No. 123092

IN THE
SUPREME COURT OF ILLINOIS

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

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

ELDAD Z. MALAMUTH
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-2235
eserve.criminalappeals@atg.state.il.us

Counsel for Plaintiff-Appellant
People of the State of Illinois

E-FILED
5/30/2018 12:00 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

Page(s)

NATURE OF THE ACTION

Defendant was charged with domestic battery and released on bond with the conditions that he refrain from having any contact with the victim, Samantha Liggett, going to, or entering her residence. While on bond, defendant went to Liggett's residence and his conduct there resulted in new charges and convictions of home invasion and battery. The appellate court reversed the home invasion conviction, holding that testimony from Liggett — that she knew defendant would be returning to her home because he had taken her keys — amounted to consent to his entry and that he therefore had authority to enter her home despite the bond condition.

ISSUES PRESENTED FOR REVIEW

1. Whether a person barred from entering a residence by court order enters the home "without authority" even if the homeowner consents.

2. Whether under the limited authority doctrine defendant was guilty of home invasion even if the homeowner testified that she knew that defendant would return because he had taken her keys.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315, 604(a)(2), and 612(b)(2). On March 21, 2018, this Court allowed the People's petition for leave to appeal.

STATUTORY PROVISION INVOLVED

720 ILCS 5/19-6 states as follows:

> (a) A person who is not a peace officer acting in the line of duty commits home invasion when without authority he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present * * * or who falsely represents himself or herself, * * * for the purpose of gaining entry to the dwelling place of another when he or she knows or has reason to know that one or more persons are present and
>
> * * *
>
> (2) Intentionally causes any injury * * * to any person or persons within the dwelling place[.]
>
> * * *
>
> (d) For purposes of this Section, "dwelling place of another" includes a dwelling place where the defendant maintains a tenancy interest but from which the defendant has been barred by a divorce decree, judgment of dissolution of marriage, order of protection, or other court order.

STATEMENT OF FACTS

Defendant was charged in this case while released on bond in another case.

In a separate case, *People v. Witherspoon*, No. 14 CF 924 (Macon Cty.), defendant was charged with domestic battery (with physical contact and three prior convictions) and criminal trespass to property. A15; Peo. Exh. 22; RV XII 277.[1] The conditions of the bond release order included that defendant was required to "7. Refrain from entering or remaining at the

[1] "A_," "C_," and "RV __ __" refer, respectively, to the appendix to this brief, the common law record, and the report of proceedings (followed by the volume and page number).

victim's residence and refrain from having any contact, directly or indirectly, with the victim until disposition of this case. Victim: Samantha Lig[g]ett"; and "8. Refrain from going on the premises located at: victim's residence." *Id.* Defendant signed the bond order and was aware of its conditions and that he was violating them the night of the incident that led to the charges in this case. RX VIII 309-10.

In this case, defendant was charged with Home Invasion (Count I), C15, Aggravated Criminal Sexual Assault (Count II), C16, Domestic Battery with Three Prior Domestic Battery Convictions (Count III), C17, Unlawful Possession of a Controlled Substance (cocaine) (Count IV), C18, and Unlawful Violation of Bail Bond (Count V), C19.

The victim's testimony

Liggett and defendant dated for several months, until the relationship ended in July 2014; they never lived together. RV XI, 131-32. On the day of the incident, August 29, 2014, Liggett was aware that a court order barred defendant from contacting her or going to her residence, although defendant had been to Liggett's house and seen her since the order went into effect. *Id.* at 133-34.

Around 10:00 p.m., defendant knocked on the door and entered Liggett's house without her permission. *Id.* at 136. Defendant was angry about a Facebook post Liggett made about a man at a gas station with pretty eyes. *Id.* at 137. Liggett told defendant to leave and went to her room.

Instead, defendant grabbed her phone and keys from her dresser. Liggett told him to give the items back, but defendant refused, swore at Liggett, and left. *Id.*

Liggett considered calling the police, but she "didn't have a phone to even do it, and [she] just knew that eventually he would bring it back." *Id.* at 138. She locked her doors and went to sleep. *Id.*

Around 2:00 or 2:30 a.m., Liggett woke up to find defendant standing above her and yelling about the Facebook post. *Id.* at 138-39. Defendant accused Liggett of cheating on him and said that "he was going to 'F' [her] up and kill [her] and [she] was not going to see anybody else." *Id.* at 139.

Liggett tried to leave her bedroom, but defendant dragged her back by her hair and punched her in the face ten to fifteen times as well as in her back, her side, and the back of her head. *Id.* at 139-40. Liggett curled up in a ball and was bleeding from her face, lip, and nose. *Id.* at 140. Liggett tried to hit defendant with a lamp, but he took it and broke it. *Id.* at 141. Defendant kept talking about the Facebook post and that he was going to "F" her up and that nobody would want her. *Id.*

Defendant agreed to let Liggett take a shower. *Id.* While she was in the shower, defendant came in, pulled the curtain back, and "punched [her] in the face some more." *Id.* at 142. Liggett was able to get to her bedroom and put on shorts and a shirt, but defendant told her to get naked and get in bed, then he forced her to have sex with him. *Id.* at 143. She was scared to

resist because he was beating her, continuing to punch her in the face, and threatening to kill her, so she just cried. *Id.* at 144-46. After a while, defendant went to the bathroom, then returned, forced Liggett to turn over, and forced her to continue having sex, punching her in the back of her head. *Id.* at 146-47. Defendant ejaculated, then fell asleep. *Id.* at 148.

When she was sure that defendant was asleep, Liggett dressed and removed her keys from his pants pocket. *Id.* at 148-49. She drove to her friend's house and immediately called the police. *Id.* at 149. When the officers arrived, they photographed her injuries, took a videotaped statement, and obtained her consent to search her house. *Id.* at 149-50. An ambulance took her to the hospital, where a sexual assault examination was performed. *Id.* at 150.

Other prosecution witnesses

Officer Tucker Tool responded to Liggett's call and found her crying to such an extent that she had trouble communicating. *Id.* at 189. Both her eyes were bruised and her left eye was so swollen it was partially shut. *Id.* at 190; C22. Her lower lip was lacerated, a knot the size of a golf ball was on her forehead, and she had abrasions and welts on her stomach and back. RV XI 190; C22.

Liggett stated that she woke to find defendant standing over her bed. C21. She said defendant had "no business being inside her residence" and "entered without her authority." *Id.*. Defendant yelled at Liggett regarding a

comment she made on Facebook, then struck her with a closed fist multiple times on her face and body. *Id.* He grabbed her by the hair and stated, "you're not going anywhere." *Id.* Defendant battered her numerous times, ordered her to "get naked," then sexually assaulted her. *Id.* Defendant fell asleep and the victim fled. *Id.*

Officer Tammara Tucker met Tool and Liggett at the friend's home and proceeded to Liggett's house, where she and two other officers, Officer Jason Danner and Sergeant Chad Shull, found defendant sleeping in Liggett's bed and took him into custody. RV XI 190, 201, 217, 221. Defendant did not appear to have and did not complain of any injuries. *Id.* at 202, 217. Shull retrieved defendant's jeans and found a clear plastic baggie containing cocaine. *Id.* at 203, 219; RV XII 256. Danner collected a bloody sheet and towel. RV XI 204-05. After being informed of his *Miranda* rights, defendant stated to Tool that "he may have possibly struck" Liggett during an argument and that he had consensual sex with her. C22.

Michelle Bovyn, a registered nurse with specialized training in treating victims of sexual assault, treated Liggett at the hospital. RV XI 224-26. Liggett was upset, tearful, and appeared to be in physical pain. *Id.* at 226. Liggett's facial injuries included a lower lip laceration, a reddened and swollen eye, markings and bruising on her leg, bite marks on her finger, and shoulder pain. *Id.* at 227-30.

Defendant's testimony

Defendant testified that he never lived at Liggett's residence but during their relationship she sometimes would give him a key, then take it back. RV XII 287-88. On the night of the assault, Liggett gave defendant her car keys so that he and a friend could obtain marijuana. *Id.* at 290-91. Defendant and Liggett smoked marijuana, then defendant left to drop off his friend. *Id.* at 291-95. When he returned, he knocked and Liggett opened the door; his regular practice was to knock even if he had a key. *Id.* at 295, 300.

Liggett was upset at how long he had taken. Defendant joked that he had been with another woman, and Liggett pushed him and poked him in the eye, prompting a "dispute." *Id.* at 295-96. Once things calmed down, they smoked marijuana and had sex. *Id.* at 296. Defendant conceded that Liggett "had some bruises from the fight" and that he punched her a few times in the face. *Id.* at 298, 307.

The trial judge's rulings

The trial judge found defendant not guilty of aggravated criminal sexual assault (Count II), but guilty of domestic battery (Count III) and unlawful possession of a controlled substance (Count IV). *Id.* at 341-42.

The judge reserved ruling on home invasion (Count I), explaining that "in terms of entry without authority, this court is not convinced that there is proof beyond a reasonable doubt that the defendant entered that residence with the intent to batter her." *Id.* at 342. On the trial court's view, that issue

"comes down to the alleged victim's word versus the defendant's word, and in terms of how that occurred I simply can't say with any degree of certainty." *Id.* at 342. Further, "[w]hen it comes down to the fact that he simply did not have the authority to enter the residence, by the alleged victim's own testimony she said, well, he took the keys, and he took the car and I didn't worry about it because I knew he was going to be back. So by her own testimony he had authority to enter the residence." *Id.* at 342-43.

The trial court was uncertain as to the effect of the bond order:

> The defendant knew that there was a bail bond in place where he knew he was not to be at that residence. So when he entered that residence he knew he was violating that bail bond. That in and of itself is without authority. If it is, then he is guilty of home invasion. If it is not, then he is not guilty of home invasion. I don't know the answer to that question at this point.

Id. at 343.

Subsequently, after reviewing materials and argument provided by the parties, the trial judge found defendant guilty of home invasion. RV XIII 355. The court reasoned that subsection 5/19-6(d) made clear that a court order prohibiting a defendant from entering a residence means that a defendant entering that residence does so without authority. *Id.* at 356.

The trial court merged the domestic battery conviction into the home invasion conviction, and sentenced defendant to fourteen years in prison for home invasion and three years for unlawful possession of a controlled substance, to run concurrently. RV XIV 4, 18; C144.

The appellate court reversed

The appellate court reversed, reasoning that "the plain language of subsection (d) does not address the circumstances of this case," where Liggett "essentially consented to defendant's entry despite the court order prohibiting that entry." A5. Because people "are sovereigns in their homes," Liggett's permission trumped the court order. *Id.* The court also rejected the People's argument that defendant's conduct exceeded any limited authority he had to enter the house, reasoning that its finding that Liggett "essentially consented to defendant's entry" meant that "the trial court has already found defendant *factually* innocent of the home invasion charge." A7 (emphasis in original).

STANDARD OF REVIEW

This Court reviews issues of law, including the construction of a statute, de novo. *People v. Manning*, 2018 IL 122081, ¶ 16.

ARGUMENT

When defendant went into his ex-girlfriend's house in the middle of the night and battered her, despite a court order prohibiting him from going to her house, his entry into her dwelling place was without authority; thus, he was guilty of home invasion under 720 ILCS 5/19-6(a).

Defendant had been charged with another domestic battery of Liggett, and one condition of his pre-trial release was that he refrain from entering her residence. Giving the word "authority" its plain and ordinary meaning, defendant could not have had the right or permission to enter Liggett's

residence when doing so was prohibited by law. Further, subsection 5/19-6(d), which declares that a dwelling place includes a residence where a defendant maintains a tenancy interest but from which defendant has been barred by a court order, makes clear that the legislature intended home invasion to encompass the situation of a person violating a court order not to enter a specific home. Liggett's alleged consent to defendant's entry could not render his otherwise unlawful entry lawful.

Further, the lower courts accepted as true Liggett's testimony that she "knew [defendant] was going to be back" to her house because he had fled with her keys, phone, and car, but mistakenly believed that this authorized him to enter such that it barred a home invasion conviction. Under the limited authority doctrine, defendant exceeded any authority he had when he battered Liggett, making his entry unauthorized and him guilty of home invasion.

I. Defendant Entered the Residence Without Authority Because the Bail Condition Rendered His Entry Unlawful.

The primary objective in construing statutes "is to ascertain and give effect to the intent of the legislature," with the "most reliable indicator of legislative intent" being "the language of the statute, given its plain and ordinary meaning." *People v. Chenoweth*, 2015 IL 116898, ¶ 21. A court views statutes as a whole and may consider the reasons for the laws, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statutes in different ways. *Id.*

A person "commits home invasion when without authority he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present . . . or who falsely represents himself or herself for the purpose of gaining entry to the dwelling place . . . and . . . (2) Intentionally causes any injury . . . to any person or persons within the dwelling place." 720 ILCS 5/19-6(a). A "dwelling place of another" includes a "dwelling place where the defendant maintains a tenancy interest but from which the defendant has been barred by a divorce decree, judgment of dissolution of marriage, order of protection, or other court order. 720 ILCS 5/19-6(d).

For three reasons, this Court should hold that the bond condition meant that defendant entered Liggett's residence without authority. First, authority is "[t]he official right or permission to act." *Black's Law Dictionary*, 158 (10th ed. 2014). Defendant's bond condition barred him from entering Liggett's residence, making his entry unlawful and without authority. Second, the General Assembly has made clear in subsection 5/19-6(d) that it intended home invasion to apply when a court order prohibits a defendant from entering a home. Third, Liggett's consent, even if it had been granted, would not trump the superior legal authority of the court and legislature, just as homeowners generally cannot make unlawful activities lawful in their homes.

A. The bond order barring defendant from entering Liggett's residence rendered his entry unauthorized.

When defendant entered Liggett's residence, he was legally prohibited from doing so. Conditions of his bond included that he would refrain from entering Liggett's residence or having any contact with her. A15; Peo. Exh. 22; RV XII 277. Defendant admitted that he signed the bond order and was aware of its provisions and that he was violating them on the night of the assault. RX VIII 309-10.

This bond condition was authorized — even required — by statute. *See* 725 ILCS 5/110-10(d) (when "victim is a family or household member as defined in Article 112A, conditions shall be imposed" that "shall include requirements that the defendant do the following: . . . (2) refrain from entering or remaining at the victim's residence for a minimum period of 72 hours following the defendant's release"); 725 ILCS 5/112A-3(b)(3) ("'Family or household members' include . . . persons who have or have had a dating or engagement relationship").

Defendant was bound by his bail bond release order. *See* 725 ILCS 5/102-7 ("'Bail bond' means an undertaking secured by bail entered into by a person in custody in which he binds himself to comply with such conditions as are set forth therein."); Peo. Exh. 22 ("Defendant further undertakes the Following as terms and conditions of this bond"); *id.* ("I certify that I have read the foregoing provisions of this bond; fully understand the condition[s] thereto and agree to comply with said conditions"). Moreover, the bond

release order was a court order that defendant had to comply with until and unless it was set aside. *See In re Estate of Steinfeld*, 158 Ill. 2d 1, 19 (1994) ("A litigant's disagreement with the court's decision does not excuse the litigant from the obligation to obey it."); *People v. Graves*, 74 Ill. 2d 279, 282-83 (1979) ("'If the court had jurisdiction of the subject matter and of the parties to the proceeding, then its order must be obeyed until such time as it is set aside by the issuing or reviewing court.'") (quoting *Faris v. Faris*, 35 Ill. 2d 305, 309 (1966)).

Defendant was legally prohibited from entering Liggett's apartment by his bond order. Thus, when he entered her apartment, it was unlawful and without authority. *See People v. Howell*, 358 Ill. App. 3d 512, 528 (3d Dist. 2005) ("Concerning the home invasion charge, a reasonable jury could have found beyond a reasonable doubt that the defendant did not have authority to enter [the victim's] home. In fact, he was under a court order of protection to have no contact with [the victim].")

B. Homeowners and residents cannot override superior legal authority or render unlawful behavior lawful.

The appellate court's holding rests on the principle that people "are sovereign in their homes." A5. But the appellate court provided no Illinois precedent suggesting that homeowners may override the law and authorize otherwise illegal activities merely because they take place in their homes.

To the contrary, unlawful conduct remains so even if done with a homeowner's consent. If defendant had been charged with a bail bond

violation for entering Liggett's home, it would have been no defense that she consented to his entry. The same is true for home invasion. *People v. Priest*, 297 Ill. App. 3d 797, 806 (4th Dist. 1998) (defendant was guilty of home invasion and trial court properly excluded evidence that victim permitted defendant to enter home on previous occasions because order of protection prohibited defendant's entry).

The rule applies broadly to court orders, which homeowners may not override, including with respect to who may or may not enter the residence. For example, homeowners may not prevent law enforcement from entering their homes if the officers have valid search or arrest warrants. Similarly, if an order of protection prohibits a father from visiting his child, he cannot defeat a charge of violating that protective order by asserting that he was invited into a home of another relative where he knew that his child was present.

Generally, homeowners have the power to determine who may or may not enter their homes. But when a court order prohibits an individual from entering a particular home, that homeowner lacks the power to override the superior legal authority of the court. *See In Interest of B.J.*, 268 Ill. App. 3d 449, 452 (4th Dist. 1994) ("Court orders are not contingent upon the approval of third parties whom those orders were intended to benefit, and even if those third parties later decide they do not wish the benefits of the court order, persons subject to that court order are in no way relieved from obeying it.").

A homeowner unhappy with a court order may seek to modify it. For instance, here, Liggett could have worked with the prosecution or defense counsel to alter the terms of defendant's bond. *See* 725 ILCS 5/110-6(a) ("Upon verified application by the State or the defendant . . . the court before which the proceeding is pending . . may alter the conditions of the bail bond"). Until the order is modified, however, a homeowner has no power to authorize unlawful conduct.

Nor may a defendant claim authority to enter simply because a resident, in contravention of superior legal authority, consents to his entry. For instance, in *People v. Long*, 283 Ill. App. 3d 224, 226 (2d Dist. 1996), the owner of the house had made it clear to the defendant that he was not authorized to enter the house, but the owner's children invited the defendant in. The court held that the defendant entered the house without authority, even though a minor can generally authorize entry of others, because the "parent-owner's right to control the access to his home was superior to and overrode any authority [the owner's] sons might have had in inviting others into the home." *Id.*; *see also People v. Martin*, 115 Ill. App. 3d 103, 106 (2d Dist. 1983) (minor may "authorize entries into his parents' house for lawful purposes," but "he could not authorize the defendant's entry into his parents' house for the unlawful purpose of stealing his parents' jewelry").

Moreover, this case illustrates how a rule allowing homeowner consent to trump a court order would endanger the safety of domestic battery victims.

Here, a court order prohibited defendant from contacting Liggett or entering her home. Subsequently, she was battered by defendant in her home, but her purported (and disputed) consent to his entry could allow him to avoid a home invasion conviction. To allow a defendant charged with domestic violence to make an end-run around the bond condition by obtaining his victim's permission to enter (thereby avoiding serious repercussions for further physical violence) would erode the protections that courts and the legislature intended to provide to victims of domestic violence. *See People v. Townsend*, 183 Ill. App. 3d 268, 271 (4th Dist. 1989) ("[W]e do not agree that a victim's invitation to violate the court's order frees those contemnors from conviction for wilful misconduct. A contrary result would lead to mockery of the powers granted the courts under the Act."). Indeed, such victims are in need of protection from attempts to obtain consent by their attackers because "accessibility and familiarity enable domestic violence to be ongoing and to effectively intimidate and control the victim." *People v. Gray*, 2017 IL 120958, ¶ 65.

Here, defendant was prohibited from entering Liggett's residence by court order. As a result, Liggett could not have rendered his entry lawful even if she had consented to it.

C. The General Assembly has made clear that home invasion applies when a court order bars an individual from entering the residence.

The General Assembly has made clear in 720 ILCS 5/19-6(d) that it intends home invasion to encompass the situation where a person violates a court order directing him not to enter a specific home. This Court should effectuate that intent.

In *People v. Reid*, 179 Ill. 2d 297, 315-17 (1997), this Court held that the defendant could not have committed home invasion because he, along with the victim, rented the apartment he entered, even though an order of protection granted exclusive possession to the victim. *Id.* at 315. *Reid* reasoned that the legislature had "specifically sought to exclude domestic disputes from the reach of the statute." *Id.* at 316.

Shortly thereafter, the General Assembly added subsection (d), clarifying that "'dwelling place of another' includes a dwelling place where the defendant maintains a tenancy interest but from which the defendant has been barred by a divorce decree, judgment of dissolution of marriage, order of protection, or other court order." 90th Ill. Gen Assemb., Pub. Act. 90-787 (S.B. 1506); 720 ILCS 5/19-6(d).

Subsection (d) overturned *Reid* and provided that a defendant violating a court order prohibiting him from entering a specific home commits home invasion. *See* 90th Ill. Gen. Assemb., House of Representatives Proceedings, March 19, 1998 (Statement of Rep. Brady) ("This clarifies that an individual

who is under an order of protection not to visit a property would, in fact, be eligible for a violation under the home invasion statute in such a manner."). Subsection (d) would "close[] this loophole" created by *Reid* "by defining 'dwelling place of another' to include a dwelling place in which the offender has a legal interest but has been specifically barred by — by the court order." 90th Ill. Gen Assemb., Senate Proceedings, May 14, 1998 (Statement of Sen. Maitland).

Thus, the General Assembly made clear, after a contrary interpretation by this Court, that when a court order prohibits a person from entering a specific residence — even one in which he has a tenancy interest — violating that court order renders the person subject to prosecution for home invasion. This Court should not reopen any further "loopholes," but should instead effectuate the legislature's clear intent.

The appellate court asserted that "the plain language of subsection (d) does not address the circumstances of this case, in which the trial court found that S.L. essentially consented to defendant's entry despite the court order prohibiting that entry." A5. Under this view, a statute must specifically address all possible exceptions, otherwise the general rule will not apply when those exceptions arise.

But this reasoning contravenes established principles of statutory construction. Courts "must not depart from the statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not

express." *People v. Casas*, 2017 IL 120797, ¶ 18. Subsection (d) specifies that when a court order bars a defendant from entering a residence, his entry into that residence qualifies as home invasion if the other criteria are met. Subsection (d) need not address every possible exception, because courts presume that the legislature did not intend to include exceptions or limitations not delineated in the statute.

To be sure, because it addressed *Reid*, subsection (d) specifically tackled the phrase "dwelling place of another" and not "without authority." But, interpreting the statute as a whole, subsection (d) confirms that the legislature intended a court order to be the superior legal authority, whether compared to a tenancy interest as it was in *Reid* or a homeowner's purported consent as it is here.

II. Under the Limited Authority Doctrine, Liggett Did Not Authorize Defendant's Entry.

Both of the lower courts reached an incorrect legal conclusion based upon facts that they found — or more accurately assumed — to be true. The appellate court believed that Liggett had "essentially consented to defendant's entry." A5. The appellate court quoted the trial judge, who stated, "When it comes down to the fact that he simply did not have the authority to enter the residence, by the alleged victim's own testimony she said, [']well, he took the keys, and he took the car[,] and I didn't worry about it because I knew he was going to be back.['] So[,] by her own testimony[,] he had authority to enter the residence." A4. This statement betrays a

misunderstanding of the term "authority" in the home invasion statute and ignores the limited authority doctrine.

This Court has "established 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." *People v. Peeples*, 155 Ill. 2d 422, 487 (1993); *see also People v. Bush*, 157 Ill. 2d 248, 253 (1993) ("when a defendant comes to a private residence and is invited in by the occupant, the authorization to enter is limited and [ ] criminal actions exceed this limited authority"). "Thus, consent given for a defendant's entry is vitiated by criminal actions engaged in by the defendant after entering, thus making his entry unauthorized." *Peeples*, 155 Ill. 2d at 487-88. *Peeples* held that the defendant was guilty of home invasion and that his entry into the victim's apartment was unauthorized because, although he may have been invited in to borrow a cup of sugar, his attack of the victim exceeded that limited authority. *Peeples*, 155 Ill. 2d at 488.

A defendant who enters a home with the intent to commit criminal acts in the dwelling makes an unauthorized entry even if he is initially invited in for noncriminal purposes. *Bush*, 157 Ill. 2d at 254, 257; *see also People v. Davis*, 173 Ill. App. 3d 300, 305 (1st Dist. 1988) (even if owner let defendants into house, they committed home invasion as "they exceeded any possible original authority granted to them when they terrorized [owner] and his family"); *People v. Hudson*, 113 Ill. App. 3d 1041, 1045 (5th Dist. 1983)

(defendant was guilty of home invasion when he and a companion "did not exceed the authority granted them, at least for a time, but later did so when they drew weapons upon their hosts, then bound and gagged them and stole their property.").

And authority to enter in specific circumstances does not constitute carte blanche authority to enter at will. In *People v. Reynolds*, 359 Ill. App. 3d 207, 212–13 (2d Dist. 2005), the court held that the facts that defendant sometimes entered the house without explicit permission when one occupant knew he was coming over and had been at the house multiple times, including during the night, did not mean that he had authority to enter the house in the middle of the night without prior permission. *See also People v. Brown*, 150 Ill. App. 3d 535, 538 (3d Dist. 1986) (entry was without authority even though defendant previously had keys to house).

Here, the facts assumed to be true by the lower courts do not support their legal conclusions. Based on Liggett's testimony that defendant had taken her keys and car, and she "knew he was going to be back," the lower courts concluded that defendant "had authority to enter the residence." A4.

That Liggett assumed that defendant would return at some point with her car and keys did not mean that defendant had authority to enter her home without knocking, especially given his testimony that it was his custom to knock even when he had keys. RV XII 295, 300. It did not mean that defendant had authority to enter her home in the middle of the night and

enter her bedroom while she slept. *See Reynolds*, 359 Ill. App. 3d at 212-13; *Brown*, 150 Ill. App. 3d at 538. Above all, it did not mean he had authority to batter her. *See Bush*, 157 Ill. 2d at 254, 257; *Peeples*, 155 Ill. 2d at 488. Thus, petitioner's entry with the intent to batter Liggett exceeded any limited authority he had to enter her home, making the entry without authority and defendant guilty of home invasion.

CONCLUSION

This Court should reverse the judgment of the appellate court.

May 30 2018

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

ELDAD Z. MALAMUTH
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-2235
emalamuth@atg.state.il.us

Counsel for Plaintiff-Appellant
People of the State of Illinois

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 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 twenty-two pages.

/s/ Eldad Z. Malamuth
ELDAD Z. MALAMUTH
Assistant Attorney General

TABLE OF CONTENTS TO THE APPENDIX

Page(s)

TABLE OF CONTENTS TO THE APPENDIX

Page(s)

Illinois Official Reports

Appellate Court

***People v. Witherspoon*, 2017 IL App (4th) 150512**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARCELUS WITHERSPOON, Defendant-Appellant.
District & No.	Fourth District Docket No. 4-15-0512
Filed	December 6, 2017
Decision Under Review	Appeal from the Circuit Court of Macon County, No. 14-CF-1056; the Hon. Thomas E. Griffith, Judge, presiding.
Judgment	Affirmed in part, reversed in part, and cause remanded with directions.
Counsel on Appeal	Michael J. Pelletier, Patricia Mysza, and Adrienne N. River, of State Appellate Defender's Office, of Chicago, for appellant. Jay Scott, State's Attorney, of Decatur (Patrick Delfino, David J. Robinson, and John M. Zimmerman, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE STEIGMANN delivered the judgment of the court, with opinion. Presiding Justice Turner and Justice Appleton concurred in the judgment and opinion.

OPINION

¶ 1 Under Illinois law, an individual commits home invasion when "*without authority* he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present *** and *** [i]ntentionally causes any injury *** to any person or persons within the dwelling place." (Emphasis added.) 720 ILCS 5/19-6(a)(2) (West 2014).

¶ 2 After an April 2015 bench trial, the trial court found defendant, Marcelus Witherspoon, guilty of home invasion. The court found that defendant entered the dwelling of another without authority because a court order prohibited him from going to or entering that particular residence. Defendant had argued that he had authority because the resident, S.L., consented to his entry. The court rejected that argument and later sentenced defendant to 14 years in prison.

¶ 3 On appeal, defendant argues only that the State failed to prove him guilty beyond a reasonable doubt of home invasion because S.L. consented to his entry. We agree, concluding that a defendant is not guilty of home invasion when, with the resident's consent, he enters that resident's dwelling place even though his doing so is in violation of a court order. Accordingly, we reverse defendant's conviction.

¶ 4 I. BACKGROUND

¶ 5 In August 2014, the State charged defendant in Macon County case No. 14-CF-0924 with domestic battery and criminal trespass to a residence. S.L. was the alleged victim in that case. On August 10, 2014, defendant was released on bond subject to the conditions that he refrain from (1) contacting S.L., (2) going to her residence, or (3) entering her residence.

¶ 6 In September 2014, the State charged defendant with the following crimes of which S.L. was the alleged victim: home invasion (720 ILCS 5/19-6 (West 2014)), aggravated criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2014)), domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)), unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)), and violation of bail bond (720 ILCS 5/32-10(b) (West 2014)). The State alleged that these offenses were committed on August 28, 2014. Before trial, the State dropped the violation of bail bond charge.

¶ 7 In April 2015, defendant's case went to trial, beginning as a jury trial. However, midway through trial, defendant waived his right to a jury, and the trial continued as a bench trial.

¶ 8 At trial, S.L. testified that she previously had a romantic relationship with defendant throughout 2014. On August 28, 2014, around 10 p.m., defendant arrived at her home. She and defendant argued, and defendant left with her phone and keys. S.L. testified that she went to bed, expecting defendant to return the items later. When she awoke around 2 a.m., she discovered defendant standing over her, and he then attacked and raped her. She called the police around 5:30 a.m., and they arrested defendant as he slept at S.L.'s home. Police found three-tenths of a gram of cocaine in his pants. The State also introduced defendant's condition of bond from his earlier pending criminal case, Macon County case No. 14-CF-0924.

¶ 9 Defendant testified that on August 28, 2014, he had been at S.L.'s home and left to get marijuana. When he returned, S.L. opened the door to let him in her residence. Defendant

testified that they had a physical fight, and he defended himself. According to defendant, he had consensual sex with S.L. following the fight.

¶ 10 The trial court found defendant guilty of domestic battery and possession of a controlled substance but not guilty of aggravated criminal sexual assault. The trial court reserved ruling on the home invasion charge so that it could receive further argument from counsel regarding the effect of the bail bond condition. However, when the court so ordered, the court first essentially found that S.L. had consented to defendant entering her residence, with the court's noting that "by [S.L.'s] own testimony[,] [defendant] had authority to enter [S.L.'s] residence." The court further explained that if defendant's violation of the condition of his bail bond that he not enter S.L.'s residence was sufficient "in and of itself" to render his entry as being without authority, "then he is guilty of home invasion." However, if defendant violating that condition of his bail bond was not sufficient, "then he is not guilty of home invasion." The trial court continued the trial so that the parties could brief this issue.

¶ 11 At a subsequent hearing in April 2015, the State argued that "judicial authority is the ultimate controlling factor here as far as authority to enter a residence and trumps any other authority that an individual might attempt to give to another person as far as entering their residence." The State cited subsection (d) of the home invasion statute, which defined "dwelling place of another" to include a dwelling place "where the defendant maintains a tenancy interest but from which the defendant has been barred by a divorce decree, judgment of dissolution of marriage, order of protection, or other court order." 720 ILCS 5/19-6(d) (West 2014). Defendant countered that the authority to enter a dwelling comes from the resident and that S.L. consented to defendant's entry.

¶ 12 The trial court accepted the State's argument and found that defendant entered S.L.'s residence without authority because he violated the conditions of his bond requiring him to stay away from and not enter her residence. The court therefore convicted defendant of home invasion, merged the domestic battery conviction with the home invasion conviction, and sentenced defendant to 14 years in prison. The court also sentenced defendant to serve a concurrent three-year sentence based upon his conviction for possession of a controlled substance.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues only that the State failed to prove him guilty beyond a reasonable doubt of home invasion. Specifically, defendant contends that he had authority to enter S.L.'s home within the meaning of the home invasion statute because S.L. consented to his entry.

¶ 16 The State counters that defendant entered the victim's residence without authority because a court order prohibited him from going to or entering that residence. The State maintains that a victim's consent cannot override a court order requiring a defendant to not enter a particular residence. Alternatively, because the trial court found defendant guilty of home invasion, the State requests that we affirm the conviction for any reason the record supports.

¶ 17 We disagree with the State's arguments and reverse defendant's conviction for home invasion.

¶ 18 A. The "Without Authority" Element of Home Invasion

¶ 19 A defendant may not be convicted except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2; *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007). When reviewing a challenge to the sufficiency of the evidence, the appropriate standard is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Wheeler*, 226 Ill. 2d at 114, 871 N.E.2d at 740; *Jackson v. Virginia*, 443 U.S. 307, 318 (1979). A trial court's factual findings are entitled to great weight. *Wheeler*, 226 Ill. 2d at 115, 871 N.E.2d at 740. However, the trial court's construction of a statute is a question of law and is reviewed *de novo*. *People v. Williams*, 393 Ill. App. 3d 77, 81, 910 N.E.2d 1272, 1276 (2009); *People v. Davis*, 199 Ill. 2d 130, 135, 766 N.E.2d 641, 644 (2002). A conviction will be reversed only when the evidence is so unreasonable, improbable, or unsatisfactory that it justifies reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542, 708 N.E.2d 365, 370 (1999).

¶ 20 1. *The Trial Court's Determinations in This Case*

¶ 21 As earlier noted, the trial court here found that S.L. essentially consented to defendant's entry. The trial court reasoned as follows:

> "[The] *** issue comes down to the alleged victim's word versus the defendant's word, and in terms of how [these events] occurred[,] I simply can't say with any degree of certainty. When it comes down to the fact that he simply did not have the authority to enter the residence, by the alleged victim's own testimony she said, ['']well, he took the keys, and he took the car[,] and I didn't worry about it because I knew he was going to be back.['] So[,] by her own testimony[,] he had authority to enter the residence."

We note that the issue before us is not whether this court would have concluded that "S.L. essentially consented to defendant's entry."

¶ 22 Nonetheless, the trial court found defendant guilty of home invasion based upon its understanding of the holding of *People v. Howard*, 374 Ill. App. 3d 705, 709, 870 N.E.2d 959, 963 (2007). The court explained as follows:

> "The court finds on the basis of the plain language of subsection (d) of the home invasion statute and the *Howard*[ ] underlying case that the defendant entered the dwelling of another without authority and intentionally caused a battery, and, therefore, the defendant is guilty of Count I, home invasion. There is a judgment of conviction entered.
>
> The court does believe that the *Howard* case is exactly on point. *** [W]hen [the legislature] amended the statute with subsection (d), the case makes it very clear that to have authority to enter[,] one must have the requisite tenancy interest, which is what the limited authority cases are about, and the possessory interest[,] and when there is the court order barring entry, one does not have the possessory interest.

Therefore, that makes Mr. Witherspoon guilty in this circumstance."

¶ 23 2. *This Court's Analysis*

¶ 24 We disagree with the trial court's analysis on two grounds.

¶ 25 First, the plain language of subsection (d) does not address the circumstances of this case, in which the trial court found that S.L. essentially consented to defendant's entry despite the court order prohibiting that entry.

¶ 26 Second, *Howard* dealt with whether a residence was the dwelling place of another. 374 Ill. App. 3d at 709, 870 N.E.2d at 963. The *Howard* court did not reach the issue before this court, which is whether the dwelling place's resident had the authority to give defendant permission to enter her residence despite the court order prohibiting such entry. In *Howard*, the court affirmed the defendant's conviction for home invasion because the defendant entered the dwelling of another without the permission of the tenant. *Id.* at 716, 870 N.E.2d at 968. No court order barring such entry was involved in that case. See *id.* at 713-14, 870 N.E.2d at 966-67. Thus, *Howard* has no bearing on whether a court order negates the consent given by a tenant, which is the issue in this case, as it relates to the "without authority" element of the offense of home invasion.

¶ 27 As earlier noted, the issue in this case is whether the consent of the resident of a dwelling place for a person to enter trumps—for purposes of the home invasion statute—a court order that prohibited that person from entering that dwelling place. Subsection (d) says nothing about that issue and instead 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. 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). But again, in the present case, we have the trial court's finding that S.L. essentially consented to defendant's entry into her residence, so case law addressing whether defendant would have committed a home invasion *absent* that consent is simply irrelevant.

¶ 28 By going to S.L.'s residence and then entering it, defendant might very well have violated conditions of his bail bond that prohibited him from doing so, and we note that the State initially charged him with that offense, among other charges. None of that matters. The only issue before us is the question of whether he entered S.L.'s dwelling place "without authority" because of the condition of his bail bond even though S.L. essentially consented to that entry (as the trial court found). We hold he did not.

¶ 29 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 that residence and to not enter it. 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. Her decision may be unwise, but it is one that the law must respect, particularly regarding a situation, like this case, where a person charged with a Class X offense may have relied upon that consent.

¶ 30 Our research about the narrow issue before us has not disclosed many cases on point, but the few we found support our conclusion. For instance, in *State v. Hall*, 47 P.3d 55, 56 (Or. Ct. App. 2002), the defendant was convicted of criminal trespass and argued on appeal that

because he was given permission to enter the premises by the owner, he was improperly convicted even though a court order prohibited him from entering those premises. The appellate court agreed with the defendant and reversed his conviction, rejecting the State's argument (which the trial court had accepted) that the owner's invitation to the defendant to enter was irrelevant in light of the conditions of the bond through which the defendant had obtained his release from jail. He had been in jail on an earlier charge involving a claim that he physically assaulted the same victim. The appellate court explained its decision, in part, as follows:

> "As a general rule, one of the incidents of property ownership is the right to invite other persons to use property or, conversely, to exclude them from doing so. *See, e.g.*, Robert A. Cunningham et al., *The Law of Property* § 7.1, 411 (1984) (right to invite or to exclude 'is the most nearly absolute of the many property rights that flow from the ownership or other rightful possession of land'). That much the state does not contest. ***
>
> *** Defendant signed a conditional release order that restrained *him* from engaging in certain conduct. But nothing in the record of this case suggests that the conditional release order limited [*the victim's*] authority to invite whomever she pleased to her residence. In short, the state failed to establish that [the victim] lacked actual authority to invite defendant onto her premises." (Emphases in original.) *Id.* at 57.

¶ 31 Two other decisions of the Court of Appeals of Oregon cited *Hall* approvingly. They are *State v. Maxwell*, 159 P.3d 1255 (Or. Ct. App. 2007), and *State v. Klein*, 342 P.3d 89 (Or. Ct. App. 2014).

¶ 32 B. Double Jeopardy

¶ 33 Alternatively, the State argues that even if this court concludes that the trial court erred by finding defendant guilty of home invasion based upon his violation of the conditions of his bail, the evidence nonetheless was sufficient to prove defendant guilty. By making this argument, the State is asking us to second-guess the trial court's finding that S.L. consented to defendant's entry. We decline the State's request to do so.

¶ 34 "In criminal cases[,] the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963 [(725 ILCS 5/114-1 (West 2014))]; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence." Ill. S. Ct. R. 604(a) (eff. Dec. 11, 2014). If the trial court as trier of fact finds that a defendant is not guilty, the State may not appeal that decision even if the court made a legal error. *Sanabria v. United States*, 437 U.S. 54, 64 (1978); *People v. Laxton*, 139 Ill. App. 3d 904, 906-07, 488 N.E.2d 303, 304 (1986). To do otherwise would subject the defendant to double jeopardy. U.S. Const., amend. V; Ill. Const. 1970, art. I, § 10; *People v. Bean*, 135 Ill. App. 3d 336, 338-39, 481 N.E.2d 888, 890-91 (1985).

¶ 35 In this case, the trial court found defendant factually innocent of home invasion due to S.L.'s consent but guilty as a matter of law due to the court order barring him from entering that residence. That is, the court made a specific factual finding that S.L. essentially granted defendant authority to enter her dwelling. However, we have concluded that the court made

an erroneous legal conclusion when it ruled that S.L.'s permission was irrelevant because defendant's entry into S.L.'s residence was in violation of the conditions of his bail bond.

¶ 36 Apparently foreseeing the possibility that this court might so conclude, the State asks us nevertheless to affirm defendant's home invasion conviction. Citing ***Beacham v. Walker,*** 231 Ill. 2d 51, 61, 896 N.E.2d 327, 333 (2008), the State suggests that this court can affirm defendant's conviction based on "any ground which is called for by the record, regardless of whether the lower court relied on those grounds and regardless of whether the lower court's reasoning was correct." The State further asks this court to review the evidence in the light most favorable to the State. ***People v. Collins***, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (2005). However, for the reasons stated, our doing so would violate Illinois Supreme Court Rule 604(a) (eff. Dec. 11, 2014) and the double jeopardy clause of the fifth amendment, which prohibits an appellate court from reversing a trial court's factual findings that resulted in an acquittal.

¶ 37 We reiterate that the trial court has already found defendant ***factually*** innocent of the home invasion charge. To review the record on appeal in the light most favorable to the State and to then find defendant factually guilty of home invasion (contrary to the trial court's findings) would subject defendant to double jeopardy. U.S. Const., amend. V; Ill. Const. 1970, art. I, § 10.

¶ 38 III. CONCLUSION

¶ 39 We reverse defendant's conviction for home invasion and remand for sentencing on his conviction for domestic battery. We otherwise affirm.

¶ 40 Affirmed in part, reversed in part, and cause remanded with directions.

residence deprived him of any authority that he had to enter, and that Samantha Liggett, the person who is protected by that order, cannot override that order.

So the defendant did not have authority, and I don't think under that theory we have to prove anything as far as a criminal intent when he entered.

THE COURT: All right. So, Carolyn, show the court has considered the additional arguments of counsel. The court finds on the basis of the plain language of subsection (d) of the home invasion statute and the *Howard* underlying case, that the defendant entered the dwelling of another without authority and intentionally caused a battery, and, therefore, the defendant is guilty of Count I, home invasion. There is a judgment of conviction entered.

The court does believe that the *Howard* case is exactly on point. They agree with you - - well, I don't think "agree" is the right word, Mrs. Root - - but they do go into a discussion about how if one reads the legislative notes when they passed the law, that this was not the original intent of the home invasion statute. But when they amended the statute with the subsection (d), the case makes it very clear that to have authority to enter one must have the requisite

tenancy interest, which is what the limited authority cases are about, and the possessory interest and when there is the court order barring entry, one does not have the possessory interest. Therefore, that makes Mr. Witherspoon guilty in this circumstance.

So we need to set the matter for sentence hearing, correct, Ms. Koll?

MS. KOLL: Yes.

THE COURT: Mrs. Root?

MRS. ROOT: Yes.

THE COURT: Show cause is allotted for sentence hearing. I keep trying the sell the week after Memorial Day, which is the week of May 26th.

Are you here that week, Mrs. Root?

MRS. ROOT: I am in town so, yes, I could do it that week.

THE COURT: Were you scheduled to be off?

MRS. ROOT: I was. So is everybody else in the free world.

THE COURT: I am here. How about the next week, the week of June 1st?

MRS. ROOT: That week is fine.

MS. KOLL: That is fine.

THE COURT: That's a pretrial week, but we can

THE COURT: Well, you both make very good arguments. This will be at least the partial decision of the court.

Carolyn, show the defendant has considered - - the court has considered the sworn testimony, the exhibits and the arguments of counsel.

Finding by the court as to Count II, the People have not proven the charge of aggravated criminal sexual assault beyond a reasonable doubt. I am not going to comment at great length because the two of you have carefully reviewed the facts. But this court simply cannot find with the requisite degree of certainty in terms of what happened fact-wise with respect to that particular offense.

Then, Carolyn, show as to Counts III and IV, Count III is the domestic battery, Count IV is unlawful possession of a controlled substance, finding by the court the People have proven beyond a reasonable doubt the defendant guilty as to Counts III and IV.

And to comment briefly, as to Count III, at a minimum, and even by defendant's own testimony, and from looking at the photos, from hearing the testimony of the police officers and of the R.N. at St. Mary's Hospital, there was clearly an extensive use of force

used in this circumstance. If the court takes the alleged victim's statement as being true, there was clearly more than excessive use of force. So I think the People have clearly proven Counts III.

As to Count IV, I do agree it is a constructive possession situation. The cocaine was found within the defendant's jeans. There is no testimony that anybody else wore the jeans. The jeans had been previously within his exclusive control. I think the court can infer knowledge from that point.

The court is most troubled by Count I, the home invasion. The court is going to reserve ruling as to that count at this time.

To get right to the point, in terms of entry without authority, this court is not convinced that there is proof beyond a reasonable doubt that the defendant entered that residence with the intent to batter her. When you are looking at that issue it comes down to the alleged victim's word versus the defendant's word, and in terms of how that occurred I simply can't say with any degree of certainty. When it comes down to the fact that he simply did not have the authority to enter the residence, by the alleged victim's own testimony she said, well, he took the

keys, and he took the car and I didn't worry about it because I knew he was going to be back. So by her own testimony he had authority to enter the residence.

What I am troubled by is this jury's instruction, and specifically the issue is this:

The defendant knew that there was a bail bond in place where he knew he was not to be at that residence. So when he entered that residence he knew he was violating that bail bond. That in and of itself is without authority. If it is, then he is guilty of home invasion. If it is not, then he is not guilty of home invasion. I don't know the answer to that question at this point. I presume that there is some case law that further explains that jury instruction.

So, again, as to the home invasion count, which I think is Count I, I am going to reserve ruling at this time. I am going to set that count for further argument how about next Wednesday or Thursday, counsel?

MS. KOLL: Your Honor, there is a lengthy committee note if the court would like to go look at that.

THE COURT: I would like to look at that and any case law. I want to know what it means. Give me a date.

IN THE CIRCUIT COURT OF MACON COUNTY, ILLINOIS
SIXTH JUDICIAL CIRCUIT

FILED
JUN. 03 2015
LOIS A. DURBIN
CIRCUIT CLERK

PEOPLE OF THE STATE OF ILLINOIS)
) Case No. 14 CF 1056
Vs.)
)
Marcellus Witherspoon,)
Defendant

Date of Sentence June 2, 2015
Date of Birth March 8, 1975
(Defendant)

JUDGMENT - SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below; IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
I	Home Invasion	8/29/2014	720 5/19-6	X	14 Yrs. -0- Mos.	3 Yrs.
To be served at 50% pursuant to 730 ILCS 5/3-6-3						
IV	Unlawful Possession of ControlledSubstance	8/29/2014	720 570/402(c)	4	3 Yrs. Mos.	1 Yr.
To run concurrent with Count I and served at 50% pursuant to 730 ILCS 5/3-6-3						
					Yrs. Mos.	Yrs.
To run (concurrent with) (consecutively to) count(s) and served at 50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3						

This Court finds that the defendant is:

_____Convicted of a class _____ offense but sentenced as a Class X offender pursuant to 730 ILCS 5/5-4.5-95(b).

X The Court further finds that the defendant is entitled to receive credit for time actually served in custody August 29, 2014 through June 1, 2015. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections.

_____The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____ resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(2)(iii)).

_____The Court further finds that the defendant meets the eligibility requirements for possible placement in the Impact Incarceration Program. (730 ILCS 5/5-4-1(a)).

_____The Court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse and mental health program. (730 ILCS 5/5-4-1(a)).

_____The defendant successfully completed a full-time (60-day or longer) Pre-Trial Program ____Educational/Vocational ___ Substance Abuse ___ Behavior Modification ___ Life Skills ___ Re-Entry Planning – provided by the county jail while held in pre-trial detention prior to this commitment and is eligible for sentence credit in accordance with 730 ILCS 5/3-6-3(a)(4). THEREFORE IT IS ORDERED that the defendant shall be awarded additional sentence credit as follows: total number of days in identified program(s) _____ x 1.50 (1.25 for program participation before August 11, 1993) = _____ days, if not previously awarded.

_____The defendant passed the high school level test for General Education and Development (GED) on _____ while held in pre-trial detention prior to this commitment and is eligible to receive Pre-Trial GED Program Credit in accordance with 730 ILCS 5/3-6-3(a)(4.1). THEREFORE IT IS ORDERED that the defendant shall be awarded 60 days of additional sentence credit, if not previously awarded.

_____IT IS FURTHER ORDERED the sentence imposed on count _____ be concurrent with the sentence imposed in case number _____ in the Circuit Court of _____ County.

_____IT IS FURTHER ORDERED that _____

_____

The Clerk of the Court shall deliver a certified copy of this order to the Sheriff. The Sheriff shall take the defendant into custody and deliver defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law.

This order is (X effective immediately) (_____ stayed until _____).

DATE: June 3, 2015 ENTER: _____

Thomas E. Griffith, Circuit Judge
(PLEASE PRINT JUDGE'S NAME HERE)

Approved by Conference of Chief Judges 6/20/14

C144

In the Circuit Court of the 6th Judicial Circuit
Macon County, Illinois

The People of the State of Illinois,

v. No 2014-CF-1056

Marcelus Witherspoon

Notice of Appeal
Joining Prior Appeal/ Separate Appeal/ Cross Appeal
(Circle one)

An appeal is taken from an order or judgment described below.

(1) Court to which appeal is taken: 4th Judicial District

1. Name of appellant and address to which notices shall be sent.
2. Name: Marcelus Witherspoon B28687

Address: Graham Correctional Center, RR #1 Highway 185 PO Box 499 Hillsboro, Il 62049

Email:

3. Name and address of appellant's attorney on appeal.

Name: The State Appellate Defender

Address: 400 West Monroe Suite 303 Springfield, Illinois 62705-5240

Email:

If appellant is indigent and has no attorney, does he want one appointed? Yes

4. Date of judgment or order: 06/02/2015
5. Offense of which convicted: CT I Home Invasion/Cause Injury
   CT IV Unlawful Possession of Controlled Substance
6. Sentence: CT I 14 Years CT IV 3 Years
7. If appeal is not from a conviction, nature of order appealed from:
8. If the appeal is from a judgment of a circuit court holding unconstitutional a statute of the United States or of this state, a copy of the court's findings made in compliance with rule 18 shall be appended to the notice of appeal

(Signed) Lois A Durbin

(May be signed by appellant, attorney for appellant, or clerk of circuit court)

123092

FILED

AUG 11 2014

LOIS A. DURBIN
CIRCUIT CLERK

In the Circuit Court of the Sixth Judicial Circuit
Macon County, Illinois

People of the State of Illinois
Vs.
Witherspoon, Marcellus

The undersigned defendant, being charged with the Offense of Domestic Battery/ Harmful contact/other and criminal trespass to residence

Case No. 14CF924

Bond

(X) Cash ( ) Recognizance

The undersigned defendant, being charged with an offense under the laws of the State of Illinois acknowledges an indebtedness to the People of the State of Illinois in the penal sum of $10,000 to be levied upon his/her property wherever situated, and as security thereto for the compliance with the conditions of bond, the sum $1000 is deposited in cash with the Clerk of the Court which is ( ) the total amount required by Article V of the rules of the Supreme Court of Illinois (X) equal to 10% of the amount of bond. Defendant further undertakes the Following as terms and conditions of this bond: If checked the following are conditions of Bond.

(X) 1. Appear in Courtroom 1 Macon County Courthouse Decatur, Illinois at 9:00 o'clock a.m. on the 21 day Of Aug, 2014 and from time to time thereafter as may be directed until discharged by the court;
(X) 2. Submit to all orders and processes of the court;
(X) 3. Not to depart this State without permission of court;
(X) 4. Not violate any criminal statute of any jurisdiction
(X) 5. Give written notice to the Clerk of the Court of any change of address within 24 hours thereafter;
( ) 6. Refrain from possessing a firearm or other dangerous weapon;
(X) 7. Refrain from entering or remaining at the victim's residence and refrain from having any contact, directly or indirectly, with the victim until disposition of this case.
Victim: Samantha Liggett

( ) 7.(a) Refrain from contact or communication with the victim and refrain from entering or remaining at the victims residence for a minimum period of 72 hours following the defendant's release.
Time of release: _____
(X) 8. Refrain from going on the premises located at: Victims residence
( ) 9. Refrain from using intoxicating liquor or illegal drugs;
( ) 10. Undergo treatment for drug addiction or alcoholism;
( ) 11. Observe curfew and to be home at ____p.m. until ____ a.m. Monday through _____
(X) 12. $25.00 Bond fee
( ) 13. _____

Certification

BY DEFENDANT

I understand that if at any time prior to the final disposition of this case, I fail to appear in court when so required, my failure to appear will Constitute a waiver of my right to confront witnesses against me and the trial may proceed in my absence.

I certify that I have read the foregoing provisions of this bond; fully understand the condition thereto and agree to comply with said conditions; That upon violation of any such condition, my bond may be forfeited, the amount of bond increased and/or the conditions altered, and if the commission of a felony is alleged as a violation of bond, this bond may be revoked.

PAYOR OF CASH DEPOSIT

I further understand any sum given as cash deposit may be used in the court's discretion for the payment of fine, costs, restitution or court appointed counsel Public Defender's fees. Therefore, money posted by the defendant, or by someone else on his/her behalf may, or may not, be returned at the conclusion of the case. Ten percent of such money deposit will be retained by the Clerk as statutory bond costs with the balance being returned to the defendant or his/her designee less any amount applied to the payment of fines, costs, restitution and court appointed counsel fees.

X Marcellus Witherspoon	X Charlotta Witherspoon
Defendant's signature	Payor of Cash Deposit other the Defendant
1429 E. Prairie	1429 E. Prairie
Street Address	Street Address
Decatur IL 62521	Decatur IL 62521
City State Zip	City State Zip
217 519-3434 3-8-75	217-519-3434 2-16-74
Phone DOB	Phone DOB
	W362-1107-4647
Driver's Lic. SSN	Driver's Lic. SSN
Taken before me this 10 day of Aug 2014	( ) Judge ( ) Clerk (X) Sheriff ( ) Police

Circuit Clerk- White Copy State's Attorney- Pink Copy Defendant- Yellow copy

***People v. Witherspoon*, No. 14 CF 1056 (Macon County)**
Index to the Common Law Record

Page(s)

People v. Witherspoon, No. 14 CF 1056 (Macon County)
Index to the Report of Proceedings

Page(s)

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

PROOF OF FILING AND SERVICE

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 May 30, 2018, the foregoing **Brief and Appendix of Plaintiff-Appellant** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

Adrienne N. River
Office of the State Appellate Defender
203 North LaSalle Street, 24th Floor
Chicago, Illinois 60601
1stdistrict.eserve@osad.state.il.us

John M. Zimmerman
State's Attorneys Appellate Prosecutor
725 South Second Street
Springfield, Illinois 62704
4thdistrict@ilsaap.org

Jay Scott
Macon County State's Attorney
Macon County Courthouse Facility
Decatur, Illinois 62523
general@sa-macon-il.us

Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief and Appendix to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Eldad Z. Malamuth
ELDAD Z. MALAMUTH
Assistant Attorney General