

11.53A

Unauthorized Entry--Limited Authority Doctrine--Home Invasion And Residential Burglary

The defendant's entry into a dwelling of another is “without authority” if, at the time of entry into the dwelling, the defendant has an intent to commit a criminal act within the dwelling regardless of whether the defendant was initially invited into or received consent to enter the dwelling.

However, the defendant's entry into the dwelling is “with authority” if the defendant enters the dwelling without criminal intent and was initially invited into or received consent to enter the dwelling, regardless of what the defendant does after he enters.

Committee Note

This instruction should be given *only* when an issue arises regarding the defendant's criminal intent when he entered the dwelling, and whether this intent, or lack thereof, affects the status of his entry--”with authority” or “without authority”. See *People v. Bush*, 157 Ill.2d 248, 253-54, 623 N.E.2d 1361, 1364, 191 Ill.Dec. 475, 478 (1993).

The Illinois Supreme Court specifically requested that the Committee write an instruction which conveys the “limited-authority” doctrine to the jury. See *Bush*, 157 Ill.2d at 257, 623 N.E.2d at 1365, 191 Ill.Dec. at 479 (“an instruction regarding the limited authority doctrine is necessary to augment the IPI instructions on home invasion”). The “limited-authority” doctrine provides that a defendant's authority to enter a private residence is limited only to the specific purpose for which he entered. Thus, the defendant's entry into a dwelling is unauthorized if prior to the defendant's entry into the dwelling, the defendant intends to commit a criminal act within the dwelling. When this is the case, the status of his entry is *not affected* by whether he was invited into the dwelling or received consent to enter the dwelling. As noted by the court in *Bush*,

“No individual who is granted access to a dwelling can be said to be an authorized entrant if he intends to commit criminal acts therein, because, if such intentions had been communicated to the owner at the time of entry, it would have resulted in the individual's being barred from the premises *ab initio*.” *Bush*, 157 Ill.2d at 253-54, 623 N.E.2d at 1364, 191 Ill.Dec. at 478.

However, if the defendant does not form his criminal intent until after he has entered the dwelling, then his invited or consented entry into the dwelling is authorized. *Bush*, 157 Ill.2d at 253-54, 623 N.E.2d at 1364, 191 Ill.Dec. at 478; see also *People v. Peeples*, 155 Ill.2d 422, 487-88, 616 N.E.2d 294, 325, 186 Ill.Dec. 341, 372 (1993).

In *Bush*, an issue arose whether the defendant had been invited into another's residence wherein an altercation had occurred. The trial court, over the defendant's objection, supplemented the home invasion instructions with a non-IPI instruction which discussed whether the defendant's entry was unauthorized. The Illinois Supreme Court held that an instruction setting forth the limited authority doctrine was appropriate in this case, but that the trial court's non-IPI instruction had misstated the doctrine. Accordingly, the supreme court stated that the defendant was entitled to a new trial with an instruction which correctly set forth the limited authority doctrine. *People v. Bush*, 157 Ill.2d 248, 257, 623 N.E.2d 1361, 1365, 191 Ill.Dec. 475, 479 (1993).