. The court limited its holding to special mobile equipment, which can be acquired and transferred without registration and title requirements, and expressed no opinion of the constitutionality of the same inference as applied to vehicles which have such requirements.

People v. Housby, 84 Ill.2d 415, 420 N.E.2d 151 (1981) The unexplained possession of recently stolen property, standing alone, is insufficient to prove that a defendant committed a burglary. The jury may be instructed as to the permissive presumption in regard to possession of recently stolen property when: (1) there is 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 is more likely than not to flow from his recent, unexplained and exclusive possession of burglary proceeds, and (3) there is evidence corroborating defendant's guilt. See also, **People v. Natal**, 368 Ill App.3d 262, 858 N.E.2d 923 (1st Dist. 2006).

Illinois Appellate Court

People v. Wynder, 2024 IL App (1st) 221875 The appellate court reversed defendant's conviction for possession of a stolen motor vehicle because the State failed to prove defendant knew the car was stolen. The evidence showed that the complainant's car was stolen from her home, and two weeks later, defendant was driving the car, without license plates, when she was pulled over. She had no identification and initially gave the police a fake name. She told the police the car belonged to one of her passengers, her friend Williams. She also said it belonged to Cheryl, and that Williams, picked her up. Williams did not refute this statement, but told police he borrowed the car from a friend. A second passenger testified that Williams told him he borrowed the car from his Aunt Cheryl. The circuit court concluded that the State proved knowledge beyond a reasonable doubt in light of defendant's shifting and misleading responses to the police, and that it could infer knowledge from defendant's exclusive, unexplained possession of the car.

Defendant argued on appeal that defendant's statement that she believed the car belonged to Williams's aunt was uncontradicted, and that it was improper for the court to find that defendant's knowledge could be inferred because she had "exclusive, unexplained possession" of the car. The appellate court agreed.

The PSMV statute states that the element of knowledge can be inferred "from the surrounding facts and circumstances, which would lead a reasonable person to believe that the vehicle or essential part is stolen or converted" or "if the person exercises exclusive unexplained possession over the stolen or converted vehicle or essential part, regardless of whether the date on which the vehicle or essential part was stolen is recent or remote." 625 ILCS 5/4-103(a)(1).

The first inference did not apply because no evidence was presented demonstrating that the car had any damage suggesting that it was stolen. The second inference did not apply because defendant's possession was not exclusive. Defendant claimed that she borrowed it from Williams, and Williams did not contemporaneously deny that assertion on the scene. Thus, defendant shared possession with Williams. Because two weeks had passed since the theft, the appellate court would not infer knowledge from the joint possession.

Nor did the State present other sufficient evidence of knowledge. The appellate court disagreed with the State's argument that defendant provided multiple explanations for her

possession of the car, noting that she said the car belonged to Cheryl, which was Williams' aunt's name, and that this was corroborated by the third passenger. And while defendant initially provided the police with a false name, she explained she did so because of an outstanding warrant, not consciousness of guilt.

In re Gregory G., 396 Ill.App.3d 923 (2d Dist. 2009) The court found that there is an irreconcilable split of Illinois Supreme Court authority concerning whether the three-part test of **People v. Housby**, 84 Ill.2d 415, 420 N.E.2d 151 (1981) applies to all inferences from circumstantial evidence, or only to the inference from possession of recently stolen property. The court declined to resolve the split of authority here, finding that whether **Housby** or the "rational trier of fact" standard was applied, the evidence was insufficient to convict defendant of battery for striking a security guard over the head with a bottle. (See **REASONABLE DOUBT**, §§44-2, 44-4).

People v. Johnson, 96 Ill.App.3d 1123, 422 N.E.2d 19 (2d Dist. 1981) Defendant was convicted of felony theft based on evidence that on the day after the victim's apartment was entered, defendant had possession of and was selling property taken from the premises. The stolen property in defendant's possession, however, was worth less than $150. The Court held the evidence was insufficient to prove theft over $150. The value of the property is an essential element, and where "the only proof that the defendant stole the property was his unexplained possession of part of it, we can only assess the offense on the basis of the property found in his possession. . . ." The conviction was reduced to misdemeanor theft.

People v. Moats, 89 Ill.App.3d 194, 411 N.E.2d 573 (3d Dist. 1980) The inference flowing from exclusive possession of recently stolen property applies if a defendant is charged with stealing the property, but not if he is charged with theft by receiving stolen property. "The reason behind the distinctive treatment is that in the latter form of theft, receiving stolen property, knowledge that the property was stolen is an essential element . . . [and] the inference of guilt from recent possession permits the jury to infer guilt without also finding the requisite knowledge which must be proven for a conviction for receiving stolen property."

People v. Barber, 20 Ill.App.3d 977, 313 N.E.2d 491 (2d Dist. 1974) If circumstances show that a defendant possessed recently stolen property either singly or jointly, an inference of guilt is warranted. The "exclusiveness" of the possession is not rebutted by showing that another was present. See also, **People v. Quick**, 15 Ill.App.3d 300, 304 N.E.2d 143 (3d Dist. 1973).

§48-6
Deceptive Practices

Illinois Supreme Court
People v. Davis, 112 Ill.2d 55, 491 N.E.2d 1153 (1986) To obtain a conviction for theft by deception the State must prove that the victim transferred property to the accused in reliance on the defendant's deceptive conduct. Where money was transferred as part of an undercover police operation, and the person who paid the money did not believe defendant's claim that he could obtain an early prison release for the payor's relative, there was no reliance on defendant's deception. The conviction was reduced to attempt theft. See also, **People v.**

Gordon, 45 Ill.App.3d 282, 359 N.E.2d 794 (1st Dist. 1977) (testimony failed to show that property was transferred in reliance on a misrepresentation relating to an existing event).

People v. Ogunsola, 87 Ill.2d 216, 429 N.E.2d 861 (1981) The Court held that "intent to defraud" is an essential element of deceptive practices. The failure to so instruct the jury was plain error because the principal contested issue was whether defendant had the intent to defraud and "fundamental fairness required that the jury be instructed on this issue."

Illinois Appellate Court

The court also remanded for sentencing on the merged convictions for forgery. Although defendant attacked the sufficiency of the evidence of forgery, the Appellate Court found it lacked jurisdiction to reach the issue

People v. Haissig, 2012 IL App (2d) 110726 A person commits theft when he knowingly:

> (1) Obtains or exerts unauthorized control over the property of the owner; or
> (2) Obtains by deception control over property of the owner;
> and
>
> (A) Intends to deprive the owner permanently of the use or benefit of the property.720 ILCS 5/16-1(a)(1)(A) and (a)(2)(A).

The owner of property is deprived of the "use or benefit" of his property when the taking of the property by the defendant is unauthorized or is accomplished by deception, because the owner is deprived of the opportunity to dispose of his property as he sees fit with knowledge of the material facts. No action by the defendant with respect to the property in addition to the *actus reus* specified in subsections (1) or (2) is required. It is irrelevant that defendant did not intend to inflict ultimate financial detriment on the owner, or that the owner suffered no actual financial loss, or that the defendant gave the owner any separate property, services, or value in exchange for the property.

Defendants' employer had a policy requiring employees to disclose any personal financial interest they had in firms doing business with their employer. Defendants formed a company which entered into a contract with their employer to provide certain services. They concealed their interest in the company from their employer by using a fabricated contract name.

The Appellate Court held that defendants acquired their employer's funds by deception and by exerting unauthorized control over those funds. It was irrelevant that defendants intended to and did render all services for which their employer contracted. Defendants intended to permanently deprive their employer of the use or benefit of the funds because they intended to permanently retain those funds. Defendants' deception deprived their employer of the ability to dispose of its funds knowingly, in transactions with parties who truthfully represented their identities, so that the employer could do business consistent with its policies.

People v. Parks, 403 Ill.App.3d 451, 934 N.E.2d 582, 2010 WL 3239289 (1st Dist. 2010) The defendant was convicted of home repair fraud and insurance fraud. Home repair fraud occurs when a person enters into an agreement or contract for home repair and he knowingly misrepresents a material fact relating to the terms of the contract or agreement or creates or confirms another's impression which is false and which he does not believe to be true, or promises performance which he does not intend to perform or knows will not be performed. 815 ILCS 515/3(a)(1). Insurance fraud occurs when a person obtains, attempts to obtain, or

causes to be obtained, by deception, control over the property of an insurance company, intending to deprive the company of the use and benefit of that property. 720 ILCS 5/46-1(a).

Defendant and another employee of Action Fire, a fire restoration business, solicited a homeowner's business shortly after her home experienced a fire. Defendant was employed by Action Fire as a salesperson and as a public adjustor. After the homeowner signed a contract with Action Fire, Action Fire received funds from the insurance company for the restoration project, but the project was never completed by persons hired by Action Fire to perform the work because they were not paid by Action Fire.

It was unclear from the evidence what role defendant played in the fire restoration project or what promises, if any, had been made by him to the homeowner. There was no evidence that defendant had agreed to act as a public adjustor on behalf of the homeowner. The court was unwilling to assume that defendant was responsible for oversight of the reconstruction project merely because he went to the home to solicit the homeowner's business. Nor was there any evidence that defendant was responsible for making any false or fraudulent claim on the homeowner's behalf with the insurance company that could support a conviction for insurance fraud.

The Appellate Court reversed defendant's convictions.

People v. Reich, 241 Ill.App.3d 666, 610 N.E.2d 124 (3d Dist. 1993) The defendant, the head of a construction company was convicted of theft by deception stemming from a contract to build a home. Defendant contracted to build the house for $100,000; the other bids ranged from $187,750 to $415,000. Defendant dug the foundation by hand, and over an eight-month period finished only the foundation and a concrete floor for the garage. Over the eight-month period the homeowner paid defendant $57,292.96, and defendant paid out $25,509.91 for materials and $29,000 for labor. Although defendant had been in the construction business for 45 years, he had built only three complete houses. Defendant testified that he had believed that he could build the home for $100,000 by charging less for labor and taking only a small profit on materials. He also claimed that he stopped working on the house only because the subdivision's developer refused to allow him on the property. Merely failing to complete the contract did not show specific intent to defraud; the State was required to also show that defendant had no intention of building the home or did not believe that he could do so for $100,000. The State failed to meet this burden; instead, the evidence suggested that defendant put substantial time and effort into the house and, due to his inexperience, believed he could complete it for the agreed price.

People v. Bratcher, 149 Ill.App.3d 425, 500 N.E.2d 954 (5th Dist. 1986) The defendant was charged with deceptive practices for delivering seven bad checks to various merchants within a 90-day period. The total amount of the checks was $202. Defendant was advised that he was charged with seven Class 4 felonies, and pleaded guilty. The Court held that it was error to convict the defendant for seven Class 4 felonies. The statute provided that a defendant "shall be guilty of a Class 4 felony" when the value of the property obtained by deceptive practice in a single transaction, or in separate transactions within a 90-day period, exceeds $150. The Court found that the clear language of the statute shows legislative intent to classify a series of 'bad checks' within a 90-day period as a single Class 4 felony. See also, **People v. Burke**, 164 Ill.App.3d 468, 517 N.E.2d 1191 (2d Dist. 1987).

People v. Bormet, 142 Ill.App.3d 422, 491 N.E.2d 1281 (1st Dist. 1986) The State's evidence showed that defendant purchased plumbing supplies with a check. The owner of the supply

company attempted to deposit defendant's check twice, and on both occasions the check was returned for insufficient funds. At the time of trial defendant still had not paid the supply company. Defendant testified that when he issued the check there were sufficient funds in the account. However, on the following day a check he had post-dated for three weeks later was cashed prematurely. Within three weeks defendant had again deposited sufficient funds to cover the check for the plumbing supplies. The defendant's bank records, introduced by stipulation, corroborated the defendant's testimony. The Court held that the evidence was insufficient to convict of deceptive practices. The Court pointed out that at the time the check was issued, there were sufficient funds in defendant's account to cover it.

People v. McLaughlin, 123 Ill.App.3d 24, 462 N.E.2d 875 (5th Dist. 1984) The Court found the evidence insufficient to prove intent to defraud. The complainant testified that she entered into a contract with defendant to sell certain junk cars. Defendant was to take cars from four different sections of complainant's junk yard, and was "to pay for each section as he crushed [the cars]." On April 23, 1980 defendant gave the complainant four checks for $5,000 each, and said that "the money would be in the bank when these (checks) were presented." The first two checks cleared, but the third and fourth checks were not honored due to insufficient funds.

The Court held that the "fair implication" of defendant's representations put the complainant on notice that defendant did not have sufficient funds to cover all four checks when he gave them to her. The Court relied on **People v. Cundiff**, 16 Ill.App.3d 267, 305 N.E.2d 735 (3d Dist. 1973), which held that "[w]here the parties agree at the time the check is issued that it shall not be presented for payment until a later date, and the fair implication is that there were not sufficient funds at the time the check was issued, . . . fraudulent intent is lacking" because the transaction is "in its essential nature an extension of credit to the drawer."

People v. Rolston, 113 Ill.App.3d 727, 448 N.E.2d 965 (3d Dist. 1983) The Court held that the circumstantial evidence was insufficient to support conviction for theft by deception; defendant's failure to fulfill certain contracts did not prove intent to defraud.

People v. Jensen, 103 Ill.App.3d 451, 431 N.E.2d 720 (3d Dist. 1982) The evidence was insufficient to prove defendant guilty of theft by deception. The State failed to prove two essential elements: deception and intent to permanently deprive. Defendant obtained money by making statements, but there was no evidence that the statements were false. Additionally, the defendant never asked for money, but "relayed a sob story" to which the alleged victims responded by volunteering money. Most of the alleged victims considered the money a loan that defendant was to repay; because the lack of repayment does not necessarily negate an intention to repay, intent to permanently deprive was not proven.

People v. Sumner, 107 Ill.App.3d 368, 437 N.E.2d 786 (1st Dist. 1982) The evidence was insufficient to prove that defendant had "intent to defraud" when he wrote a bad check. The offense of deceptive practices is complete at the moment of making, delivering or uttering the check. Defendant claimed he deposited enough money to cover the check after he wrote it, but that he withdrew the money after reconsidering the purchase and attempting to rescind the contract with the seller. This evidence was insufficient to establish defendant's intent at the time he wrote the check; the Court found it significant that the State only introduced bank records showing defendant's account balance on the day the check was written and on

the day it was presented, and did not present the records that would have disclosed whether defendant had made a large intervening deposit and withdrawal.

People v. Dennis, 43 Ill.App.3d 518, 357 N.E.2d 563 (1st Dist. 1976) The evidence was insufficient to prove intent to defraud; defendant produced a valid driver's license (with her correct address) when she gave the check to the store, she was never given a chance to honor the checks, and evidence showed that her husband had closed the account without telling her.

§48-7
Enhancement of Misdemeanor to Felony

Illinois Supreme Court
People v. Brenizer, 111 Ill.2d 220, 489 N.E.2d 862 (1986) A restaurant manager was charged with felony theft for charging personal items on the restaurant's account. The charges stemmed from numerous charges made over some 30 months. The Court held that "a series of acts committed by a defendant each of which might otherwise constitute a misdemeanor theft may be charged as a single felony [theft] when it is alleged that the acts were in furtherance of a single intention and design to obtain the property of a single owner or several persons having a common interest in such property . . . [and the] total value of the property taken will determine whether the theft constitutes a misdemeanor or a felony."

Illinois Appellate Court
People v. Lindsey, 2016 IL App (1st) 141067 Theft of property not exceeding $500 is a Class A misdemeanor. 720 ILCS 5/16-1(b)(1). Theft is elevated to a Class 4 felony if it is committed in a place of worship. 720 ILCS 5/16-1(a)(1)(A). A place of worship is a "church, synagogue, mosque, temple, or other building...used primarily for religious worship and includes the grounds of a place of worship." 720 ILCS 5/2-15b.

Any enhancement factor, other than a prior conviction, which increases the range of penalties must be submitted to the jury and proved beyond a reasonable doubt. **Apprendi v. New Jersey**, 530 U.S. 466 (2000). Although **Apprendi** errors are subject to harmless-error review, the State bears the burden of proving beyond a reasonable doubt that the outcome of trial would have been the same without the error.

A jury convicted defendant of Class 4 felony theft from a place of worship. But the jury was never instructed that the theft had to be committed in a place of worship. The court found that the failure to properly instruct the jury was reversible error since under the facts of this case the omitted instruction was not harmless beyond a reasonable doubt.

The theft took place in the parish office building located near the church. Defendant argued that the office building was entirely distinct from the church while the State argued that the office building was on the grounds of the church. The court noted that **Apprendi** errors have been found harmless only where the evidence was "uncontested and overwhelming," but here the issue was hotly contested and involved complex facts applied to a statutory definition subject to conflicting interpretations. In these circumstances, the error could not be deemed harmless.

The court reduced defendant's conviction to a Class A misdemeanor.

In re Antoine B., 2014 IL App (3d) 110467-B The sentence for theft is elevated from a misdemeanor to a Class 4 felony if the defendant has been previously convicted of theft. 720

ILCS 5/16-1(b)(2). A prior juvenile adjudication for theft does not constitute a prior theft conviction permitting the elevation of the sentence to a felony. **Taylor**, 221 Ill. 2d 157.

The existence of the prior conviction is not an element of the offense. It is only used to enhance the sentence. 720 ILCS 5/16-1(b)(2). Therefore, when a court has incorrectly used a prior juvenile adjudication to elevate the sentence for theft, it is not appropriate to vacate the theft conviction (or, in this case, the juvenile adjudication for theft). Instead, the proper remedy is to reduce the sentence from a felony to a misdemeanor and remand for a new sentencing hearing.

People v. Dicostanzo, 304 Ill.App.3d 646, 710 N.E.2d 173 (1st Dist. 1999) Under 720 ILCS 5/16A-10(2), which enhances misdemeanor retail theft to a Class 4 felony where the defendant "has been previously convicted of any type of theft, robbery, armed robbery, burglary, residential burglary, possession of burglary tools or home invasion," a prior conviction for attempt burglary is not an enhancing offense. The court acknowledged that the phrase "any type" is ambiguous, but found that it referred only to theft and not to all the offenses listed.

People v. Risch-Defina, 284 Ill.App.3d 1, 671 N.E.2d 387 (2d Dist. 1996) Under 720 ILCS 5/16-1(b)(3), which provides that a "second or subsequent . . . offense is a Class 3 felony," the prior crime must have been reduced to a conviction to trigger a Class 3 conviction. The Court rejected the State's argument that it need only present evidence that a prior crime had occurred, not that the defendant had been convicted.

People v. Leckner, 149 Ill.App.3d 314, 500 N.E.2d 721 (4th Dist. 1986) The defendant was convicted of felony deceptive practices based on a prior deceptive practices conviction. However, the prior conviction was obtained after defendant committed the acts that constituted the deceptive practice offense in this case. The Court held that he could not be prosecuted for felony deceptive practice under the recidivist provision unless the actions leading to the felony prosecution took place after conviction for the misdemeanor offense.

People v. Hall, 145 Ill.App.3d 873, 495 N.E.2d 1379 (5th Dist. 1986) An out - of - state theft conviction may be used to enhance a misdemeanor theft to a felony. Under **People v. Davis**, 95 Ill.2d 1, 447 N.E.2d 353 (1983), an identity of names between the defendant and the person named in the certified records gives rise to a rebuttable presumption of identity. To rebut this presumption, the defendant must not only object "but must also introduce some evidence to rebut the presumption." Here, the defendant presented no evidence to rebut the presumption, and the State presented testimony defendant's fingerprints matched those from a prior theft case. Compare, **People v. April**, 73 Ill.App.3d 555, 392 N.E.2d 400 (3d Dist. 1979) (State must prove beyond a reasonable doubt that the defendant is the person named in the certified copy of the prior conviction; the mere identity of names is not sufficient).

People v. Sierra, 122 Ill.App.3d 822, 461 N.E.2d 1079 (2d Dist. 1984) Defendant was convicted of theft of labor or services for failing to pay a taxicab fare. The charge was enhanced to a felony based on a prior theft conviction. The defendant alleged that theft of labor or services may not be enhanced to a felony. The Court agreed that the enhancement provisions of the statute do not apply to theft of labor or services. Had the legislature wanted to "enhance the penalty for a second or subsequent conviction of the offense of theft of labor

or services . . . it could have expressly provided for such enhancement . . . as it specifically did" in other theft statutes.

People v. Rogers, 86 Ill.App.3d 1092, 408 N.E.2d 769 (2d Dist. 1980) A conviction for theft under a municipal ordinance may not be used to enhance a subsequent misdemeanor theft to a felony. The phrase "conviction of any type of theft," as used in the statute does not include a municipal ordinance violation.

§48-8
Retail Theft

Illinois Appellate Court
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. 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. Johnson, 2018 IL App (3d) 150352 Defendant's shoplifting of clothing from Wal-Mart should have been charged as retail theft rather than burglary; shoplifting cannot 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. Taylor, 344 Ill.App.3d 929, 801 N.E.2d 1005 (1st Dist. 2003) The court concluded that 720 ILCS 5/16A-4, which provides that in retail theft prosecutions a person who conceals and removes merchandise beyond the last pay station shall be presumed to have acted with the state of mind required for the offense of retail theft, creates an unconstitutional mandatory presumption. The court concluded, however, that the remainder of the retail theft statute can be severed from the unconstitutional presumption.

People v. Dicostanzo, 304 Ill.App.3d 646, 710 N.E.2d 173 (1st Dist. 1999) Under 720 ILCS 5/16A-10(2), which enhances misdemeanor retail theft to a Class 4 felony where the defendant "has been previously convicted of any type of theft, robbery, armed robbery, burglary, residential burglary, possession of burglary tools or home invasion," a prior conviction for attempt burglary is not an enhancing offense. The court acknowledged that the phrase "any type" is ambiguous, but found that it referred only to theft and not to all the offenses listed.

People v. Mikolajewski, 272 Ill.App.3d 311, 649 N.E.2d 499 (1st Dist. 1995) Defendant was arrested for the felony retail theft of comforters from a department store. After the arrest, a store employee came to the police station and asked if the comforters could be returned. After telephoning an Assistant State's Attorney, a police officer took photographs of the comforters and then returned them to the employee. At trial, the State introduced the photographs taken by the police officer, along with other photographs taken by the retailer. The photographs showed the comforters in the original wrappings with the store's labels attached.
725 ILCS 5/115-9 provides that in prosecutions for retail theft and several other offenses, a photograph of property shall be admitted as competent evidence if it shows the nature of the property and is otherwise admissible under the rules of evidence. The statute also provides that a law enforcement agent holding property shall return it to the owner if the prosecutor makes a written request and the property has been photographed in a "manner that will serve the purpose of demonstrating the nature of the property." However, §5/115-9 provides that the defendant has 14 days from the date of arrest to ask that the property be retained and that photographs not be substituted. Because the requirements of 725 ILCS 5/115-9 were not followed, the photographs should not have been admitted into evidence. First, the property should not have been returned where the prosecutor failed to make a written request. The Court stated that the legislature intended to "interpose the judgment of someone who would exercise discretion to protect the integrity of the statutory plan" by examining the photographs to insure that no evidentiary problems would arise at trial. In addition, the officer violated §5/115-9 by depriving defendant of the statutory 14-day period to request that the evidence be retained.

People v. James, 148 Ill.App.3d 536, 499 N.E.2d 1036 (4th Dist. 1986) Statute creating offense of felony retail theft where property exceeds $150 in value does not violate equal protection or due process, though theft of property does not become felony until value exceeds $300. See also, **People v. Taylor**, 147 Ill.App.3d 129, 497 N.E.2d 861 (3d Dist. 1986).

People v. Flowers, 134 Ill.App.3d 324, 480 N.E.2d 198 (4th Dist. 1985) At defendant's trial for retail theft (for putting cigarettes in his pants and walking past the cash register), the jury was instructed that " if any person conceals upon his person or among his belongings unpurchased merchandise displayed for sale in a retail mercantile establishment and removes that merchandise beyond the last known station for receiving payments for that merchandise in that retail mercantile establishment, such person shall be presumed to have possessed such merchandise with the intention of retaining it without paying the full retail value of such merchandise."

The Court found that the instruction contained a mandatory presumption establishing the element of intent. A mandatory presumption instruction is unconstitutional unless "the inferred fact flows beyond a reasonable doubt from the established fact." The Court concluded that "possession of merchandise with the intent to permanently deprive a merchant of possession of the merchandise without paying its full retail value would not necessarily flow beyond a reasonable doubt" from the predicate facts of the presumption; "it is not completely unreasonable to hypothesize a person carrying merchandise past the last payment station, without paying for it, due to inadvertence or thoughtlessness. . . ." Thus, the instruction was unconstitutional.

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