No. 125483

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In the
Supreme Court of Illinois

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United States of America,
Plaintiff-Appellee,

vs.

Jeremy Glispie,
Defendant-Appellant.

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On order agreeing to answer question certified by the
United States Court of Appeals for the Seventh Circuit
No. 19-1224

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# Reply Brief of Defendant-Appellant, Jeremy Glispie

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Federal Public Defender
Central District of Illinois
300 W. Main Street
Urbana, Illinois 61801
Telephone: 217-373-0666
Fax: 217-373-0667
Email: colleen_ramais@fd.org

Colleen McNichols Ramais
Assistant Federal Public Defender
ARDC No. 6302807

Attorney for Defendant-Appellant, Jeremy Glispie

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Oral argument requested

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## Points and Authorities

**Page(s)**

## Argument[1]

**The arguments made by the United States are inconsistent with the law as it has developed in Illinois over the past forty years and should be rejected.**

### I. The government's "plain language" argument is inconsistent with this Court's long-standing precedent.

The United States first argues that the plain language of the statute forecloses application of the limited authority doctrine to the residential burglary statute, because "[n]owhere does the statute imply that a court may infer the required unauthorized entry or remaining from the required criminal intent." Gov't Br. at 6. However, this Court has used a plain language approach to apply the doctrine to both the burglary and home invasion statutes, which contain identical language, "[f]or over 100 years." *People v. Johnson*, 2019 IL 123318, ¶ 16. In *People v. Weaver*, the Court expressly rejected an argument that "without authority" required a showing of more than intent to commit a theft on the face of the simple burglary statute. 41 Ill. 2d 434, 439 (1968). The *Weaver* court acknowledged first that a common-law breaking was no longer required, but that the entry must both be "without authority and with intent to commit a felony or theft." *Id.* The court reasoned, however, that "authority to enter a

[1] The following abbreviations are used herein: "Glispie Br." refers to Mr. Glispie's opening brief in this Court, and "Gov't Br." refers to the brief of the United States also filed in this proceeding.

business building, or other building open to the public, extends only to those who enter with a purpose consistent with the reason the building is open. An entry with intent to commit a theft cannot be said to be within the authority granted patrons of a laundromat." *Id.* (citations omitted). Similarly, in analyzing the home invasion statute, this Court has concluded that "when a defendant comes to a private residence and is invited in by the occupant, the authorization to enter is limited. Criminal actions exceed this limited authority," and a concealed intent to engage in criminality renders a defendant's entry "unauthorized." *People v. Peeples*, 155 Ill. 2d 422, 487–88 (1993). This has been the consistent understanding of "without authority" in Illinois for decades.

Tellingly, the government does not propose an alternate reading of "without authority," except to conclusorily state that it cannot include the limited authority doctrine. Gov't Br. 5–6. Such a reading does not square with the common understanding of "without authority" in this context, and cannot be supported by a "plain language" reading of the statute.

## II. The government errs in attempting to divorce residential burglary from the statutory context in which it was enacted.

The government urges this Court to look to the "purposes and history" of the residential burglary statute and conclude that the limited authority doctrine does not apply, arguing that it should not be construed

in relation to the burglary and home invasion statutes. Gov't Br. at 7–30. However, the government's arguments fail to account for the principle of statutory construction that, when a new statute is adopted, it is assumed that the legislature is aware of construction given to related statutes. *Harvel v. City of Johnston City*, 146 Ill. 2d 277, 287 (1992) (quoting 2A N. Singer, Sutherland on Statutory Construction § 51.02, at 453 (Sands 4th ed. 1984)). Moreover, "where the legislature adopts an expression which has received judicial interpretation, [that] interpretation is prima facie evidence of legislative intent." *Id.* (quoting 2A N. Singer, Sutherland on Statutory Construction § 49.09, at 400 (Sands 4th ed. 1984)).

By the time the residential burglary statute was enacted in 1981, the common law requirement that there be a "breaking" in addition to an "entering" had long been abandoned by Illinois law. See *Weaver*, 41 Ill. 2d at 439 (citing *People v. Brown*, 397 Ill. 529 (1947) for the proposition that "a common-law breaking is no longer an essential element of the crime of burglary"). Moreover, the limited authority doctrine was a well-established interpretation of the phrase "without authority" as used in the simple burglary statute. See *Johnson*, 2019 IL 123318, ¶ 16 (collecting cases). It defies logic, as well as the principles of statutory construction, to conclude that the legislature adopted identical language in the residential

burglary for every element save the locational element, yet intended for the residential burglary statute to add additional requirements onto the "without authority" element that were not present in the simple burglary statute.[2]

This Court's opinion in *People v. Bales* does not help the government's argument. See Gov't Br. at 10–11. In *Bales*, the Court did conclude that "the legislature, in the residential-burglary statute,

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[2] See John F. Decker and Christopher Kopacz, Illinois Criminal Law: A Survey of Crimes and Defenses § 13.05 (5th ed. 2017), for a more thorough history of the statute. A portion of that analysis is reproduced here:

> A comparison of the ordinary burglary statute and the residential burglary statute when first enacted revealed that they were identical in all respects except two: (1) with residential burglary, the entry must have been into the dwelling place of another; and (2) ordinary burglary reached the defendant who entered without authority or without authority remained in the protected place, while the residential burglary statute reached only the defendant who enters. However, the exclusion of the "without authority remains" language from the residential burglary statute was of little consequence. First, … Illinois courts hold that one who has general authority to make an entry into a facility can lose that authority if the entry is for an unlawful purpose. Thus, an invitee to a social gathering in a residence, who remained to follow through on his purpose of robbing some of the guests, could be convicted of burglary because his entry was wrongful. … Consequently, because of this broad interpretation of the word "enters," there was little need for the additional language of "or without authority remains." Second, almost every defendant who has been convicted of ordinary burglary under section 5/19-1 had been convicted for his illegal entry and few have been convicted under the "without authority remains" language. In 2001, the legislature amended the residential burglary statute to include "without authority remain" language.

attempted to restore to this crime the original status of the crime of burglary," but this recognition was followed immediately (within the same sentence) with qualification—the new statute created an enhanced penalty for "an offense *against a particular type of structure or enclosure*, that is, a structure or enclosure which is used for habitation purposes." *People v. Bales*, 108 Ill. 2d 182, 191 (1985) (emphasis added). The rationale of imposing increased penalties on the burglary of a dwelling, in particular, was "to protect the privacy and sanctity of the home," because "residential burglary contains more possibility for danger and serious harm than that of places not used as dwellings." *Id.* at 193 (quoting *People v. Gomez*, 120 Ill. App. 3d 545, 549 (1983)). When *Bales* was decided, the limited authority doctrine had already been applied to private spaces. See, e.g., *People v. Fisher*, 83 Ill. App. 3d 619, 623 (1980). The statutory context, then, is paramount in this case. By introducing *residential* burglary, the legislature explicitly built off the framework of the existing statutes (simple burglary and home invasion) and created an offense that falls somewhere between the two. See *Bales*, 108 Ill. 2d at 193. Any reasonable interpretation of the statute, then, must take into account the context of the simple burglary and home invasion statutes and how they have been interpreted and applied.

Finally, the government cannot provide a compelling reason to interpret the residential burglary statute inconsistently with the simple burglary and home invasion statutes. The argument that the common law requires this result (because common law burglary required a "breaking" in addition to entering with intent to commit a crime) was rejected long ago in Illinois courts with regards to simple burglary. See *Weaver*, 41 Ill. 2d at 438. There is no particular reason to conclude that identical language used in a later-enacted statute would seek to reinstate such a requirement.

Moreover, any arguments that the home or a dwelling place is materially different than a public space and should not be subject to the limited authority doctrine were rejected by this Court in *Peeples* and *Bush*, when the doctrine was applied to home invasion. *Peeples*, 155 Ill. 2d at 487–88 (noting that, even though "[t]he gravamen of the offense is unauthorized entry," such entry can be proven when a defendant commits criminal actions in the private residence after entering); *People v. Bush*, 157 Ill. 2d 248, 254 (1993) ("the determination of whether an entry is unauthorized depends on whether the defendant possessed the intent to perform criminal acts therein at the time the entry was granted"). The government argues that this logic cannot be applied to residential burglary because it would require a "double inference" to convict. Gov't Br. at 29–

30. This argument appears to suggest that, because criminal intent is often inferred from other circumstances and actions, the single inference of intent cannot be considered for more than one element. However, this argument runs into a number of immediate complications. First, the government cannot provide a rationale for why this so-called "double inference" can be made in a simple burglary context, but not in a residential burglary context.[3] Moreover, when finding that an entry was "without authority" under the limited authority doctrine, there still must be some showing of the limited authority that the individual had to be in the home. The government suggests that applying the doctrine to residences would have the "absurd result" of an individual being convicted of burglarizing their own home by stealing from their roommate. Gov't Br. at 13–14. Tellingly, however, despite the appellate court applying the limited authority doctrine to residences and other private spaces for approximately forty years, the government could not cite to a single such case; and it is not even clear that the state *could* bring

[3] The government asserts the claimed problem is not at issue in the home invasion context because there is no separate element in that context that the entry be "with intent" to commit a crime. Gov't. Br. at 29–30. However, in the home invasion context, finders of fact are still permitted to infer that an individual's entry was "without authority" where they find (via inference) that there was an intent to commit a crime in the residence.

such a prosecution because to show an unauthorized entry, they still must prove that the criminal intent exceeded the defendant's permission to be in the residence. See *Peeples*, 155 Ill. 2d at 487–88 ("consent given for a defendant's entry is vitiated by criminal actions engaged in by the defendant after entering, thus making his entry unauthorized").

## III. Adoption of the government's arguments would result in substantial disruption to the state of the law as currently practiced.

The prevailing view of the Illinois Appellate Court is that the limited authority doctrine applies to residences and other private spaces for purposes of the simple burglary, residential burglary, and home invasion statutes. See Glispie Br. at 20–23. This point of view has been codified by the Illinois Pattern Jury Instructions, and is in use around the state. See Illinois Pattern Jury Instructions Criminal, 4th, No. 11.53(A) (4th ed. 2000). The government has not provided this Court a compelling reason to undermine this prevailing practice.

## Conclusion

For these reasons, as well as those articulated in the opening brief, Defendant-Appellant Jeremy Glispie respectfully requests that this Court hold that the limited authority doctrine applies to subsection (a) of the Illinois residential burglary statute consistent such that one may be convicted of residential burglary upon a showing that they entered a residence with a concealed intent to commit a felony or theft even when the owner allowed them to enter and so answer the certified question from the Seventh Circuit Court of Appeals.

Respectfully submitted,

s/ Colleen M. Ramais
Colleen M. Ramais
ARDC No. 6302807
Assistant Federal Public Defender

Attorney for Defendant-Appellant,
Jeremy Glispie

**Certificate of compliance with Ill. S. Ct. R. 341**

I certify that this brief conforms with the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 2,383 words.

s/ Colleen M. Ramais
Colleen M. Ramais
Assistant Federal Public Defender

Dated: March 19, 2020

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**Notice of filing and proof of service**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 Ill. Comp. Stat. 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. The undersigned counsel of record hereby certifies that on that, on March 19, 2020, I electronically filed the foregoing with the Clerk of the Illinois Supreme Court using the Odyssey eFileIL system, which will send notification of such filing to counsel of record:

W. Scott Simpson, Assistant United States Attorney, 318 South Sixth Street, Springfield, Illinois 62701; w.scott.simpson@usdoj.gov

The undersigned also certifies that she has mailed a paper copy of this brief to Mr. Jeremy Glispie at the following address on March 19, 2020:

Jeremy Glispie, Reg. No. B86083, Stateville Correctional Center, P.O. Box 112, Joliet, Illinois 60434

s/ Colleen M. Ramais
Colleen M. Ramais
ARDC No. 6302807
Assistant Federal Public Defender
Office of the Federal Public Defender
300 W. Main Street
Urbana, Illinois 61801
Phone: (217) 373-0666
colleen_ramais@fd.org