No. 125483

IN THE
SUPREME COURT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	Certified Question
Plaintiff,	)	United States Court of Appeals
	)	for the Seventh Circuit,
v.	)	No. 19-1224
	)	
JEREMY GLISPIE,	)	
	)	
Defendant.	)	

BRIEF OF PLAINTIFF UNITED STATES OF AMERICA

JOHN C. MILHISER
United States Attorney

W. SCOTT SIMPSON
Illinois ARDC Number 6333721
Assistant United States Attorney
Office of the United States Attorney
318 South Sixth Street
Springfield, Illinois 62701-1806
(217) 492-4413

Counsel for the United States

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Carolyn Taft Grosboll
SUPREME COURT CLERK

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POINTS AND AUTHORITIES

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NATURE OF THE CASE[1]

The Illinois residential-burglary statute requires (1) unauthorized entry or remaining (or entry by false representation) and (2) intent to commit a felony or theft. 720 ILCS 5/19-3(a) (West 2013). The question in this case, certified by the United States Court of Appeals for the Seventh Circuit, is whether residential burglary is covered by the limited-authority doctrine that this Court has adopted for home invasion and simple burglary by unauthorized entry (but not simple burglary by unauthorized remaining). *See United States v. Glispie*, 943 F.3d 358 (7th Cir. 2019); *see also People v. Peeples*, 155 Ill. 2d 422, 616 N.E.2d 294 (1993) (home invasion); *People v. Johnson*, 2019 IL 123318 (burglary by entry); *People v. Bradford*, 2016 IL 118674, 50 N.E.3d 1112 (burglary by remaining).[2] Thus, the question here is "whether, and if so under what circumstances, the limited-

[1] We use the following abbreviations for record citations: "Def. Br." refers to the defendant's opening brief in this proceeding, and "Def. Br. CA7" refers to the defendant's opening brief in the Seventh Circuit, filed on April 17, 2019. The Seventh Circuit included the parties' federal briefs in transmitting its certification decision to this Court.

[2] Because this Court held in *Bradford* that the limited-authority doctrine does not apply to simple burglary by unauthorized remaining, the doctrine presumably does not apply to residential burglary by remaining, even in absence of a decision by this Court addressing the question certified by the Seventh Circuit. Thus, the question here is, specifically, whether the doctrine applies to residential burglary by unauthorized entry.

authority doctrine applies to [the] residential burglary statute." 943 F.3d at 372.

The Seventh Circuit certified this question because that court must decide whether residential burglary in Illinois constitutes "generic burglary" under federal sentence-enhancement law, which the U.S. Supreme Court defines as having three distinct elements: "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Taylor v. United States*, 495 U.S. 575, 599 (1990). If the limited-authority doctrine were applied to Illinois residential burglary – that is, if the unauthorized-entry and intent elements merged under certain circumstances – then residential burglary would not count as "generic burglary" for purposes of recidivist sentencing under the federal Armed Career Criminal Act, 18 U.S.C. § 924(e).

Under the limited-authority doctrine, courts infer the unauthorized entry required for simple burglary by entry and home invasion from the prosecution's proof of criminal intent at the time an invitee enters the premises. *See Johnson*, 2019 IL 123318, ¶¶ 28, 47; *Peeples*, 155 Ill. 2d at 487-88, 616 N.E.2d at 325. On its face, however, the residential-burglary statute requires the prosecution to prove both unauthorized entry and criminal

intent, such that the limited-authority doctrine does not apply. 720 ILCS 5/19-3(a) (West 2013). That fact alone should resolve this matter.

In any event, assuming the residential-burglary statute were ambiguous in this regard, this Court's rules on statutory construction would also militate in favor of requiring proof of both elements and thus against applying the limited-authority doctrine. A criminal statute that reflects a common-law antecedent must be construed "based largely on the common-law understanding of that offense." *People v. Reese*, 2017 IL 120011, ¶ 37, 102 N.E.3d 126, 138 (2017). Also, a statute "in derogation of the common law" must be "strictly construed in favor of persons sought to be subjected to their operation" – here, the accused – and "to effect the least – rather than the most – alteration in the common law." *People v. Perry*, 224 Ill. 2d 312, 332, 864 N.E.2d 196, 209 (2007); *Rush Univ. Med. Ctr. v. Sessions*, 2012 IL 112906, ¶ 16, 980 N.E.2d 45, 51. Moreover, applying the limited-authority doctrine to residential burglary would permit the "absurd" result of convicting lessees and co-tenants of burglarizing their own homes. *See People v. Hunter*, 2017 IL 121306, ¶ 28, 104 N.E.3d 358, 365; *People v. Bailey*, 188 Ill. App. 3d 278, 297, 543 N.E.2d 1338, 1349 (1989) (Chapman, J., dissenting) (providing illustrations).

Finally, other aspects of the history of the residential-burglary statute counsel against applying the limited-authority doctrine. When the General Assembly enacted the statute in 1981, this Court had applied that doctrine only to public buildings, not to private dwellings, *see Peeples*, 155 Ill. 2d 422, 616 N.E.2d 294 (applying doctrine to home invasion in 1993), so that the enactment did not incorporate the limited-authority doctrine. And applying the doctrine to residential burglary would render superfluous the legislature's addition of the "false representation" option to the statute in 2010, *see* 720 ILCS 5/19-3(a-5) (West 2013). A showing of false representation under that provision replaces the requirement in subsection (a) that the entry be without authority, but applying the limited-authority doctrine would allow the State to satisfy the unauthorized-entry requirement by showing criminal intent.

In arguing that the limited-authority doctrine applies to residential burglary, the defendant seeks to analogize this offense to simple burglary and home invasion, 720 ILCS 5/19-1 (West 2018); 720 ILCS 5/19-6 (West 2013), and to rely on court decisions and rationales regarding the burglary of commercial establishments. In construing the residential-burglary statute, however, this Court is not bound by prior holdings regarding the burglary or home-invasion statutes. These are three separate statutes,

enacted at different times, and residential burglary, as the modern embodiment of the common-law offense of burglary with its particular rationales and purposes, stands apart from other statutes. Also, precedent regarding commercial establishments and other public buildings does not control here because of essential differences between access to such buildings and access to private homes, and precedent regarding home invasion does not control because of essential differences between the home-invasion statute and the residential-burglary statute.

Accordingly, this Court should answer the Seventh Circuit's question by holding that the limited-authority doctrine does not apply to residential burglary in Illinois.

ARGUMENT

I. Residential Burglary Requires the Prosecution to Prove Both Unauthorized Entry and Criminal Intent.

A. The Plain Language of the Statute Requires Proof of Both Elements.

"[T]he cardinal rule of statutory construction is to give effect to the intent of the legislature." *People v. Donoho*, 204 Ill. 2d 159, 188, 788 N.E.2d 707, 724 (2003). "The best indication of this intent is the statutory language, given its plain and ordinary meaning." *People v. Bradford*, 2016 IL 118674, ¶ 15, 50 N.E.3d 1112, 1115. "Where the language is plain and

unambiguous, it must be applied without resort to further aids of statutory construction." *Id*.[3]

On its face, the residential-burglary statute requires the prosecution to show (1) that the defendant "knowingly and without authority enter[ed] or knowingly and without authority remain[ed] within the dwelling place of another," and (2) that the defendant, at that time, had "the intent to commit therein a felony or theft." 720 ILCS 5/19-3(a) (West 2013). Nowhere does the statute imply that a court may infer the required unauthorized entry or remaining from the required criminal intent. The language of the statute, therefore, forecloses applying the limited-authority doctrine.

[3] Some decisions of this Court endorse considering the purposes of a statute (although not its legislative history) in determining, as an initial matter, whether the statute is ambiguous. *See Bradford*, 2016 IL 118674, ¶ 15, 50 N.E.3d at 1115 ("The best indication of [the legislature's] intent is the statutory language, given its plain and ordinary meaning. . . . We may consider the reason for the law, the problems to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. Where the language is plain and unambiguous, it must be applied without resort to further aids of statutory construction.") (citations omitted); *see also People v. Grant*, 2016 IL 119162, ¶ 20, 52 N.E.3d 308, 313 ("To discern the plain meaning of statutory terms, it is appropriate for the reviewing court to consider the statute in its entirety, the subject it addresses, and the apparent intent of the legislature in enacting it.").

B. The Statute's Purposes and History Support Requiring Proof of Both Unauthorized Entry and Criminal Intent.

Assuming the language of the residential-burglary statute does not alone resolve the question certified by the Seventh Circuit, the statute's purposes and history also strongly militate against applying the limited-authority doctrine. If a statute is ambiguous, "courts may look beyond the statutory language and consider the purpose of the law, the evils it was intended to remedy, and the legislative history of the statute." *Johnston v. Weil*, 241 Ill. 2d 169, 175-76, 946 N.E.2d 329, 335 (2011); *see Bradford*, 2016 IL 118674, ¶ 15, 50 N.E.3d at 1115 (court "may consider the reason for the law, the problems to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another"). "The language of a statute is ambiguous if it is susceptible to more than one reasonable interpretation." *People v. Boyce*, 2015 IL 117108, ¶ 22, 27 N.E.3d 77, 83.

Although the United States believes the "plain and ordinary meaning" of the residential-burglary statute forecloses applying the limited-authority doctrine, the defendant's positions in this litigation and the decisions of the Illinois Appellate Court support looking beyond the statutory language if necessary. In his brief to the Seventh Circuit, the defendant acknowledged that this statute, on its face, "appears to require not only that the State prove that a defendant had intent to commit a crime

at the time of entry, but also that the entry be 'without authority.'" Def. Br. CA7, at 13; *see United States v. Glispie*, 943 F.3d 358, 364 (7th Cir. 2019) (noting defendant's admission). The defendant argued, nevertheless, that the unauthorized entry required for residential burglary should be inferred from proof of criminal intent pursuant to the limited-authority doctrine – even though this Court has never so held. Def. Br. CA7, at 17-21.

Moreover, different districts of the Illinois Appellate Court have disagreed regarding the scope of the limited-authority doctrine. For example, prior to this Court's decision in *People v. Johnson*, 2019 IL 123318, the Second, Third, and Fourth Districts disagreed as to whether the doctrine applied to simple burglary by unauthorized entry under 720 ILCS 5/19-1. *See People v. Moore*, 2018 IL App (2d) 160277, 107 N.E.3d 402 (applying doctrine), *appeal denied*, 132 N.E.3d 310 (Ill. 2019); *People v. Johnson*, 2018 IL App (3d) 150352, 94 N.E.3d 289 (declining to apply doctrine), *rev'd*, 2019 IL 123318; *People v. Burlington*, 2018 IL App (4th) 150642, 99 N.E.3d 577 (applying doctrine), *appeal denied*, 132 N.E.3d 308 (Ill. 2019). And, although the First District applied the doctrine to a case of residential burglary in *People v. Scott*, 337 Ill. App. 3d 951, 787 N.E.2d 205 (2003), the Third District's decision in *Johnson*, *supra*, suggests that it would decline to do so. *See Johnson*, 2018 IL App (3d) 150352, ¶ 34, 94 N.E.3d at

295 ("[B]urglary aims to punish circumstances where a trespass and unwelcomed criminal intent combine to harm the victim more than either individual crime; the whole is greater than the sum of its parts."). As this Court has noted, a "difference in appellate court interpretations" of a statute "strongly suggests" that the statute is ambiguous. *See Ready v. United/Goedecke Servs., Inc*., 232 Ill. 2d 369, 379, 905 N.E.2d 725, 731 (2008).

1. Burglary at Common Law Required Unauthorized Entry and Criminal Intent, Independently Proven.

Burglary at common law was "the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony." *Taylor v. United States*, 495 U.S. 575, 580 n.3 (1990) (emphasis added) (quoting 2 W. LaFave & A. Scott, Substantive Criminal Law § 8.13, at 464 (1986)). Consistent with the requirement of a "breaking," "a burglary charge could not be maintained where an unlimited consent to entry was given by an owner or occupant of a building or dwelling, or by some other authorized person, regardless of the defendant's intent at the time of entry." Judy E. Zelin, Annot., *Maintainability of Burglary Charge, Where Entry into Building Is Made with Consent*, 58 A.L.R.4th 335, § 3 (1987); *see Smith v. State*, 477 N.E.2d 857, 862 (Ind. 1985) ("In jurisdictions, such as Indiana, which retain the common law definition of burglary by requiring a breaking, there can be no breaking and therefore no burglary where the

owner or other authorized person consents to entry, since a consensual entry is not an unlawful or illegal entry."). Thus, under common-law burglary, unauthorized entry could not be inferred from the defendant's criminal intent.

2. The Common-Law Roots of Residential Burglary and Related Principles of Statutory Construction Counsel Requiring Proof of Both Unauthorized Entry and Criminal Intent.

Several principles declared and followed by this Court counsel in favor of construing the residential-burglary statute consistent with its common-law roots – that is, as requiring the prosecution to prove both unauthorized entry and criminal intent.

First, this Court has observed that, in enacting the residential-burglary statute in 1981, the General Assembly "attempted to restore to this crime the original status of the crime of burglary – an offense against . . . a structure or enclosure which is used for habitation purposes, and to make residential burglary a more serious offense than the ordinary illegal invasion of other types of structures or enclosures." *People v. Bales*, 108 Ill. 2d 182, 191, 483 N.E.2d 517, 521 (1985). Reflecting that intent, for example, the legislature enacted more stringent penalties for residential burglary than for simple burglary or other offenses. Residential burglary is a Class 1 felony, punishable by four to fifteen years in prison. 720 ILCS 5/19-3(b)

(West 2013); 730 ILCS 5/5-4.5-30(a) (West 2020). In contrast, for example, simple burglary of a building is a Class 2 felony, punishable by three to seven years in prison, 720 ILCS 5/19-1(b) (West 2018); 730 ILCS 5/5-4.5-35(a) (West 2017); theft of property from a person not exceeding $500 in value is generally a Class 3 felony, punishable by two to five years in prison, 720 ILCS 5/16-1(b)(4) (West 2020); 730 ILCS 5/5-4.5-40(a) (West 2017); and retail theft, depending on the amount stolen and other circumstances, is generally either a Class A misdemeanor, punishable by less than one year's imprisonment, or a Class 4 felony, punishable by one to three years in prison, 720 ILCS 5/16–25(f) (West 2012); 730 ILCS 5/5–4.5–55(a) (West 2019), 730 ILCS 5/5-4.5-45(a) (West 2017). Since the General Assembly meant to "restore" burglary to its "original status" in enacting the residential-burglary statute, the statute is best understood as requiring separate proof of unauthorized entry and criminal intent, like the common-law crime.

Second, in relation to construing Illinois statutes generally, this Court has held that a criminal statute reflecting a common-law offense should be construed "based largely on the common-law understanding of that offense." *People v. Reese*, 2017 IL 120011, ¶ 37, 102 N.E.3d 126, 138 (citing *People v. Strickland*, 154 Ill. 2d 489, 609 N.E.2d 1366 (1992)). "The

common law, having been classified and arranged into a logical system of doctrine, principles, rules and practices, furnishes one of the most reliable backgrounds upon which analysis of the objects and purposes of a statute can be determined." *Advincula v. United Blood Servs.*, 176 Ill. 2d 1, 21-22, 678 N.E.2d 1009, 1019-20 (1996). For example, in *Strickland*, *supra*, this Court relied partly on the common-law understanding of armed robbery to construe 720 ILCS 5/18-2 (formerly Ill. Rev. Stat. 1985, ch. 38, par. 18–2(a)). *See* 154 Ill. 2d at 524-25, 609 N.E.2d at 1382 (citing 2 W. LaFave & A. Scott, Substantive Criminal Law § 8.11(e), at 452-54 (1986)); *see also People v. Pierce*, 226 Ill. 2d 470, 479, 877 N.E.2d 408, 412 (2007) ("This court then interpreted the robbery statute in conformity with the common law definition . . . ."). This overall principle of statutory construction further militates in favor of requiring proof of both unauthorized entry and criminal intent for residential burglary, as at common law.

Third, "[t]he rule in Illinois is that statutes in derogation of the common law are to be strictly construed in favor of persons sought to be subjected to their operation" and "to effect the least – rather than the most – alteration in the common law." *People v. Perry*, 224 Ill. 2d 312, 332, 864 N.E.2d 196, 209 (2007); *Rush Univ. Med. Ctr. v. Sessions*, 2012 IL 112906, ¶ 16, 980 N.E.2d 45, 51. "In construing such a statute, a court will not

presume that the legislature intended an innovation of the common law further than that which the statutory language specifies or clearly implies." *Williams v. Manchester*, 228 Ill. 2d 404, 419, 888 N.E.2d 1, 10 (2008). This means that a criminal statute in derogation of the common law must be strictly construed in favor of the accused. *See People v. Haywood*, 118 Ill. 2d 263, 272-73, 515 N.E.2d 45, 49-50 (1987) (construing Ill. Rev. Stat. 1985, ch. 38, par. 12-13(a)(1) [now 720 ILCS 5/11-1.20] consistent with common-law rape and in favor of accused).

Since burglary at common law (that is, residential burglary) required both unauthorized entry (breaking and entering) and criminal intent, independently proven, this Court must "strictly construe" the Illinois residential-burglary statute in favor of potential defendants, as requiring proof of both elements. As noted earlier, this statute on its face requires the prosecution to prove both unauthorized entry and criminal intent. Construing the statute "strictly" and "to effect the least . . . alteration in the common law" requires concluding that it requires proving both of these elements rather than inferring the existence of one element from proof of the other.

Fourth and finally, this Court has "an obligation to construe statutes in a manner that will avoid absurd, unreasonable, or unjust results that the

legislature could not have intended." *People v. Hunter*, 2017 IL 121306, ¶ 28, 104 N.E.3d 358, 365. "The process of statutory interpretation should not be divorced from consideration of real-world results." *People v. Fort*, 2017 IL 118966, ¶ 35, 88 N.E.3d 718, 728. Applying the limited-authority doctrine to residential burglary would lead to absurd results regarding lessees and co-tenants, who could, under the limited-authority doctrine, be convicted of residential burglary of their own apartments or houses. For example, if two men share an apartment and one enters and steals his roommate's cash from a kitchen drawer, the first man could be convicted of burglarizing his own apartment, exposing him to the enhanced penalties of residential burglary. *Cf. People v. Bailey*, 188 Ill. App. 3d 278, 297, 543 N.E.2d 1338, 1349 (1989) (Chapman, J., dissenting) (stating that in such scenarios, the limited-authority doctrine "effectively reads the phrase 'without authority' out of the statute"). The General Assembly could not have intended such results.

3. Other Aspects of the History of the Residential-Burglary Statute Counsel Against Inferring Unauthorized Entry from Proof of Criminal Intent.

The histories of the residential-burglary statute and the limited-authority doctrine further belie any assertion that the General Assembly meant to incorporate that doctrine into the statute.

a. The General Assembly's enactment of the residential-burglary statute in 1981 did not incorporate the limited-authority doctrine.

This Court adopted what later became known as the limited-authority doctrine in *People v. Weaver*, 41 Ill.2d 434, 243 N.E.2d 245 (1968), *cert. denied sub nom. Weaver v. Illinois*, 395 U.S. 959 (1969); *see People v. Wilson*, 155 Ill.2d 374, 614 N.E.2d 1227 (1993) (first using the term "limited-authority doctrine"). *Weaver*'s holding was that "authority to enter a *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." 41 Ill. 2d at 439, 243 N.E.2d at 248 (emphasis added); *see People v. Johnson*, 2019 IL 123318, ¶ 6 (noting that *Weaver* "set forth the limited authority a person has to enter a business building or other building open to the public"). In 1972, this Court applied the doctrine to the burglary of a car wash, again rejecting a contention that entry of a "public place" cannot constitute entry "without authority." *People v. Blair*, 52 Ill. 2d 371, 374, 288 N.E.2d 443, 445 (1972). Not until 1993, in *People v. Peeples*, 155 Ill. 2d 422, 616 N.E.2d 294, did the Court apply the limited-authority doctrine to a private dwelling – in a case under the home-invasion statute, 720 ILCS 5/19-6(a). *See People v. Reid*, 179 Ill. 2d 297, 316-17, 688 N.E.2d 1156, 1165 (1997) (describing enactment of home-invasion statute).

Thus, when the General Assembly enacted the residential-burglary statute in 1981, this Court had applied the limited-authority doctrine only to the entry of *public* buildings. Indeed, in both *Weaver* and *Blair*, the Court expressly limited the doctrine to that context. The legislature did not, therefore, enact the residential-burglary statute in light of any rule applying this doctrine to private buildings. Moreover, that statute is expressly limited to the entry of "dwelling place[s]" – that is, buildings clearly not covered by this Court's then-existing decisions on the limited-authority doctrine. *See People v. Johnson*, 2019 IL 123318, ¶ 35 ("[A] newly enacted statute will generally not be construed to change settled law unless its terms clearly require such a construction.").

b. The 2010 amendment to the residential-burglary statute forecloses any argument that the limited-authority doctrine applies.

The General Assembly's amendment of the residential-burglary statute in 2010 also belies the defendant's assertion that the limited-authority doctrine applies.

In construing a statute, a court must "give effect to every word, clause, and sentence," if possible, and avoid "render[ing] any part [of the statute] superfluous or meaningless." *Palm v. Holocker*, 2018 IL 123152, ¶ 21, 131 N.E.3d 462, 469; *see People v. Salem*, 2016 IL 118693, ¶ 16, 47

N.E.3d 997, 1003 (court is "obliged to avoid a construction which renders a part of the statute superfluous or redundant, and instead presume that each part of the statute has meaning"). As the U.S. Supreme Court has said, this "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013). "Statutory provisions should be read in concert and harmonized." *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 25, 998 N.E.2d 1227, 1235.

The residential-burglary statute sets forth two alternative ways of establishing the offense. The first, enacted in 1981, says someone commits the crime by "knowingly and without authority enter[ing] or knowingly and without authority remain[ing] within the dwelling place of another . . . with the intent to commit therein a felony or theft." 720 ILCS 5/19-3(a) (West 2013). The second alternative, which the General Assembly added in 2010, says someone commits residential burglary by "falsely represent[ing] himself or herself . . . for the purpose of gaining entry to the dwelling place of another, with the intent to commit therein a felony or theft or to facilitate the commission therein of a felony or theft by another." *Id.* § 5/19-3(a-5); *see* 2010 Ill. Legis. Serv. P.A. 96-1113. Thus, when a defendant is charged under subsection (a-5), the false representation under that provision

replaces the requirement in subsection (a) that the entry be without authority.

If the limited-authority doctrine were applied to subsection (a), the false-representation provision would have been unnecessary. In that event, a defendant's intent to commit a felony or theft would itself make the entry unauthorized under subsection (a), obviating any need for the option to prove false representation rather than unauthorized entry as permitted by subsection (a-5). In other words, if the unauthorized-entry requirement under subsection (a) could be met merely by a finding of criminal intent at the time of entry or remaining, as permitted by the limited-authority doctrine, there would have been no substantial reason for adding subsection (a-5) as an alternative. Thus, applying the limited-authority doctrine to residential burglary would make the 2010 addition surplusage, violating one of this Court's "cardinal rules of statutory construction." *Fisher v. Waldrop*, 221 Ill. 2d 102, 115, 849 N.E.2d 334, 341 (2006).

Granted, as the Seventh Circuit observed in a footnote, the final phrase of subsection (a-5) encompasses a defendant's entry by false representation "to facilitate the commission . . . of a felony or theft by another," whereas subsection (a), on its face, applies only to the defendant's own commission of a felony or theft. *See Glispie*, 943 F.3d at 368 n.19; *see also*

Def. Br. 25. Thus, the court said, subsection (a-5) encompasses individuals who are "casing" a residence for an accomplice. 943 F.3d at 368 n.19. Someone casing a residence for an accomplice, however, would have "the intent to promote or facilitate [the] commission" of burglary as an aider or abettor. 720 ILCS 5/5-2(c) (West 2010) (providing that aiders and abettors are "equally responsible for the consequences of those further acts"). Additionally, a person who cases a dwelling in order to facilitate the commission of burglary has taken a "substantial step" toward the commission of that offense, such that he could be prosecuted for attempt. *See* 720 ILCS 5/8-4(a) (West 2010) (defining the elements of "attempt"). *But see id.* § 8-4(c)(3) (stating that an attempted Class 1 felony is punishable as a Class 2 felony). Thus, if the limited-authority doctrine were read into subsection (a), it not clear that the legislature accomplished anything by enacting subsection (a-5) other than enacting a superfluous provision.

Lastly, contrary to the defendant's argument (Def. Br. 24), the General Assembly's addition of a false-representation option to the home-invasion statute at the same time should not affect this Court's interpretation of the residential-burglary statute. When the legislature made those amendments in 2010, this Court had already held that the limited-authority doctrine applies to home invasion. *See Peeples*, 155 Ill. 2d 422, 616

N.E.2d 294. Although the United States is aware of no legislative history on the General Assembly's thinking in relation to the limited-authority doctrine at the time, the legislature simply may have wanted to ensure that false representation could lead to a conviction for home invasion, notwithstanding that the limited-authority doctrine already permitted prosecutors to pursue that theory.[4] The legislature's action does not, however, encourage a construction that would render superfluous part of a different statute.

II. Decisions and Rationales Regarding Other Statutes Do Not Dictate Construction of the Residential-Burglary Statute.

The defendant's other arguments cannot defeat the plain language of the residential-burglary statute and the significance of its purposes and history.

[4] The Senate sponsor of the bill that became the 2010 amendments said, "Situation in Will County - this is an initiative of the Will County Sheriff - folks are being deceived, especially elderly folks. They're being deceived, allowed into the residence and them committing a burglary. I think this is good public policy." Illinois Senate Transcript, 2010 Reg. Sess. No. 97 (Mar. 15, 2010). There was no further discussion on the Senate floor, and no statement regarding prosecution efforts. The bill was introduced on February 11, 2010, and passed both houses by April 23, 2010. *See* Bill Status of SB3684, 96th General Assembly, http://www.ilga.gov/ legislation/ BillStatus_pf.asp? DocNum=3684& DocTypeID= SB&LegID= 51872&GAID= 10&SessionID=76&GA=96 (last visited Mar. 2, 2020).

A. Residential Burglary Stands Apart from Other Statutes.

1. This is a separate statute as a matter of legislative enactment.

The defendant argues that this Court must construe the elements of the burglary, home invasion, and residential-burglary statutes in the same way because all three statutes use the term "without authority." Def. Br. 3. It is true, as this Court has held, that "where the same words appear in different parts of the *same statute*, they should be given the same meaning unless something in the context indicates that the legislature intended otherwise." *McMahan v. Indus. Comm'n*, 183 Ill. 2d 499, 513, 702 N.E.2d 545, 552 (1998) (emphasis added). But the burglary, home invasion, and residential-burglary statutes are *not* the "same statute." The General Assembly enacted them at different times (1961, 1978, and 1981, respectively), and they are codified in different sections of the Illinois Compiled Statutes.

Moreover, as this Court has recognized, "[there are] limitations in importing definitions from other statutes, since the context in which a term is used obviously bears upon its intended meaning. Even when two statutes share nearly identical definitions, there can be critical differences in context . . . ." *People ex rel. Illinois Dep't of Labor v. E.R.H. Enters.*, 2013 IL 115106, ¶ 29, 4 N.E.3d 1, 8 (citations omitted); *cf. Yates v. United States*, 574

U.S. 528, 135 S. Ct. 1074, 1082 (2015) ("[I]dentical language may convey varying content when used in different statutes, sometimes even in different provisions of the same statute."). Different statutes may have different purposes and may be directed at remedying different problems, and each statute has its own legislative history – all potentially leading to different interpretations. *See People v. Bradford*, 2016 IL 118674, ¶ 15, 50 N.E.3d 1112, 1115; *Johnston v. Weil*, 241 Ill. 2d 169, 175-76, 946 N.E.2d 329, 335 (2011). Thus, "mischief can result if [the same words appearing in different statutes] are given one meaning regardless of the statutory context." *Lee v. Madigan*, 358 U.S. 228, 230-31 (1959).

2. Residential burglary is conceptually and historically distinct from other statutes.

Even aside from its status as a separate statute, the deep roots and unique justifications of residential burglary under the common law set it apart from other offenses.

At common law, all burglary was residential burglary; as stated earlier, burglary was defined as "the breaking and entering *of the dwelling house of another* in the nighttime with the intent to commit a felony." *Taylor v. United States*, 495 U.S. 575, 580 n.3 (1990) (emphasis added). Common-law burglary arose out of a desire to protect the home and the safety and

peace of its residents. As noted in the American Law Institute's commentary on the Model Penal Code, "The dwelling was and remains each man's castle, the final refuge . . . . It is the place of security for his family, as well as his most cherished possessions." *See* Model Penal Code, § 221.1 Commentary, at 67 (Am. Law. Inst. 1980). The common law affirmed that intrusion into the home with criminal intent produced fear on the part of residents and a significant risk of violent encounters between perpetrators and residents. *See* 4 William Blackstone, Commentaries *223 (noting that burglary at common law "has always been looked upon as a very heinous offence: not only because of the abundant terror that it naturally carries with it, but also as it is a forcible invasion and disturbance of [the] right of habitation"), *available at* Blackstone's Commentaries on the Laws of England, https://avalon.law.yale.edu/ 18th_century/ blackstone_ bk4ch16.asp (last visited Mar. 2, 2020).

This Court's decision in *People v. Bales*, regarding the modern residential-burglary and simple-burglary statutes, reflects the distinctive nature of residential burglary and thus of common-law burglary. 108 Ill. 2d 182, 483 N.E.2d 517 (1985). In *Bales*, the Court rejected a contention that punishing residential burglary more severely than simple burglary violated the Equal Protection Clause of the U.S. Constitution. In contrast to

simple burglary, the Court observed, the General Assembly enacted residential burglary "to deter the unlawful entry into dwelling places and thus to protect the privacy and sanctity of the home," given that "residential burglary contains more possibility for danger and serious harm than [burglary] of places not used as dwellings." 108 Ill. 2d at 193, 483 N.E.2d at 522. "There is a considerably greater chance of injury and danger to persons in the home context" than in other contexts, such as "a place of business," the Court said. *Id.* (quoting *People v. Gomez*, 120 Ill. App. 3d 545, 549, 458 N.E.2d 565, 568 (1983)); *see also People v. Hudson*, 228 Ill. 2d 181, 193-94, 886 N.E.2d 964, 972 (2008) ("[I]t is common for the law to recognize that some crimes – such as those involving an intrusion into the victim's living quarters – cause *psychological* as well as physical harm."). Thus, this Court concluded in *Bales*, "[t]here clearly is a reasonable basis for the challenged statutory classification." 108 Ill. 2d at 193, 483 N.E.2d at 522. Further, while the Court acknowledged that "the home-invasion statute . . . also serves to deter the unlawful entry into dwelling places and to protect the sanctity of the home," the Court noted that home invasion requires additional elements and is thus "more limited in scope" than residential burglary. 108 Ill. 2d 182, 193-94, 483 N.E.2d at 522.

As residential burglary stands apart from simple burglary and home invasion, the courts should construe the residential-burglary statute as *sui generis*. Construing residential burglary on its own preserves its special status under the law.

B. Decisions and Rationales Regarding the Burglary of Commercial Establishments Should Not Be Applied to Residential Burglary.

Further, in arguing that residential burglary should be governed by the limited-authority doctrine, the defendant seeks to rely on court decisions and rationales regarding commercial establishments. Def. Br. 11, 15. While the doctrine makes sense in that context, private residences are very different.

At noted earlier, this Court adopted the limited-authority doctrine in *People v. Weaver*, 41 Ill.2d 434, 243 N.E.2d 245 (1968). Weaver entered a laundromat during business hours, used a burglar key to open a vending machine, and stole coins from the machine. 41 Ill.2d 434, 435-36, 243 N.E.2d at 247. In response to a charge of burglary under 720 ILCS 5/19-1, he argued that he could not have entered "without authority" since the laundromat was open to the public. 41 Ill. 2d at 438-39, 243 N.E.2d at 248. This Court rejected that contention, holding that "authority to enter a 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." 41 Ill. 2d at 439, 243 N.E.2d at 248; *People v. Johnson*, 2019 IL 123318, ¶ 6 (noting that *Weaver* "set forth the limited authority a person has to enter a business building or other building open to the public"). Thus, since "[a]n entry with intent to commit a theft cannot be said to be within the authority granted patrons of a laundromat," the Court affirmed Weaver's conviction. 41 Ill. 2d at 439, 243 N.E.2d at 248.

The limited-authority doctrine makes sense in relation to commercial establishments and other public places. The owners of stores and similar locations typically authorize any and all persons to enter and remain during business hours. Since everyone is presumptively allowed to enter, the nature and extent of an individual's authority inside a public building can be unclear. Questions regarding authority to enter or remain inevitably arise when a member of the public commits a theft or some other crime in a commercial establishment or other public building. The limited-authority doctrine helps clarify that authority.

In contrast, residences are inherently private, such that any person who enters or remains necessarily does so either without authority or with the specific and express permission of the owner or resident. Anyone found in a residence without specific permission has clearly entered, or is

clearly remaining, without authority. Thus, no legal doctrine is needed to help resolve the scope of such person's authority to enter or remain.

For these reasons, applying the limited-authority doctrine to private residences is very different from applying it to commercial establishments and other buildings open to the public. Therefore, court decisions and rationales on applying the limited-authority doctrine to the burglary of commercial establishments should not be applied to residential burglary.

C. Decisions and Rationales Regarding Home Invasion Do Not Apply to Residential Burglary.

Finally, the defendant also seeks to rely on decisions regarding home invasion under 720 ILCS 5/19-6. Def. Br. 11-13. Although this Court has applied the limited-authority doctrine to home invasion, *see People v. Peeples*, 155 Ill.2d 422, 616 N.E.2d 294 (1993), that crime, too, is very different from residential burglary. Someone commits home invasion by entering the occupied dwelling of another person either "without authority" or by using false representation, and thereafter committing or threatening any of several violent acts inside. 720 Ill. Comp. Stat. 5/19-6(a) (West 2013). No intent is required, except that one of the alternative violent acts must be done "intentionally." *Id*. 5/19-6(a)(2); *see People v. Robinson*, 89 Ill. App. 3d 211, 214, 411 N.E.2d 589, 591 (1980) ("No constitutional provision requires that the legislature include criminal intent at the time of

entry in the offense of home invasion."). The prosecution must, of course, prove that the defendant committed or threatened one of the specified violent acts. *See People v. Hicks*, 181 Ill. 2d 541, 545, 693 N.E.2d 373, 375 (1998).

Applying the limited-authority doctrine to home invasion merely entails inferring a lack of authority to enter – or the resident's withdrawal of authority – from the proven commission or threat of a statutorily defined violent act inside. *See Peeples*, 155 Ill. 2d at 487, 616 N.E.2d at 325 ("[W]hen 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."). That approach is consistent with the holdings of this Court that certain elements of a crime – including the unauthorized entry for home invasion – can be inferred from other circumstances established by the prosecution. *See Peeples*, 155 Ill. 2d at 488, 616 N.E.2d at 325 (inferring unauthorized entry for home invasion); *see also*, *e.g.*, *People v. Kolton*, 219 Ill. 2d 353, 370-71, 848 N.E.2d 950, 960 (2006) (in prosecution for aggravated criminal sexual abuse, inferring from circumstances that defendant acted "for the purpose of sexual gratification"). Thus, inferring unauthorized entry from proof a violent criminal act under the home-

invasion statute does no violence to the structure of the statute or the purposes of the legislature.

In contrast, the residential-burglary statute, by its clear terms, requires the prosecution to prove *both* criminal intent and unauthorized entry. Both elements are essential to the crime, under both the common law and the modern statute. As this Court has held, "[t]he gist of the offense [of residential burglary] is the defendant's felonious intent," and "[t]he offense is complete upon entering with the requisite intent." *People v. Maggette*, 195 Ill. 2d 336, 353, 747 N.E.2d 339, 349 (2001).

Under this Court's precedents, however, criminal intent can be inferred from other circumstances proven by the prosecution. *See People v. Woodrum*, 223 Ill. 2d 286, 316, 860 N.E.2d 259, 279 (2006) ("Criminal intent is a state of mind that is usually inferred from the surrounding circumstances."). Thus, if the limited-authority doctrine were applied to residential burglary, the court would infer unauthorized entry from a finding of criminal intent, which could itself be based on an inference rather than any direct evidence. In other words, applying the limited-authority doctrine to residential burglary would permit inferring the existence of one statutorily required element (unauthorized entry) from the *inferred* existence of another statutorily required element (criminal

intent) – in contrast to applying the doctrine to home invasion, which involves inferring unauthorized entry from the prosecution's *actual proof* of one of the specified violent acts. *Cf. Evans-Smith v. Taylor*, 19 F.3d 899, 908 n.25 (4th Cir. 1994) (rejecting use of "double inference" to convict). Therefore, court decisions and rationales on applying the limited-authority doctrine to home invasion are not applicable to residential burglary.

CONCLUSION

Accordingly, this Court should answer the question certified by the Seventh Circuit, stating that the limited-authority doctrine does not apply to residential burglary in Illinois.

Respectfully submitted,

JOHN C. MILHISER
United States Attorney

By: /s/W. Scott Simpson
Illinois ARDC Number 6333721
Assistant United States Attorney
Office of the United States Attorney
318 South Sixth Street
Springfield, Illinois 62701-1806
Telephone: (217) 492-4413
Email:
W.Scott.Simpson@usdoj.gov

Counsel for the United States

RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to 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 thirty pages.

/s/W. Scott Simpson
Assistant United States Attorney

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109 (West 2019), the undersigned counsel of record certifies that the statements set forth in this instrument are true and correct.

The foregoing document was filed with the Clerk of the Supreme Court of Illinois on March 5, 2020, using the Odyssey eFileIL system, which will send notification of such filing to the following counsel of record:

Colleen Ramais (colleen_ramais@fd.org)

Thomas Patton (thomas_patton@fd.org)

Upon its acceptance by the Court's electronic filing system, the undersigned will send thirteen copies of the foregoing document to the Clerk of the above Court.

/s/W. Scott Simpson
Assistant United States Attorney