

CH. 8
BURGLARY & RESIDENTIAL BURGLARY

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§8-1

Generally

§8-1(a)

Burglary

[People v. Steppan, 105 Ill.2d 310, 473 N.E.2d 1300 \(1985\)](#) The intent element for burglary of a motor vehicle ("intent to commit therein a felony or theft") includes the intent to steal the entire vehicle, and is not limited to intent to steal property from inside the vehicle. The Court rejected the contention that the burglary from a motor vehicle statute violates due process because it is a Class 2 felony whereas the theft of the entire vehicle is only a Class 3 felony. The purposes of the burglary and theft statutes are different; thus, the classification of burglary as a Class 2 felony is reasonable. See also, [People v. Pitsonbarger, 142 Ill.2d 353, 568 N.E.2d 783 \(1990\)](#).

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

[People v. Beauchamp, 389 Ill.App.3d 11, 904 N.E.2d 1014 \(1st Dist. 2009\)](#) The offense of burglary is complete when an illegal entry is made with the intent to commit a felony or a theft. An "entry" may occur in either of two ways: (1) where any body part of the offender is inserted into the protected zone, or (2) where an instrument is inserted into the protected zone for the immediate purpose of committing the underlying felony, and not merely for the purpose of "breaking" the barrier in order to permit an "entry." Where the evidence showed that defendant "punched out" a lock on the back of a SUV and removed the back window, but did not indicate that breaking the "plane" of the vehicle would have been necessary to perform either act, the evidence was insufficient to find that an "entry" was made. Therefore, the burglary conviction could not stand.

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

[People v. Ramirez, 151 Ill.App.3d 731, 502 N.E.2d 1237 \(5th Dist. 1986\)](#) The defendant, Teresa Ramirez, was convicted of burglary (by accountability). The evidence showed that a drug store was burglarized. Police entered the store about 4:25 a.m. and found two offenders, one of whom was named Elizabeth Ramirez. There was a hole in the roof, and various tools nearby. An officer ran a license check on cars parked in the mall lot, and found that only one car was registered outside the area. This car was registered in the Chicago area and a man

and two women - one of whom was the defendant - were seen entering this vehicle after leaving a grocery store in the mall. Upon being questioned, defendant gave the officer a false name. The three people were instructed to follow the police to the station where defendant telephoned a person in Chicago. Later, Elizabeth Ramirez telephoned the same person. The Court held that although the evidence established a "strong suspicion" that defendant acted as a lookout or otherwise assisted the principal offenders, "suspicions and probabilities are not enough to convict." The "connection" between the defendant and the principal (i.e., common last name and a common acquaintance in Chicago) was insufficient to establish guilt.

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

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

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

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

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

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

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

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

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

[**People v. Perruquet**, 173 Ill.App.3d 1054, 527 N.E.2d 1334 \(5th Dist. 1988\)](#) Two defendants, Perruquet and Vreland, were convicted of burglary. Perruquet and his wife went into a used furniture store and asked to see an air conditioner. They looked at the air conditioner, but did not buy it at that time. The next day Perruquet and Vreland went into the store to measure the air conditioner. After doing so, Perruquet purchased it. One of the defendants drove a car to the door of a storage room and the air conditioner was loaded into the trunk. The defendants and the employee then went to the counter, where Perruquet paid cash for the air conditioner. The employee prepared a receipt and Perruquet wrote the name "James Davis" on it. Perruquet then asked the employee if there was any wire in the storage room - to tie down the trunk. The employee and Vreland went into the storage room, while Perruquet remained at the counter, near the cash drawer. After the defendants left the store, the employee discovered that money had been stolen from the cash drawer and her purse. The Court held that the evidence was insufficient to prove burglary because it failed to prove that defendants intended to commit a theft when they entered the store. The defendants could have entered the store for the sole purpose of buying the air conditioner, and formed the intent to take the money after they entered.

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[People v. Beauchamp, 241 Ill.2d 1, 944 N.E.2d 319 \(2011\)](#)

A person commits burglary when without authority he enters a motor vehicle or any part thereof with intent to commit therein a felony or theft. [720 ILCS 5/19-1\(a\)](#). An entry for purposes of the statute does not require intrusion by a person's entire body; an intrusion by part of the body into the protected enclosure is sufficient, even if the intrusion is slight. An entry may be accomplished by breaking the close, i.e., crossing the planes that enclose the protected space. An entry may also be made by breaking the close with an instrument, rather than the defendant's person, but only if done with the intention of using the instrument to commit the intended felony or theft.

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

A reasonable inference exists that defendants were able to open the rear window by either prying it open or pressing the button after the lock was punched. Although touching the inside of the window would not constitute an entry where the window opened away from the vehicle, given the size of the window (4 feet by 3 to 3½ feet), a fair amount of maneuvering and force would have been necessary to remove the window, as evidenced by the dangling and detached hydraulic arms. Therefore, the court found that it was physically impossible to remove the window without gaining at least minimal entry into the protected interior or close of the vehicle.

(Defendants were represented by Assistant Defender Amanda Ingram, Chicago, and former Assistant Defender Steven Becker.)

[People v. Edgeston, ___ Ill.App.3d ___, 920 N.E.2d 467 \(2d Dist. 2009\)](#) (No. 2-07-1195, 11/24/09)

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

(Defendant was represented by Deputy Defender Chuck Schiedel, Supreme Court Unit.)

[People v. Gharrett, 2016 IL App \(4th\) 140315 \(No. 4-14-0315, 4/27/16\)](#)

Under [720 ILCS 5/19-1\(a\)](#), the offense of burglary occurs where, without authority, the defendant knowingly enters or remains in a building "or any part thereof, with intent to commit therein a felony or theft." The court concluded that the plain language of the statute applies where a person with authority to be in part of a building leaves that part and enters a separate area which he does not have authority to enter.

The evidence was sufficient to show that defendant committed burglary where he accompanied his recently-married wife to the public area of a Secretary of State facility so his

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

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

(Defendant was represented by Assistant Defender Ryan Wilson, Springfield.)

[People v. Harris, 2016 IL App \(1st\) 141746 \(No. 1-14-1746, 10/26/16\)](#)

1. The offense of burglary is defined as knowingly entering or without authority remaining “within a building, housetrailer, watercraft, aircraft, motor vehicle . . . , railroad car, or any part thereof, with intent to commit therein a felony or theft.” [720 ILCS 5/19-1\(a\)](#). The purpose of the burglary statute is to protect the security and integrity of certain enclosures.

In the context of the burglary statute, a “building” is a structure or edifice designed for habitation or for the shelter of property. Structures that have been found to constitute a “building” under the burglary statute include a partially built tool shed consisting of a roof and one wall, a tent, an open-ended car wash, and a telephone booth. Furthermore, trailers used to store property have been held to qualify as buildings under the burglary statute.

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

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

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

Defendant’s conviction for burglary was affirmed.

(Defendant was represented by Assistant Defender Kristen Mueller, Chicago.)

[People v. McCann, 2016 IL App \(1st\) 142136 \(No. 1-14-2136, 10/26/16\)](#)

1. The offense of burglary is defined as knowingly entering or without authority remaining “within a building, housetrailer, watercraft, aircraft, motor vehicle . . . , railroad car, or any part thereof, with intent to commit therein a felony or theft.” [720 ILCS 5/19-1\(a\)](#). The purpose of the burglary statute is to protect the security and integrity of certain enclosures.

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

Defendant's conviction for burglary was affirmed.

(Defendant was represented by Assistant Defender Stephen Gentry, Chicago.)

[People v. Richardson, 2011 IL App \(5th\) 090663 \(No. 5-09-0663, 8/17/11\)](#)

A person commits burglary when without authority he knowingly enters or without authority remains within a building or any part thereof, with intent to commit a felony or theft. [720 ILCS 5/19-1\(a\)](#). The statute defining the offense thus provides two alternative ways to commit the offense – by unlawful entry or unlawfully remaining after lawful entry. The offense of burglary by remaining is proved by evidence that defendant lawfully entered a store during business hours and then secreted himself in the store until it closed with intent to steal, but evidence of hiding and secreting until a store closes is not necessary to a conviction of burglary by remaining. Evidence that defendant formed a criminal intent after a lawful entry suffices.

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

(Defendant was represented by Assistant Defender Dan Evers, Mt. Vernon.)

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§8-1(b)

Residential Burglary

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

[People v. Atkins, 217 Ill.2d 66, 838 N.E.2d 943 \(2005\) P.A. 91-920](#), which became effective,

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

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

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

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

[People v. Thomas](#), 137 Ill.2d 500, [561 N.E.2d 57 \(1990\)](#) The Court held that an "attached garage is not necessarily a 'dwelling' within the meaning of the residential burglary statute." In [People v. Bales](#), 108 Ill.2d 282, [483 N.E.2d 517 \(1985\)](#), the term "dwelling" was defined as a structure "used by another as a residence or living quarters in which the owners or occupants actually reside." Thus, "[a] garage, whether attached to the various living units or not, cannot be deemed a residence or living quarters."

[People v. Mata](#), 243 Ill.App.3d 365, [611 N.E.2d 1235 \(1st Dist. 1993\)](#) A residential burglary conviction was improper because the building in question, an attached garage, was not a "dwelling." Compare, [People v. Cunningham](#), 265 Ill.App.3d 3, [637 N.E.2d 1247 \(2d Dist. 1994\)](#) (in the case of a single-family home, an attached garage leading directly into a room of

a single-family home is part of the "dwelling place" even if no one actually lives in the garage).

[**In re A.G.**, 215 Ill.App.3d 611, 575 N.E.2d 584 \(2d Dist. 1991\)](#) A minor was found delinquent for committing criminal trespass to a residence after he entered a garage that was not attached to the owner's house. The Court stated that under the plain language of the statute a "residence" is a "relatively permanent habitat." An unattached garage that no one "inhabits" does not qualify as a "residence." See also, [**People v. Bonner**, 221 Ill.App.3d 887, 583 N.E.2d 56 \(1st Dist. 1991\)](#) (a house, unoccupied for seven years, was not a "dwelling," under the residential burglary statute, where there was no showing that anyone intended to reside there in the foreseeable future).

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

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

[**People v. Wiley**, 169 Ill.App.3d 140, 523 N.E.2d 1344 \(2d Dist. 1988\)](#) An enclosed porch constitutes a part of the dwelling under the residential burglary statute. See also, [**People v. McIntyre**, 218 Ill.App.3d 479, 578 N.E.2d 314 \(4th Dist. 1991\)](#) (a porch was part of the dwelling where the floor, walls, and roof were attached to the house; there were solid walls to a height of three feet and screens from that height to the roof, a metal and glass door with a lock led to the backyard and a wood and glass door with locks connected the porch to the house.

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

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

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

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

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

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

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

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

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[People v. Burnley, 2014 IL App \(5th\) 120486 \(No. 5-12-0486, 2/19/14\)](#)

Residential burglary is defined as knowingly and without authority entering or remaining within the "dwelling place" of another with the intent to commit a felony or theft. ([720 ILCS 5/19-3\(a\)](#)). A "dwelling place" is "a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside." ([720 ILCS 5/2-6\(b\)](#)).

The court found that the State's evidence provided a basis by which a reasonable jury could have found that the house in question was a "dwelling place." The owner originally purchased the house for her parents, and had lived there "on and off for a year" although her primary residence was elsewhere. The owner kept personal property in the house, including clothing, a bed, a television, a kitchen table, business papers, and a new washer and dryer. The owner was in the process of moving most of this property to her primary residence, but the utilities were still connected and the home was maintained and kept neat. The owner

described her feelings upon discovering the burglary as “extremely angry and . . . even vengeful.”

The court contrasted the facts with those of [People v. Roberts, 2013 IL App \(2d\) 110524](#), where the burglarized house was vacant and the owners had moved out of state with no plans to return. Here, although the owner did not live primarily at the burglarized home, the jury could rationally have concluded that the home was a “dwelling place” because it was not abandoned, contained personal property including a bed, and was frequently visited by the owner. In addition, the owner kept the house neat and was outraged when it was burglarized. Under these circumstances, a reasonable jury could have found that the owner had two residences and was using them both at the time of the offense.

The court added that even if the owner was moving from one house to the other, “[t]he unique protections afforded by the residential burglary statute are not lost at some point during the moving process, well before the home is completely vacated.”

Defendant’s conviction for residential burglary was affirmed.

(Defendant was represented by Assistant Defender Rob Markfield, Chicago.)

[People v. Edgeston, ___ Ill.App.3d ___, 920 N.E.2d 467 \(2d Dist. 2009\)](#) (No. 2-07-1195, 11/24/09)

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

(Defendant was represented by Deputy Defender Chuck Schiedel, Supreme Court Unit.)

[People v. Larry, 2015 IL App \(1st\) 133664 \(No. 1-13-3664, 12/1/15\)](#)

1. A person commits residential burglary when he knowingly and without authority enters the dwelling place of another with intent to commit therein a felony or theft. [720 ILCS 5/19-3\(a\)](#). Dwelling means a house, apartment, mobile home, trailer, or other living quarters in which the owners or occupants actually reside or intend to reside within a reasonable period of time. [720 ILCS 5/2-6](#). The statute includes occupants as well as owners, so property interests do not come into play.

2. Defendant and the complaining witness, Shalonda Harris, were in a romantic relationship for three or four years. During that time, “excluding stints in jail,” defendant stayed with Harris at her apartment. Defendant did not have keys, but he had access “whenever he wanted” through Harris. Harris testified that defendant lived in the apartment and left his clothing there.

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

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

The court rejected the State's argument that defendant did not actually reside in the apartment since he had no key and depended on Harris to grant him access. The record showed that defendant lived in the apartment for a number of years, kept his clothing there, and Harris often lent him her keys. The possession of a key is not "automatically indicative" of residency status. Some people, such as friends and neighbors, have keys to dwellings they do not inhabit. Others, such as family members and romantic partners, do not have keys to dwellings where they actually reside.

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

(Defendant was represented by Assistant Defender Mike Orenstein, Chicago.)

[People v. McGee, 398 Ill.App.3d 789, 924 N.E.2d 612 \(1st Dist. 2010\)](#)

1. Residential burglary occurs where the defendant knowingly and without authority enters or remains within a "dwelling place" with the intent to commit a felony or a theft. [720 ILCS 5/19-3\(a\)](#). A dwelling place is defined as "a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside in or in their absence intend within a reasonable period of time to reside." [720 ILCS 5/2-6\(b\)](#).

2. A house which had been damaged by fire qualified as a "dwelling place" where the first floor of the building was used to store clothes, furniture, appliances and other personal belongings, the owners of the house checked on the premises and the belongings every day, and one of the owners testified that at the time of the burglary she was planning to move back into the house. By attempting to secure the premises and checking daily on the condition of the house and its contents, the owners took actions which created a reasonable inference that they left their belongings in the building with the intent of returning to reside there.

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

(Defendant was represented by Assistant Defender Carolyn Klarquist, Chicago.)

[People v. Moore, 2014 IL App \(1st\) 112592 \(Nos. 1-11-2592 & 1-12-0313, 5/14/14\)](#)

1. A person commits residential burglary where knowingly and without authority, he or she enters or remains within the "dwelling place" of another with the intent to commit a felony or theft. [720 ILCS 5/19-3\(a\)](#). A "dwelling" is defined as a residence "in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside." [720 ILCS 5/2-6\(b\)](#). Residential burglary includes the offense of burglary, which occurs when a person without authority knowingly enters or without authority remains in a building or any part thereof with intent to commit therein a felony or theft.

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

burglarized a residence.

The conviction for residential burglary was reduced to burglary.
(Defendant was represented by Assistant Defender Brian McNeill, Chicago.)

[People v. Rankin, 2015 IL App \(1st\) 133409 \(1-13-3409, 7/16/15\)](#)

1. To obtain a conviction for residential burglary, the State must prove beyond a reasonable doubt that the defendant knowingly and without authority entered the dwelling of another with intent to commit a felony or theft. The court concluded that the evidence in this case was insufficient to sustain a residential burglary conviction.

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

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

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

(Defendant was represented by Assistant Defender Rebecca Levy, Chicago.)

[People v. Roberts, 2013 IL App \(2d\) 110524 \(No. 2-11-0524, 1/14/13\)](#)

A person commits residential burglary who knowingly and without authority remains within the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft. [720 ILCS 5/19-3\(a\)](#). For purposes of the residential burglary statute, "dwelling" is defined as "a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside." [720 ILCS 5/2-6\(b\)](#).

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

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

burglary, and remanded for resentencing.

[People v. Sanderson, 2016 IL App \(1st\) 141381 \(No. 1-14-1381, 4/20/16\)](#)

A defendant is guilty of armed habitual criminal if he possesses a firearm and has been previously convicted of two or more forcible felonies. As defined by the Criminal Code, a forcible felony includes several specifically enumerated offenses, including residential burglary, or any other felony involving “the use or threat of physical force or violence.” [720 ILCS 5/2-8.](#)

An unenumerated felony falls within the residual clause if the defendant contemplated and was willing to use force or violence, but he does not need to actually use violence. Crimes may fall within the residual clause in two ways: (1) one of the crime’s elements is a specific intent to carry out a violent act; or (2) the particular facts of the case show that the defendant contemplated and was willing to use force.

Defendant was convicted of armed habitual criminal based on having a prior conviction for attempted residential burglary. The only evidence of the prior conviction was a certified copy of conviction which provided no details about the circumstances of the prior offense.

The court held that defendant’s conviction for attempted residential burglary, which was not a specifically enumerated forcible felony, also did not fall within the residual clause since it was “neither by definition nor by circumstance a forcible felony.”

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

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

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

(Defendant was represented by Assistant Defender Ben Wimmer, Chicago.)

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§8-1(c)

“Without Authority”

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

[People v. Bush, 157 Ill.2d 248, 623 N.E.2d 1361 \(1993\)](#) Under the "limited-authority" doctrine, consent to enter premises is vitiated if, at the time of the entry, the invitee secretly intends to commit a criminal act once he is inside. The doctrine is based on the premise that had the invitee's true purpose been known, he would not have been invited to enter. The

limited-authority doctrine does not apply where defendant enters with innocent intent, but later commits a crime that was not contemplated at the time of the entry. Therefore, in appropriate cases, juries should be instructed that a consensual entry to a dwelling is unauthorized where "the defendant has, at the time of entry, an intent to commit criminal acts within the dwelling."

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

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

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

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

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

Cumulative Digest Case Summaries §8-1(c)

[People v. Bradford, 2016 IL 118674 \(No. 118674, 3/24/16\)](#)

Burglary may be committed in two ways: (1) by entering a building without authority with the intent to commit a felony or theft, or (2) by remaining within a building without authority with the intent to commit a felony or theft. [720 ILCS 5/19-1\(a\)](#).

Here defendant was charged with the second type of burglary, remaining within a building without authority. Defendant entered a retail store during regular business hours and at all times stayed in areas of the store that were open to the public. Once inside the store,

defendant stole several items. The trial court convicted defendant of burglary and sentenced him to three years imprisonment.

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

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

(Defendant was represented by Assistant Defender Joel Wessol, Springfield.)

[People v. Bradford, 2014 IL App \(4th\) 130288 \(No. 4-13-0288, 11/24/14\)](#)

720 ILCS 5/19-1(a) provides that "a person commits burglary when without authority he or she knowingly enters or without authority remains in a building . . . or any part thereof, with intent to commit therein a felony or theft." Thus, burglary may be committed by either: (1) entering a building without authority with the intent to commit a felony or theft, or (2) remaining in a building without authority with the intent to commit a felony or theft. Defendant was charged with the second type of burglary, for knowingly without authority remaining within Walmart with intent to commit a felony or theft.

The evidence showed that defendant entered Walmart during business hours, took two DVDs from a display near the entrance, and returned the DVDs at the customer service desk in exchange for a gift card. He then removed the price tag from a hat, which he placed on his head, and put a pair of shoes in a Walmart bag which he took from his coat. Defendant then went with an unknown male to a cash register, paid for the unknown male's items using the gift card he had received earlier, and started to leave the store without paying for the shoes or hat.

Defendant argued that he was improperly convicted of burglary by remaining in the store with intent to commit a theft because he had entered the store lawfully, did not exceed the physical scope of that authority, committed the offense during business hours, and left after completing his criminal acts. Defendant argued that his actions constituted retail theft rather than burglary.

The Appellate Court disagreed. Under Illinois precedent, authority to enter a building which is open to the public for business extends only to those who enter with a purpose consistent with the reason the building is open. Thus, a person who enters with intent to commit a theft can be convicted of burglary based upon entering the business with that intent, because his intent is inconsistent with the purpose for which the owner has granted authority to the public to enter.

The court concluded that the same rationale applies where a defendant is convicted of burglary by remaining in a building that is open for business:

[J]ust as a defendant's *entry* is "without authority" if it is accompanied by a contemporaneous intent to steal, so too must a defendant's *remaining* be "without authority" if it also is accompanied by an intent to steal. . . . Accordingly, we . . . conclude that a defendant who develops an intent to steal after his entry into a public building may be found guilty of burglary

by unlawfully remaining. . . . [T]he authority to remain in a public building, or any part of the public building, extends only to persons who remain in the building for a purpose consistent with the reason the building is open.

Because defendant remained in Walmart “without authority” as he moved through the store and stole merchandise, and his purpose for being in Walmart was not consistent with the purpose for which the store was open to the public, his authority for remaining in the store was implicitly withdrawn. The conviction for burglary was affirmed.

(Defendant was represented by Assistant Defender Joel Wesson, Springfield.)

[People v. McDaniel, 2012 IL App \(5th\) 100575 \(No. 5-10-0575, 10/12/12\)](#)

“A person commits burglary when without authority he knowingly enters or without authority remains within a building . . . with intent to commit therein a felony or theft.” [720 ILCS 5/19-1\(a\)](#).

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

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

(Defendant was represented by Assistant Defender Ed Anderson, Mt. Vernon.)

[People v. Richardson, 2011 IL App \(5th\) 090663 \(No. 5-09-0663, 8/17/11\)](#)

A person commits burglary when without authority he knowingly enters or without authority remains within a building or any part thereof, with intent to commit a felony or theft. [720 ILCS 5/19-1\(a\)](#). The statute defining the offense thus provides two alternative ways to commit the offense – by unlawful entry or unlawfully remaining after lawful entry. The offense of burglary by remaining is proved by evidence that defendant lawfully entered a store during business hours and then secreted himself in the store until it closed with intent to steal, but evidence of hiding and secreting until a store closes is not necessary to a conviction of burglary by remaining. Evidence that defendant formed a criminal intent after a lawful entry suffices.

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

(Defendant was represented by Assistant Defender Dan Evers, Mt. Vernon.)

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§8-2

Charging the Offense

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

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§8-3

Attempt

[People v. Rangel, 104 Ill.App.3d 695, 432 N.E.2d 1141 \(1st Dist. 1982\)](#) Defendant was charged with burglary; however, over defense objection the jury was instructed on both burglary and attempt burglary. The jury convicted of attempt burglary. It was error to give the attempt burglary instruction because all the evidence showed that defendant entered the premises without authority, and the sole question for the jury was the defendant's intent (defendant testified that he was in a drunken stupor and mistakenly thought he was entering his own house). If defendant had the necessary intent, he was guilty of burglary; if not he should have been acquitted.

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

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

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

[People v. Delp, 85 Ill.App.3d 463, 406 N.E.2d 903 \(5th Dist. 1980\)](#) A police officer observed the defendant near a Mustang automobile in a parking lot. The defendant was "crouching over the Mustang and had a thin piece of steel protruding from his body." When the officer entered the lot, the defendant fled into a corner of the lot. The officer found a screwdriver and a broken antenna on the ground near the defendant. The officer examined the Mustang and observed scratch marks on the driver's side window and rubber molding. The officer did not see the defendant in actual possession of either the screwdriver or the antenna. The owner

of the Mustang testified that there was no damage of any type to her car, and defendant claimed that he was in the parking lot to urinate. The Court held that this evidence, particularly in light of the alleged victim's testimony that her auto was not damaged, was insufficient to establish defendant's guilt of attempt burglary.

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

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§8-4

Possession of Burglary Tools

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

[People v. Stafford, 4 Ill.App.3d 606, 279 N.E.2d 395 \(1st Dist. 1972\)](#) Mere possession of a screwdriver and a bent coat hanger was not sufficient to prove the intent required for the offense of possession of burglary tools. See also, [People v. Ramirez, 151 Ill.App.3d 731, 502 N.E.2d 1237 \(5th Dist. 1986\)](#).

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

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§8-5

Conviction Based on Possessing Stolen Property

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

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

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

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

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

[People v. Murphy, 2015 IL App \(4th\) 130265 \(No. 4-13-0265, 3/18/15\)](#)

A person commits burglary when he enters a building with the intent to commit a theft. [720 ILCS 5/19-1\(a\)](#). As relevant here, a person commits theft when he obtains or exerts control over stolen property knowing or reasonably believing it is stolen, and he either (a) intends to permanently deprive the owner of its use or benefit, or (b) uses the property in a manner that deprives the owner of its use or benefit. [720 ILCS 6/16-1\(a\)](#). The intent to permanently deprive the owner of his property is generally inferred when the person takes the property.

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.

(Defendant was represented by former Assistant Defender Gary Peterson, Springfield.)

[People v. Smith, 2014 IL App \(1st\) 123094 \(1-12-3094, 6/13/14\)](#)

1. The offense of burglary occurs when without authority, a person knowingly enters or remains in a building or any part thereof with intent to commit a felony or theft. Possession of recently stolen property is not in and of itself enough to sustain a burglary conviction. However, the trier of fact may infer that possession of recently stolen property resulted from a burglary if: (1) there was a rational connection between defendant’s recent possession of stolen property and his participation in the burglary; (2) defendant’s guilt of burglary more likely than not flowed from his recent, unexplained and exclusive possession of the proceeds of a burglary; and (3) there was corroborating evidence of defendant’s guilt. [People v. Housby, 84 Ill. 2d 415, 420 N.E.2d 151 \(1981\)](#). Although [Housby](#) concerned an instruction issue rather than the sufficiency of the evidence, the same factors are applicable when determining whether the evidence is sufficient to satisfy the reasonable doubt standard.

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

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

Officers who examined the premises after defendant’s arrest discovered that a garage

door had been kicked in and a window broken, but they could not determine if the damage occurred recently.

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

Second, although defendant admitted to police that the parts in his possession did not belong to him, his guilt did not "flow" from his possession where there was no evidence that defendant ever entered the part store. The witness testified that he saw defendant enter an opening in the fence, but that he then lost sight of the defendant for the next 10 minutes. He next observed defendant throwing pipes and auto parts over the fence. Because there was no evidence that defendant entered the store, an essential element of burglary was not proven.

Third, there was no corroborating evidence to suggest that defendant entered the store with intent to commit a theft. The officers testified that there was no way to tell whether the damage to the door and window had been inflicted recently. In addition, the witness who observed the defendant did not testify that he heard a door being kicked in or a window breaking.

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

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