

## 14.07A

### Unauthorized Entry--Limited Authority Doctrine--Burglary

The defendant's entry into a[n] [ (building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) ] is “without authority” if, at the time of entry, the defendant has an intent to commit a criminal act within the [ (building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) ] regardless of whether the defendant was initially invited in or received consent to enter.

However, the defendant's entry into the [ (building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) ] is “with authority” if the defendant enters without criminal intent and was initially invited in or received consent to enter, 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 building, house trailer, watercraft, aircraft, railroad car, or motor vehicle, 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). In *People v. Smith*, 264 Ill.App.3d 82, 91, 637 N.E.2d 1128, 1134, 202 Ill.Dec. 392, 398 (3d Dist.1994), the court approved use of an instruction setting forth the limited authority doctrine to the jury in a case where the defendant had been charged with burglary.

The “limited-authority” doctrine provides that a defendant's authority to enter a building, house trailer, watercraft, aircraft, railroad car, or motor vehicle is limited only to the specific purpose for which he entered. Thus, the defendant's entry is “without authority” if prior to entering, the defendant intends to commit a criminal act within the building, house trailer, watercraft, aircraft, railroad car, or motor vehicle. When this is the case, the status of his entry is *not affected* by whether he was invited into or received consent to enter the building, house trailer, watercraft, aircraft, railroad car, or motor vehicle. 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 entering, then his invited or consented entry is “with authority”. *Bush*, 157 Ill.2d at 253-54, 623 N.E.2d at 1364, 191 Ill.Dec. at 478; *People v. Bailey*, 188 Ill.App.3d 278, 284-87, 543 N.E.2d 1338, 1341-43, 135 Ill.Dec. 591, 594-96 (5th Dist.1989).

In *Bush*, the Illinois Supreme Court specifically requested that the Committee write an instruction which conveys the “limited-authority” doctrine to the jury when the defendant is charged with the offense of home invasion. *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”); see Instruction 11.53A. In *Bush*, the court also approvingly cited *People v. Hudson*, 113 Ill.App.3d 1041, 1045, 448 N.E.2d 178, 181, 69

Ill.Dec. 718, 721 (5th Dist.1983), which stated that the “without authority” language in the home invasion statute and the burglary statute should be construed consistently. *Bush*, 157 Ill.2d at 254, 623 N.E.2d at 1364, 191 Ill.Dec. at 478. Thus, the Committee believes that the supreme court's analysis in *Bush* extends to the offense of burglary because of its similar use of the phrase “without authority”, and has accordingly provided this instruction. See also *Smith*, 264 Ill.App.3d at 91, 637 N.E.2d at 1133-34, 202 Ill.Dec. at 397-98.

In *Bush*, an issue arose whether the defendant had been invited into another's residence wherein an altercation had ensued. 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).