No. 123092

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- MARCELUS WITHERSPOON Defendant-Appellee	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-15-0512. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois, No. 14-CF-1056. Honorable Thomas E. Griffith, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE

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POINTS AND AUTHORITIES **Page**

ISSUES PRESENTED FOR REVIEW

1. Whether Marcelus Witherspoon had the "authority" to enter the home within the meaning of the home-invasion statute because the complaining witness gave her consent and therefore his entry was not an unwanted intrusion.

   A. Whether the State's argument that the mere fact that Witherspoon violated the bond order meant that he lacked authority to make his consensual entry fails to take into account the purpose of the home-invasion statute.

   B. Whether a court order directed at the invitee does not affect the power of a tenant to consent to entry.

   C. Whether, considering that the purpose of the home-invasion statute is to punish unwanted intrusions, a person barred by a court order does not enter "without authority."

   D. Whether, in the alternative, the State did not prove that Witherspoon possessed the requisite knowledge that he lacked legal authority to enter despite receiving consent.

2. Whether the limited-authority doctrine does not apply because the trial court found that Marcelus Witherspoon did not possess the intent to commit battery when he entered the home.

STATEMENT OF FACTS

The statement of facts in the State's brief is adequate. Additional facts that are needed for an understanding of the issue on appeal will be included in the argument section.

ARGUMENT

I. Marcelus Witherspoon had the "authority" to enter the home within the meaning of the home-invasion statute because the complaining witness gave her consent, and therefore his entry was not an unwanted intrusion. The complaining witness's power as a tenant to allow entry to her home was unaffected by the bond order barring Witherspoon from the home. In the alternative, the State did not prove that Witherspoon knew that he lacked legal authority to enter under the statute despite receiving consent.

The purpose of the home-invasion statute is to punish unwanted intrusions into the home. If a resident gives consent to entry, the invitee does not invade the home. The statute's phrase "without authority" is not defined, and nowhere does the statute provide that a person who enters with consent nevertheless enters without authority if a court order bars his entry. That the invitee is violating the condition of a bail-bond order by entering is irrelevant to the issue of his guilt of home invasion, and his entry only constitutes the separate offense of violating a bail bond. The resident's power to invite persons onto the property derives from property law and not from a court, and a court order directed against the invitee does not affect this power. As the trial court found that the complaining witness gave her consent for Marcelus Witherspoon to enter her home, the appellate court properly reversed his home-invasion conviction. In the alternative, the State did not prove that Witherspoon knew that he lacked the legal authority to enter under the statute despite receiving consent. This Court should affirm the appellate court.

A. The State's argument that the mere fact that Witherspoon violated the bond order meant that he lacked authority to make his consensual entry does not take into account the purpose of the home-invasion statute.

The State makes the conclusory argument that it is because the bond order barred Witherspoon from entering the home that he lacked authority within the meaning of the home-invasion statute. (State's Br. at 12-13) The State does not examine the statute's purpose. (State's Br. at 12-13) The plain meaning of "invasion" is an unwanted intrusion, as Witherspoon argues in section C below. If a resident consents to entry, the invitee is not invading the home. Therefore, the invitee is not entering "without authority," and a court order barring his entry is irrelevant to the commission of home invasion.

The only case the State cites is inapt. (State's Br. at 13, citing *People v. Howell*, 358 Ill. App. 3d 512 (3d Dist. 2005)). There, the appellate court upheld defendant's conviction of home invasion, which was based on his entering a home without permission. *Howell*, 358 Ill. App. 3d at 515-16. The appellate court noted that an order of protection barred defendant from having contact with the person who lived there. *Id.* at 528. But the appellate court did not decide the different issue that is presented in Witherspoon's case: whether a person who is subject to a court order barring entry commits home invasion when he enters with the resident's consent.

This Court should reject the State's argument that the mere existence of the court order meant that Witherspoon lacked authority under the home-

invasion statute.

B. The power of a tenant to consent to entry derives from property law, and therefore a court order directed at the invitee does not affect that power.

The complaining witness rented her home. (R.XI. 135) A tenant has traditional property rights, including the power to decide who to exclude from the property. *See People v. Yutt*, 231 Ill. App. 3d 718, 722 (3d Dist. 1992); *see also* Restatement of Property (Second) § 1.2, cmt. a (1977) (the tenant has control over the property and the power to exclude others). A tenant's authority thus does not derive from a court, and a court cannot limit that right. Therefore, the bail-bond order directed at Witherspoon had no effect on the complaining witness's ability as a tenant to allow Witherspoon to enter. *See State v. Hall*, 47 P.3d 55 (Or. App. 2002). As the appellate court held in this case, "People are sovereign in their homes, and the law should be loath to attempt to regulate whom homeowners may permit to enter. This remains true even though a court order exists directing some person to stay away from the residence and to not enter it." *People v. Witherspoon*, 2017 IL App (4th) 150512, ¶ 29. The resident's decision "may be unwise, but it is one that the law must respect." *Witherspoon*, 2017 IL App (4th) 150512, ¶ 29.

In *Hall*, 47 P.3d 55, defendant appealed from his conviction for criminal trespass. Defendant had been previously charged with assault and had been released, subject to conditions stated in a release agreement. *Id.* The agreement prohibited defendant from having contact with the assault

victim. *Id.* After his release, defendant and the victim began living together; defendant was charged with criminal trespass for doing so. *Id.* An Oregon statute provided that a person committed criminal trespass if he entered a dwelling unlawfully; to enter unlawfully was defined as the entrant not being otherwise licensed or privileged to enter. *Id.* Defendant argued that he was given permission to enter, and the State argued that the permission was irrelevant because he violated a court order prohibiting him from entering. *Id.* at 55.

Hall noted that the State had not explained how a court order could limit a property owner's authority to invite others onto his property. 47 P.3d at 57. Also, the owner was not a party to the order, which restrained only defendant. *Id.* The order did not limit the owner's authority to invite whomever she pleased to her residence. *Id.* Therefore, the court held that the State failed to establish that the owner lacked actual authority to invite defendant onto her premises, and the court reversed the criminal-trespass conviction. *Id.*

Similarly, Witherspoon's bond order did not limit the complaining witness's power to allow him to enter her home, and her consent gave him authority under the home-invasion statute. Although *Hall*, 47 P.3d 55, is from another jurisdiction, the appellate court here followed its reasoning and found that the case supported its conclusion that Witherspoon did not enter "without authority." *Witherspoon*, 2017 IL App (4th) 150512, ¶ 30. The State has ignored *Hall*.

Moreover, the State incorrectly argues that the complaining witness's consent to Witherspoon's entry was "in contravention of superior legal authority." (State's Br. at 15) As in *Hall*, the complaining witness was not subject to the order barring Witherspoon to enter, and it did not bar her from allowing Witherspoon to enter her home. Her action therefore did not contravene any legal authority binding on her.

The State cites *In Interest of B.J.*, 268 Ill. App. 3d 449, 452 (4th Dist. 1994), which held only that court orders are not contingent upon the approval of third parties whom they are intended to benefit. (State's Br. at 14) In other words, a person could be guilty of violating the court order regardless of the third party's approval. But while the third party's disapproval of a court order is irrelevant to the question of whether the order was violated, the order does not vitiate the third party's ability to allow entry to her home and does not render the entry unauthorized. Witherspoon does not dispute that because the complaining witness allowed him to enter, he could be guilty of the offense of violating the bail-bond order. 720 ILCS 5/32-10(b) (2014). Indeed, *B.J.* establishes only that the complaining witness's consent to Witherspoon's entry could not be a defense to a violation of the bond order.

As Witherspoon could have been prosecuted for violating the order, the appellate court's holding did not allow the complaining witness to "override" the law or do an "end-run" around the bond condition or render unlawful behavior lawful, contrary to the State's contentions. (State's Br. at 13, 14, 16) (The State did charge Witherspoon with violating the bail bond, but it chose

to dismiss the count. (C.I. 19; R.XI. 116-17)) Witherspoon's entry was otherwise legal but for the court order, which was a limitation solely on him. Witherspoon is not suggesting that the complaining witness could authorize illegal activity in her home, such as drug dealing, by virtue of her tenant status.

The State also argues that as the complaining witness did not seek to alter the terms of the bond, she did not have the power to authorize unlawful conduct. (State's Br. at 15) However, the complaining witness's conduct did not have the effect of "authorizing" Witherspoon to violate his bail bond. Her consent meant only that he was not committing home invasion. The State cites *People v. Townsend*, 183 Ill. App. 3d 268, 271 (4th Dist. 1989), holding that a domestic-abuse victim's invitation to defendant to violate the order of protection does not free him from conviction for contempt. (State's Br. at 16) That case does not support the State's position that the complaining witness's consent did not prevent Witherspoon from being convicted of home invasion. Instead, *Townsend* supports Witherspoon's position that he could still be punished for violating the order.

The State offers distinguishable cases and analogies in arguing that the complaining witness's consent was not a defense to home invasion's element of unauthorized entry. (State's Br. at 14-15) In *People v. Priest*, 297 Ill. App. 3d 793, 806 (4th Dist. 1998), defendant was convicted of home invasion because the resident had refused him entry, and he returned later without authorization. The court held that any evidence showing that on

previous occasions the complaining witness allowed defendant into her home despite an order of protection was not relevant in determining whether she had authorized defendant to enter her home on the date in question. *Priest*, 297 Ill. App. 3d at 806. *Priest* is irrelevant to the issue in Witherspoon's case because the complaining witness there refused entry to defendant, and so there was no question his entry was unauthorized. The relevance of the *Priest* order of protection did not go to the complaining witness's legal ability to consent but merely to the admissibility of evidence related to prior entries by defendant. The court went on, only in *dicta,* to state that even if the trial court premised its exclusion of the previous-entry evidence on the fact that the order of protection alone prohibited defendant's entry, the trial court was correct in excluding the evidence–as defendant was not relieved from obeying the order even if the protected person did not want the benefit. *Id.* But the issue of defendant being prosecuted for violating the order is separate from the issue of whether entry with consent constitutes unauthorized entry for home invasion.

The State also gives an example of a homeowner not being able to prevent the police with a search or arrest warrant from entering the home, but it is not an analogous situation. (State's Br. at 14) Such a warrant gives the police affirmative authority to enter. The bail-bond order, in contrast, did not take away the complaining witness's power to allow Witherspoon to enter. Nor is the State's other example analogous: a person, subject to a court order prohibiting him from visiting his child, is still subject to the order

although invited into a relative's home when the child was present. (State's Br. at 14) Just as the relative's consent would not be a defense to the subject's violation of the order, the complaining witness's consent here would not be a defense to a charge against Witherspoon violating the bail bond. The consent is only a defense to home invasion.

Nor is the issue in Witherspoon's case similar to the issue of whether someone committed trespass by entering a home with permission of minor children where the homeowner had withdrawn authority to enter. (State's Br. at 15, citing *People v. Long*, 283 Ill. App. 3d 224 (2d Dist. 1996)). The State also cites *People v. Martin*, 115 Ill. App. 3d 103 (2d Dist. 1983), a burglary case, but its holding that a defendant's entry was without authority because a minor could not authorize defendant's entry for an unlawful purpose is irrelevant to the issue in Witherspoon's case. (State's Br. at 15)

Finally, the State makes in effect a policy argument that allowing a homeowner to permit entry to a person barred by court order would endanger the safety of domestic-battery victims. (State's Br. at 15) It is for the homeowner or tenant to decide whether to take that risk. *See Witherspoon*, 2017 IL App (4th) 150512, ¶ 29 ("The homeowner may simply change her mind or otherwise decide that–for whatever reason–she wishes to admit into her home a person who is otherwise under a court order not to enter.") Again, where defendant enters based on the complaining witness's consent, he may be convicted of violation of the order, but this does not meet the "without authority" element of home invasion. Furthermore, had the legislature

believed, pursuant to that safety concern, that such a person should be convicted of home invasion, the legislature could have included a definition of "without authority" that included anyone who is barred by court order.

If there was no bond order, the complaining witness's consent would have required acquittal of home invasion. Her consent was still a defense despite the bond order because it did not affect her power to allow entry. This Court should reject the State's argument that the complaining witness's consent to enter overrode superior legal authority.

C. Considering that the purpose of the home-invasion statute is to punish unwanted intrusions, a person barred by a court order does not enter "without authority."

The State argues that the legislature intended that a person subject to a court order barring entry who enters with consent is "without authority" under the home-invasion statute. (State's Br. at 17-19) This interpretation ignores the purpose of the statute, and the State erroneously relies on the definition of dwelling place of another, which is irrelevant to the analysis.

The legislature did not define "without authority" or "invasion." But where the terms of a statute are not defined, the courts will assume that they were intended to have their ordinary and popularly understood meanings unless doing so would defeat the perceived legislative intent. *People v. Hicks*, 101 Ill. 2d 366, 371 (1984). Also, courts may consider the reason for the law. *People v. Bradford*, 2016 IL 118674, ¶ 15. And it is to be presumed that the legislature did not intend to create unjust results. *Bradford*, 2016 IL 11867, ¶

25.

The dictionary definition of "invasion" is a hostile or forcible encroachment on the rights of another. Black's Law Dictionary (10th ed. 2014). The obvious purpose of the home-invasion statute is to punish unwanted intrusions: when persons enter a dwelling place without the resident's permission. Considering that purpose, the plain meaning of "invasion" in the statute must be entry made only without the resident's consent. The phrase "without authority" logically cannot include a person entering with consent–even if the person is subject to a court order barring entry. Nowhere does the statute provide that a person who received consent to enter lacks authority if a court order prohibits entry. Furthermore, that interpretation would yield unjust results as it would punish persons who did not invade the home. It is the consent of the resident that must determine if one enters "without authority."

The State argues that under the appellate court's view, a statute must address "all possible exceptions." (State's Br. at 18) The State ignores the nature of the offense of home invasion, as explained above. A person entering with consent is not an "exception" that must have been included in the statute. It is conduct that does not constitute home invasion in the first place.

The State incorrectly relies on the amended definition of "dwelling place of another" in subsection (d) of the home-invasion statute to assert that a defendant who violates an order of protection when entering a home commits home invasion. 720 ILCS 5/19-6(d) (2014). (State's Br. at 17-19) All

the amendment did was to define "dwelling place of another" to include a dwelling place in which defendant maintains a tenancy interest but where defendant has been barred by court order. 720 ILCS 5/19-6(d) (2014). Therefore, such a defendant's tenancy interest is no longer a defense to the element of dwelling place of another. However, the State still must prove the element of entry "without authority." Even a person with a tenancy interest who is barred by an order of protection can enter the home with "authority" if the resident consented because that entry is not unwanted.

The appellate court correctly interpreted subsection (d). It found that "the plain language of subsection (d) does not address the circumstances of this case." *Witherspoon*, 2017 IL App (4th) 150512, ¶ 25. Also, it found that subsection (d) rather addresses "a situation in which a person who claims to have some possessory interest in a dwelling place enters it despite a court order telling him to stay away from it." *Witherspoon*, 2017 IL App (4th) 150512, ¶ 27. "In that situation, *assuming no involvement by the dwelling place's resident*, that person's entry into the dwelling place would be without authority for purposes of the home invasion statute because of subsection (d)." (Emphasis in original). *Id.* at ¶ 27. The appellate court noted that because the trial court found that the complaining witness essentially consented to defendant's entry into her residence, "case law addressing whether defendant would have committed a home invasion *absent* that consent is simply irrelevant." (Emphasis in original.) *Id.* at ¶ 27.

The rules of statutory interpretation discussed above require the

conclusion that an invitee who has the resident's consent to enter does not lack authority based on a court order barring entry. But, even if this Court finds that the statute is ambiguous on this issue, the statute must be strictly construed in favor of Witherspoon. *See People v. Whitney*, 188 Ill. 2d 91, 98 (1999) (a penal statute must be strictly construed in favor of defendants). A strict construction of "without authority" would exclude such a person.

Considering the statutory language and purpose, this Court should find that a person barred from entry by a court order does not commit home invasion when given the tenant's consent to enter.

D. In the alternative, the State did not prove that Witherspoon possessed the requisite knowledge that he lacked legal authority to enter despite receiving consent.

Even if Witherspoon lacked authority within the meaning of the home-invasion statute, the State had to prove beyond a reasonable doubt that he knew that, despite having consent to enter, he lacked authority because of the legal effect of the bail-bond order. This Court can affirm the appellate court on the alternative basis that the State did not prove Witherspoon's knowledge.

A person is not guilty of an offense, other than one that involves absolute liability, unless, with respect to each element, he acts while having the mental state of intent, knowledge, recklessness, or negligence. 720 ILCS 5/4-3(a), 4-4, 4-5, 4-6, 4-7 (2014). The home-invasion statute does not provide a mental state for the element of without authority: "A person *** commits

home invasion when without authority he or she knowingly enters the dwelling place of another ***." 720 ILCS 5/19-6(a) (2014). But if a statute does not prescribe a particular mental state applicable to an element of an offense (other than an offense which involves absolute liability), any of the mental states of intent, knowledge, recklessness, or negligence is applicable. 720 ILCS 5/4-3(b) (2014).

A person may be guilty of an offense without having, as to each element thereof, one of the mental states if the offense is a misdemeanor that is not punishable by incarceration or by a fine exceeding $500 or if the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described. 720 ILCS 5/4-9 (2014). "The section is intended to establish, as an expression of general legislative intent, rather strict limitations upon the interpretation that mental state is not an element of an offense, although the express language of the provision defining the offense fails to describe such an element." *People v. Gean*, 143 Ill. 2d 281, 285 (1991) (quoting committee comments to section 4-9). Therefore, the mere absence of express language describing a mental state does not *per se* lead to the conclusion that none is required. *Gean*, 143 Ill. 2d at 285. If at all possible, a court will infer the existence of a culpable mental state, even where the statute itself appears to impose absolute liability. *People v. O'Brien*, 197 Ill. 2d 88, 92 (2001).

The possible punishment that can be imposed for a violation of a statute is an important factor in determining whether it is an absolute-

liability offense. *Gean*, 143 Ill. 2d at 287. Where the legislature has classified an offense as a felony, it stands to reason that the legislature intended to include a mental state as an element of the offense. *People v. Sevilla*, 132 Ill. 2d 113, 122-23 (1989). It would be unthinkable to subject a person to a long term of imprisonment for an offense he might commit unknowingly. *People v. Valley Steel Prod. Co.*, 71 Ill. 2d 408, 425 (1978). It is to be presumed that the legislature did not intend to create unjust results. *People v. Bradford*, 2016 IL 11867, ¶ 25. Therefore, where the punishment is great, it is less likely that the legislature intended to create an absolute liability offense. *Sevilla*, 132 Ill. 2d at 122.

The home-invasion statute does not clearly indicate that no mental state is required for the element of lacking authority. There is no explicit statement about strict liability. Also, that the offense is a Class X felony–the most serious felony possible–makes it more likely that the legislature did not intend that there was no mental state required. *See Gean*, 43 Ill. 2d at 287. It should be presumed that the legislature did not intend the unjust result that a person who received consent to enter from a resident, who has authority to give consent by virtue of her status, should be guilty of home invasion despite not knowing that legally a court order barring his entry nullifies that consent. This Court should find that the element of "without authority" requires a mental state.

Witherspoon acknowledges that one appellate court has interpreted a similar statute, for criminal trespass, as not requiring proof that defendant

knew he lacked authority to enter. *People v. Davis*, 2012 IL App (2nd) 100934, ¶¶ 15-17. The Court found that the legislature's failure to place any words before or around "without authority" indicated the intent that defendant's lack of authority need not be knowing. *Davis*, 2012 IL App (1st) 100934, ¶ 15. But, for the same reasons why the home-invasion statute should not be interpreted as requiring no mental state for this element, *Davis* was wrongly decided. Its analysis should not be followed in interpreting the home-invasion statute.

Logically, knowledge should be the applicable mental state for the element of "without authority." 720 ILCS 5/4-5(a) (2014) (a person knows, or acts knowingly or with knowledge of the nature of attendant circumstances of his conduct, described by the statute defining the offense, when he is consciously aware that his conduct is of that nature or that those circumstances exist). The State did not prove that Witherspoon knew, despite receiving consent to enter, that he lacked authority to enter. Indeed, the two lower courts in Witherspoon's case have disagreed as to whether a person in his situation legally lacks authority under the statute. Therefore, the legal issue was not settled by law at the time Witherspoon entered the home.

Furthermore, as the appellate court noted, Witherspoon relied upon the consent given to him to enter. *Witherspoon*, 2017 IL App (4th) 150512, ¶ 29. A defendant in Witherspoon's situation, relying on such consent, would not be on notice that the consent did not give him legal authority to enter and that he was subject to conviction of home invasion.

In the alternative, if there is any doubt regarding the interpretation of the "without authority" element of the home-invasion statute, this Court must err on the side of lenity. *People v. Jones*, 223 Ill. 2d 569, 581 (2006). A strict construction would be that the State has to prove that defendant knew that he lacked authority to enter. *See People v. Whitney*, 188 Ill. 2d 91, 98 (1999) (penal statutes are strictly construed in favor of the defendant).

If this Court finds that Witherspoon lacked authority by virtue of the bail-bond order, it should affirm on the alternative basis that the State did not prove that he knew he lacked legal authority under the home-invasion statute to enter the home despite receiving consent.

Conclusion

The court order directed at Witherspoon did not affect the complaining witness's power as a tenant, derived from property law, to decide who could enter her home. Witherspoon's consensual entry was not made without authority because the purpose of the home-invasion statute is to punish only unwanted intrusions. Even if the statute is ambiguous on this issue, it must be strictly construed so that a consensual entry made by one barred by court order is made with authority. In the alternative, the State did not prove beyond a reasonable doubt that Witherspoon knew that he lacked the legal authority to enter despite receiving consent.

This Court should affirm the judgment of the appellate court.

II. The limited-authority doctrine does not apply because the trial court found that Marcelus Witherspoon did not possess the intent to commit battery when he entered the home.

The State argues in the alternative that the trial court and appellate court reached an incorrect legal conclusion that the complaining witness had consented and that under the limited-authority doctrine, she did not authorize Marcelus Witherspoon's entry. (State's Br. at 19-22) However, these issues were forfeited and lack merit.

The State's petition for leave to appeal asked this Court to clarify whether a condition of bail bond to enter a dwelling place satisfied the "without authority" element of home invasion. (Petition, p. 5) The State did not ask this Court to review whether the trial court and the appellate court made an incorrect legal conclusion that consent was given. Nor did it argue that under the limited-authority doctrine, Witherspoon's entry was unauthorized. Therefore, these arguments have been forfeited in this Court. *People v. Ligon*, 239 Ill. 2d 94, 118 (2010).

In addition, the forfeited arguments lack merit. Under the limited-authority doctrine, one is an unauthorized entrant if one intends at the time of entry to commit criminal acts inside. *People v. Bush*, 157 Ill. 2d 248, 253 (1997). The reasoning is that if the intent had been communicated to the owner at the time of entry, she would have barred entry. *Bush*, 157 Ill. 2d at 253. Thus, the determination of whether an entry is unauthorized depends upon whether the defendant possessed the intent to perform a criminal act therein at the time entry was granted. *Id.*

The home-invasion count alleged, in relevant part, that Witherspoon intentionally caused injury to the complaining witness. (C.I. 15) The State argues that Witherspoon entered with intent to batter the complaining witness and that therefore he exceeded any limited authority to enter. (State's Br. at 22) However, the State ignores that the trial court here made the specific finding that the State had not proven that Witherspoon had entered with the intent to commit battery. (R.XI. 343) As he lacked this intent when he entered, the limited-authority doctrine does not apply. *Id.* Indeed, the prosecutor below recognized that because of this finding, Witherspoon could not be guilty under the limited-authority doctrine; the State therefore declined to rely on the doctrine as being "moot." (R.XIII. 349)

The State cites cases upholding convictions for home invasion, but they are distinguishable as defendants there possessed a criminal intent upon entry. *People v. Davis*, 173 Ill. App. 3d 300, 305 (1st Dist. 1988) (defendant and another person kicked in the door, defendant struck a resident with a gun and demanded money from him, and defendant threatened other people); *People v. Hudson*, 113 Ill. App. 3d 1041, 1044-45 (5th Dist. 1983) (upon two other persons arriving, defendant told the resident that they intended to rob him, and the appellate court implied that it found that defendant had the intent to do a criminal act upon entry). (State's Br. at 20-21)

The State argues that consent to enter in specific circumstances does not allow carte blanche entry and that Witherspoon did not have the authority to enter the complaining witness's home late at night without

knocking or to enter her bedroom. (State's Br. at 21-22) But the trial court heard the evidence about the circumstances of the entry, and it determined that the complaining witness had consented to the entry. (R.XII. 342-43)

Also, the State cites distinguishable cases on authority to enter that are limited to specific circumstances: *People v. Reynolds*, 359 Ill. App. 3d 207, 212-13 (2d Dist. 2005) (defendant was not given permission to enter on the occasion at issue); *People v. Brown*, 150 Ill. App. 3d 535, 538-40 (3d Dist. 1986) (defendant retained keys after moving out only because he wanted to be reimbursed by resident for the key-duplication cost; furthermore, defendant's entry through a window could not reasonably be construed to be pursuant to any invitation which arose from his key possession). (State's Br. at 21)

The State also argues that the lower courts erred in concluding, based on the complaining witness's testimony, that Witherspoon had authority to enter. (State's Br. at 21) The State claims that it is only attacking the legal conclusions of the trial court and appellate court, but it is actually trying to attack the finding of fact that the complaining witness gave her consent. (State's Br. at 19, 21) The appellate court rightly rejected this attack below, finding that the State was improperly asking it to second-guess the trial court's finding, which violated Supreme Court Rule 604(a) governing State appeals and double jeopardy. *Witherspoon*, 2017 IL App (4th) 150512, ¶¶ 33-37. The appellate court emphasized that the trial court had found Witherspoon "*factually* innocent" of home invasion. (Emphasis in original.)

Witherspoon, 2017 IL App (4th) 150512, ¶ 37. On appeal here, the State is making the same improper attack on the factual finding of consent. On this record, this Court has no basis to reverse this factual finding, which was based on the assessment of the complaining witness's testimony. *See People v. Coleman*, 301 Ill. App. 3d 37, 42 (1st Dist. 1998) (a reviewing court will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses).

This Court should reject the State's arguments as forfeited or, alternatively, find that the limited-authority doctrine does not apply as Witherspoon did not possess the requisite intent upon entry.

CONCLUSION

For the foregoing reasons, Marcelus Witherspoon, defendant-appellee, respectfully requests that this Court affirm the judgment of the appellate court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Adrienne N. River, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing 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 23 pages.

/s/Adrienne N. River
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No. 123092

IN THE

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NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 5, 2018, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Carol Chatman
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