

CH. 25
HOME INVASION

§25 ([CumDigest](#))

[People v. Pettit, 101 Ill.2d 309, 461 N.E.2d 991 \(1984\)](#) 1. The home invasion statute requires the presence of one or more persons within the dwelling at the time of the invasion. Defendants were improperly convicted of home invasion of a second-floor apartment where no one was present within the second-floor apartment when the entry occurred. Also, defendants did not commit home invasion of the second-floor apartment by leaving and re-entering the apartment after the occupants had been taken there.

2. "Constructive presence" cannot satisfy the requirements of the home invasion statute.

[People v. Reid, 179 Ill.2d 297, 688 N.E.2d 1156 \(1997\)](#) A defendant cannot be convicted of home invasion for entering his own home, even where there is an order of protection prohibiting defendant from contact with the resident of the home. See also, [People v. Oakley, 187 Ill.2d 472, 719 N.E.2d 654 \(1999\)](#) (Reid did not apply where six months before the offense, a final divorce decree had awarded possession and equity in the house to defendant's ex-wife; because defendant retained no interest in the home, it was the "dwelling place of another").

[People v. Cole, 172 Ill.2d 85, 665 N.E.2d 1275 \(1996\)](#) A defendant who makes only one entry to a home can be convicted of only one home invasion, no matter how many people are present in the residence. See also, [People v. Ammons, 120 Ill.App.3d 855, 458 N.E.2d 1031 \(1st Dist. 1983\)](#) (defendants were improperly convicted of two counts of home invasion based on a single entry despite intentional injuries to separate victims); [People v. Morgan, 385 Ill.App.3d 771, 896 N.E.2d 417 \(3d Dist. 2008\)](#); [People v. Criss, 169 Ill.App.3d 926, 523 N.E.2d 1135 \(1st Dist. 1988\)](#).

[People v. Hicks, 181 Ill.2d 541, 693 N.E.2d 373 \(1998\)](#) Where there is a simultaneous entry by several people, it is improper to convict each person of one count of home invasion based on his own entry and additional counts based on accountability for the entries of the other persons. Only one conviction of home invasion could stand where defendant and a co-defendant simultaneously forced their way into a home, even though defendant battered one occupant while co-defendant battered a different occupant.

[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 does not apply where defendant enters with innocent intent, but subsequently commits a crime that was not contemplated at the time of the entry. Here, a non-IPI instruction misstated the limited-authority doctrine by failing to distinguish between crimes in which the criminal intent was concealed at the time of entry and crimes in which the criminal intent arose after an innocent entry. Under the non-IPI instruction given, the jury could have found that defendant's entry was unauthorized, even if at the time of the entry he did not intend to commit any crimes, merely because he committed illegal acts once inside the home. The error was not cured by the fact that correct IPI instructions were also given, because the non-IPI instruction might have confused the jury as

to the elements of home invasion.

[People v. Hudson, 228 Ill.2d 181, 886 N.E.2d 964 \(2008\)](#) Psychological trauma constitutes an "injury" for purposes of the home invasion statute. Although expert testimony may be necessary to prove psychological harm, it was not necessary here.

[People v. Sanders, 129 Ill.App.3d 552, 472 N.E.2d 1156 \(1st Dist. 1984\)](#) Defendant was properly convicted of home invasion where the victims invited defendant's accomplice to spend the night at their home, the accomplice "invited" defendant and others into the victims' home, and they robbed the victims. The accomplice exceeded his authority (he was given permission to enter the home to spend the night); thus, defendant's entry was also without authority.

[People v. Scott, 108 Ill.App.3d 607, 439 N.E.2d 130 \(1st Dist. 1982\)](#) Evidence failed to prove an unauthorized entry where defendant and another man entered the complainant's room at the YMCA with the complainant's permission and, once inside the room, struck the complainant with a nightstick and took his gun after he refused to let them see his gun. Defendant did not enter the with the requisite felonious intent to vitiate the complainant's consent to enter.

[People v. Simpson, 178 Ill.App.3d 1091, 534 N.E.2d 217 \(3d Dist. 1989\)](#) 1. The court noted that there is some split of authority as to whether home invasion requires proof of intent to use force or cause injury upon entry or merely an intent to make an unlawful entry. The court did not resolve the conflict because the evidence showed that defendant entered with the intent to use his knife.

2. An entry may be unauthorized though the outside door to the premises is not locked or even closed.

[People v. Davis, 106 Ill.App.3d 260, 435 N.E.2d 838 \(2d Dist. 1982\)](#) The home invasion statute is not unconstitutionally vague in that it allows conviction when defendant "has reason to know" that someone is on the premises.

[People v. Pettus, 84 Ill.App.3d 390, 405 N.E.2d 489 \(4th Dist. 1980\)](#) Home invasion information was fatally defective for failing to allege that the entry was "without authority." Trial court erred in allowing the State to amend the information by adding the above language. See also, [People v. Pruden, 110 Ill.App.3d 250, 442 N.E.2d 284 \(4th Dist. 1982\)](#) (home invasion information was fatally defective in failing to allege that defendant was "armed with a dangerous weapon," an essential element of the offense). But see, [People v. Hert, 95 Ill.App.3d 871, 420 N.E.2d 813 \(3d Dist. 1981\)](#) (the failure of a home invasion indictment to allege that defendant was "not a police officer acting in the line of duty" was merely a formal defect, and the court properly allowed the State to amend the indictment although the amendments were probably unnecessary); [People v. Davis, 106 Ill.App.3d 260, 435 N.E.2d 838 \(2d Dist. 1982\)](#).

[People v. Boyer, 138 Ill.App.3d 16, 485 N.E.2d 460 \(3d Dist. 1985\)](#) Home invasion conviction reversed because there was no proof of "injury," despite the victim's testimony that she experienced pain when slapped in the face, where there was no medical evidence of any physical harm and the victim's mother testified she did not mention any observable physical harm.

[People v. Govednik, 150 Ill.App.3d 717, 502 N.E.2d 276 \(1st Dist. 1986\)](#) A defendant may not be convicted of both home invasion and armed violence (based on home invasion). To permit both convictions would in effect allow the State to convict defendant of two offenses of home invasion based on a single entry.

[People v. Freeman, 234 Ill.App.3d 380, 600 N.E.2d 862 \(3d Dist. 1992\)](#) Self-defense is a defense to home invasion where defendant: (1) believes that he is in imminent danger of death or great bodily harm, and (2) either exhausts every reasonable means of escape or withdraws from contact and clearly indicates that he wants to terminate the use of force. However, it was proper for the trial court to refuse the instruction in this case; even if the trier of fact believed defendant's version of the incident, he was the initial aggressor and did not exhaust every reasonable means of escape.

[People v. Baldwin, 199 Ill.2d 1, 764 N.E.2d 1126 \(2002\)](#) Aggravated unlawful restraint was not a lesser included offense of home invasion as charged in this case where neither count of home invasion alleged the "broad foundation" or "main outline" of aggravated unlawful restraint because neither count specifically alleged that defendant used a weapon to detain the complainant. The missing element of detention could not be inferred -- the allegation that defendant "used force" implies several possible acts that do not necessarily include detention.

[People v. Murray, 364 Ill.App.3d 999, 848 N.E.2d 160 \(4th Dist. 2006\)](#) The judge's answer to a jury question erroneously stated Illinois law concerning the circumstances in which consent to enter premises is negated by the intention to commit a crime.

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[People v. Booker, 2015 IL App \(1st\) 131872 \(No. 1-13-1872, 5/12/15\)](#)

Defendant was charged with several offenses including home invasion while armed with a firearm. Following a bench trial, he was convicted of home invasion while armed with a dangerous weapon other than a firearm. In announcing its verdict, the trial court stated that the conflicting evidence failed to establish that the weapon in question was a firearm.

1. The Appellate Court held that defendant was improperly convicted of home invasion while armed with a dangerous weapon other than a firearm. A defendant may not be convicted of an uncharged crime unless it is a lesser-included offense of the charged crime and the evidence at trial rationally supports a conviction for the lesser offense and an acquittal of the greater offense. To determine whether an uncharged crime is a lesser-included offense, the court looks to the allegations in the charging instrument to determine whether the description of the greater offense contains the broad foundation or main outline of the lesser offense.

Noting that the home invasion statute places committing the offense "with a firearm" or "with a dangerous weapon other than a firearm" in different subsections, the court concluded that the former offense necessarily excludes the latter offense. Thus, an allegation that defendant was armed with a dangerous weapon other than a firearm cannot be reasonably inferred from the allegation that he was armed with a firearm.

Because the information charging defendant with home invasion while armed with a firearm did not state the broad foundation or main outline of home invasion while armed with a dangerous weapon other than a firearm, the latter offense was not a lesser-included offense. The trial therefore erred by convicting defendant of the uncharged offense of home invasion

with a dangerous weapon other than a firearm.

2. The court reached the issue as plain error under the second-prong of the plain error rule.

The convictions and sentences for home invasion while armed with a dangerous weapon were reversed and the cause remanded for re-sentencing on the remaining convictions.

[People v. Dorsey, 2016 IL App \(4th\) 140734 \(No. 4-14-0734, 10/31/16\)](#)

The injury requirement of the home invasion statute ([720 ILCS 5/19-6](#)) is satisfied by evidence that the defendant inflicted physical or psychological harm, and there is no requirement that the psychological harm be tied to some kind of physical contact between defendant and the victim.

(Defendant was represented by Assistant Defender Akshay Matthew, Springfield.)

[People v. McNeal, ___ Ill.App.3d ___, ___ N.E.2d ___ \(1st Dist. 2010\) \(No. 1-08-2264, 9/30/10\), superceded by \[405 Ill.App.3d 647, 955 N.E.2d 32\]\(#\)](#)

An element of home invasion is entry into the dwelling of another when he or she knows or has reason to know that one or more persons is present. This element was satisfied where the offender forcibly entered the dwelling simultaneously with the victim.

(Defendant was represented by Assistant Defender Gilbert Lenz, Chicago.)

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