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 Honorable
	)	Thomas E. Griffith,
Defendant-Appellee.	)	Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

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ARGUMENT

Defendant was charged with domestic battery of Samantha Liggett, his former girlfriend. A condition of his pre-trial release required that he refrain from entering her residence. Nevertheless, defendant entered her residence and battered her again.

The issue here is whether defendant entered Liggett's residence "without authority." If so, he is guilty of home invasion. The People's opening brief established that defendant's entry was "without authority" for two reasons: (1) giving the word "authority" its plain and ordinary meaning, defendant had no official right to enter Liggett's residence when doing so was unlawful under the conditions of his pre-trial release; and (2) under the limited authority doctrine, defendant exceeded any authority he had by entering and battering Liggett.

I. When Defendant Entered the Residence in Violation of His Bail Conditions, He Did So Without Authority.

A. Defendant entered without "authority" under the word's plain and ordinary meaning.

Authority is "[t]he official right or permission to act." Authority, *Black's Law Dictionary* (10th ed. 2014); Peo. Br. 11.[1] Defendant's bond condition barred him from entering Liggett's residence, making his

[1] "Peo. Br. _" refers to the People-Appellant's opening brief in this case; "A_" refers to the appendix to the People's opening brief; "RV _ _" refers to the report of proceedings (followed by the volume and page number); and "Def. Br. _" refers to Defendant-Appellee's brief in this case.

subsequent entry without "the official right or permission to act" and, therefore, without authority.

Because the issue here is whether defendant entered "without authority," because the word's plain and ordinary meaning is the "most reliable indicator of legislative intent," *People v. Chenoweth*, 2015 IL 116898, ¶ 21, and because defendant does not dispute this plain meaning of "authority," *see* Def. Br. 4, 12, this Court should reverse on that basis alone.

Defendant's argument focusing on the meaning of "invasion" misses the point. *See* Def. Br. 4, 12 (citing *Black's Law Dictionary* (10th ed. 2014)). The legislature defined home invasion to require that the entry be made "without authority" — no element of the offense requires a literal "invasion." Because defendant does not contest that "authority" means having the "official right or permission to act," defendant's unlawful entry in violation of his bond conditions constituted home invasion.

Even if the statute required an "invasion," defendant's conduct satisfied his own definition of that term. According to defendant, Def. Br. 12, *Black's Law Dictionary* defines "invasion" as "a hostile or forcible encroachment on the rights of another." Here, defendant committed a hostile encroachment on Liggett's rights when he unlawfully entered her residence and battered her. Hostile, *Black's Law Dictionary* (10th ed. 2014) (defining hostile as "1. adverse. 2. Showing ill will or a desire to harm."); Adverse,

Black's Law Dictionary (10th ed. 2014) (defining adverse as "Against; opposed (to)").

And if, as defendant contends, the legislature had intended "without authority" to mean "without consent" of the victim, *see* Def. Br. 12, then it surely would have said so explicitly. Because it did not, this Court must give "authority" its plain and ordinary meaning. *Chenoweth*, 2015 IL 116898, ¶ 21.

Defendant also fails to adequately address 720 ILCS 5/19-6(d), which the legislature enacted in response to *People v. Reid*, 179 Ill. 2d 297, 315-17 (1997). Subsection (d) makes clear that a defendant commits home invasion when he enters without authority a residence to which a court order grants the victim exclusive possession, even if the defendant had a legal interest in the residence. Defendant responds, as the People acknowledged, that subsection (d) targeted the "dwelling place of another" element. Def. Br. 13; Peo. Br. 19. But that is only because *Reid* focused on that element. Subsection (d) demonstrates the legislature's intent that the offense is home invasion when a person enters a residence in violation of a court order. It would frustrate the legislature's clear intent and the statute's plain meaning to interpret "without authority" in a way that reopens the same loophole the legislature closed with its clarification of "dwelling place of another."

B. Courts apply the plain meaning of "authority."

Defendant points to no other Illinois case that has adopted his interpretation of "authority." Nor can he distinguish the contrary cases that have applied the word's plain meaning.

Defendant argues that *People v. Howell*, 358 Ill. App. 3d 512 (3d Dist. 2005), cited at Peo. Br. 13, is "inapt," Def. Br. 4. *Howell* addressed a sufficiency-of-the-evidence claim concerning a home invasion charge and cited one fact only with respect to defendant's lack of authority: he was under a court order barring his contact with the victim. *Id.* at 528. Defendant asserts that this case presents a "different issue": "whether a person who is subject to a court order barring entry commits home invasion when he enters with the resident's consent." Def. Br. 4. But *Howell* holds that a court order is sufficient, standing alone, to render the entry unauthorized, contradicting defendant's central argument that only the resident's consent matters.

Defendant also cannot distinguish *People v. Priest*, 297 Ill. App. 3d 797, 805 (4th Dist. 1998), cited at Peo. Br. 14, where the trial court excluded testimony from the victim of a home invasion that she had allowed the defendant into her residence on previous occasions despite the existence of an order of protection. The trial court explained that the victim "cannot grant authority in the face of an order of protection because to do so would violate the order." *Id.* The appellate court affirmed that "the trial court was correct in not allowing the evidence" as it "premised its exclusion . . . on the fact that

the order of protection alone prohibited defendant's entry." *Id.* at 806. *Priest* cited *In re B.J.*, 268 Ill. App. 3d 449, 452 (4th Dist. 1994), for the proposition that "persons subject to a court order are not relieved from obeying it even if the third party who the order protected decides he does not want the benefits of that order." *Priest*, 297 Ill. App. 3d at 806.

Defendant asserts that in *Priest*, the "order of protection did not go to the complaining witness's legal ability to consent but merely to the admissibility of evidence related to prior entries by defendant." Def. Br. 9. But defendant does not explain why this distinction makes a difference. The issue in *Priest* was whether the trial court properly excluded evidence that the victim had on previous occasions admitted defendant into her home. *Id.* at 805. Both the trial and appellate courts found evidence that the victim had consented to Priest's entry on previous occasions was irrelevant: Priest's entry was "without authority" because of the court order regardless of whether the victim consented.

To be sure, *Priest* also reasoned that the evidence regarding Priest's past visits was irrelevant because it did not make it more probable that the victim invited him into her home on the night in question when the evidence showed that she refused him entry. *Id.* at 806. But it is axiomatic that any rationale on which a court relies is "entitled to much weight and should be followed unless found to be erroneous." *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 217, 236 (2010); *see also Woods v. Interstate Realty Co.*, 337 U.S. 535,

537 (1949) ("where a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum*"). This Court should follow the Illinois cases that have long applied the plain meaning of the statute to find that one who enters a residence in violation of a court order does so "without authority."

C. Defendant's interpretation thwarts the statute's purpose.

Defendant urges this Court to ignore the plain meaning of "authority" because the "purpose of the home-invasion statute is to punish unwanted intrusions into the home." Def. Br. 3; *see also* Def. Br. 12 ("The obvious purpose of the home-invasion statute is to punish unwanted intrusions: when persons enter a dwelling place without the resident's permission."). This argument — unsupported by authority — misstates the law's purpose.

According to this Court, the stated "purpose of the home invasion statute . . . is to protect the safety of persons in their homes." *People v. Hicks*, 181 Ill. 2d 541, 549 (1998). Thus the People's interpretation of "without authority" to include those barred by court order serves this purpose.

Here, defendant was barred by court order, under provisions of the bond conditions statute, *see* Peo. Br. 12; 725 ILCS 5/110-10(d), from entering the victim's residence because he had been charged with domestic battery against her. It bears repeating that there was a legal determination that it was too dangerous to allow defendant to contact the victim or enter her

residence. Defendant violated that court order, entered the victim's home, and then battered her again. Preventing such harm is precisely the purpose of the statute: "to protect the safety of persons in their homes." *Hicks*, 181 Ill. 2d at 549.

Defendant's contrary interpretation would thwart not only the purpose of the home invasion statute, but also the laws regarding bond conditions, domestic violence protective orders, and other legislative efforts to protect victims of domestic violence, in violation of the presumption that these statutes "are governed by one spirit and a single policy, and that the legislature intended the several statutes to be consistent and harmonious." *In re Jarquan B.*, 2017 IL 121483, ¶ 34 (internal quotation marks omitted).

Defendant's rule could also undermine the statute's purpose in households with multiple residents. If any resident's consent to the entry of someone barred by court order from entering the home constitutes authority, that would include a roommate could who might be unaware of the court order, a friend of the defendant, or an easily influenced minor. This Court should reject defendant's proposal as flatly contrary to the purposes of the home invasion statute.

D. A resident can admit a defendant barred by a court order by taking the appropriate legal steps.

Defendant's argument that it "is for the homeowner or tenant to decide whether to take that risk" of admitting in a person barred by court order, Def. Br. 10, contradicts Illinois legislative policy as reflected by the laws providing

for bond conditions or domestic violence protective orders prohibiting certain defendants from entering certain residences.

Moreover, defendant fails to address the People's point that a homeowner or tenant unhappy with a court order may seek to modify it. *See* Peo. Br. 15; Def. Br. 8. 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"). Under this legislative framework, the default rule is that a homeowner can decide whether to risk authorizing entry in most situations but, once a court order prohibits such entry, the homeowner must take additional legal steps; consent of the victim or a fellow resident, alone, does not suffice.

The People's opening brief demonstrated that homeowners' and residents' ability to consent to entry is always subject to superior legal authority. For instance, when a homeowner clearly states that a defendant is not authorized to enter the house, an invitation by the owner's minor child does not confer authority even though a minor generally can authorize entry of others. *People v. Long*, 283 Ill. App. 3d 224, 226 (2d Dist. 1996); *see also* Peo. Br. 15. Defendant responds that *Long* is inapposite because there "the homeowner had withdrawn authority to enter." Def. Br. 10. But in fact, *Long* contradicts defendant's proposed rule that a resident's

contemporaneous consent always authorizes entry. *See e.g.*, Def. Br. 3 ("If a resident gives consent to entry, the invitee does not invade the home.").

Similarly, the People's brief pointed out that while a homeowner generally has authority to determine who may or may not enter the residence, court orders sometimes dictate whether entry is lawful. Thus, police officers with a valid search or arrest warrant may enter a residence regardless of the homeowner's consent. Peo. Br. 14. Defendant responds that the situation is not analogous because "a warrant gives the police affirmative authority to enter," while the bond condition "did not take away the complaining witness's power to allow Witherspoon to enter." Def. Br. 9. This in no meaningful way distinguishes the cases. In both situations, the issue is whether the homeowner may dictate whether the entry of a nonresident is lawful in the face of a contrary judicial order. In both situations, the answer is no.

Defendant's arguments to the contrary are legally and logically unsound. For instance, to bolster his argument that the victim maintained the ability to authorize defendant's entry to her residence despite the court order, he asserts that his "entry was otherwise legal but for the court order, which was a limitation solely on him." Def. Br. 8. But all conduct is legal except for the laws that make particular conduct illegal. Similarly, defendant protests that his rule would not permit a resident to "authorize" illegal conduct. Def. Br. 7-8. But he admits that entering Liggett's residence

violated his bond conditions. Def. Br. 7. If Liggett could "authorize" his entry into her residence, she could "authorize" illegal conduct, in contravention of the law and legislative policy of Illinois.

E. Defendant's foreign cases do not justify a departure from Illinois law.

The appellate court and defendant rely chiefly on a decision by an Oregon appellate court, *State v. Hall*, 47 P.3d 55 (Or. Ct. App. 2002), which reversed a conviction for criminal trespass because the resident, with whom he was romantically involved, invited him in. But in addition to interpreting a foreign statute with different wording, *Hall* does not provide a sound basis to adopt defendant's rule for two reasons: (1) it is distinguishable, and (2) it is in the minority.

Hall is distinguishable because the court order there did not bar the defendant from entering the residence. Instead, the court order barred the defendant "from having contact" with the resident. *Id.* at 56. The resident could have invited Hall to enter the home without contravening the court order, for instance by having a mutual friend indicate to Hall a time to collect his belongings. The issue under the Oregon statute was whether Hall was "licensed or privileged" to enter the home, *see id.* (citing Or. Rev. Stat. § 164.205(3)(a)), and the resident retained the ability to license Hall's entry so long as he did not have contract with her.

Even if *Hall* could be read as holding that a resident may license entry in contravention of a court order, this Court should decline to follow that

decision as it represents the minority view. For instance, *State v. Sanchez*, 271 P.3d 264, 268 (Wash. Ct. App. 2012), reversed the dismissal of a residential burglary charge, holding that the resident's invitation to the defendant did not render his entry into the home lawful because he was prohibited from doing so by a court order. *See also id.* at 267 ("We hold that the consent of a protected person cannot override a court order excluding a person from the residence."). The Washington Court of Appeals explained that the State had "a strong public policy against domestic violence," and that protected parties could not "waive the provisions" of a court order. *Id.* at 266. "Modifications of a protection order are a matter for the trial court; modifications of the public policy are for the legislature." *Id.* Illinois laws reflect a similar public policy.

Similarly, the New York Appellate Division held that the trial court properly instructed the jury that for the purposes of the charged burglary, a resident "could not grant defendant a license or privilege to enter premises from which he had been excluded by a court order." *People v. Lewis*, 786 N.Y.S.2d 494, 497 (N.Y. App. Div. 2004), *aff'd*, 840 N.E.2d 1014 (N.Y. 2005). Once a "court has ordered an individual to stay away from specified premises, the individual must comply with the order while it remains in effect, regardless of anything said or done by the occupant of the premises. Stated otherwise, the occupant of the premises has no power to grant a license or privilege to enter the premises . . . to a person who is required by court order

to refrain from entering those premises." *Id.* at 497-98; *see also Ex parte Davis*, 542 S.W.2d 192, 195-96 (Tex. Crim. App. 1976) (that defendant's brother, who also held an interest in the property, "was not a party to the civil proceeding wherein Priscilla Davis was granted exclusive possession of the residence does not empower him to give appellant effective consent to enter the premises declared off limits for appellant by the civil court's order. If it did, the power and authority of the civil court which imposed the equitable order could be circumvented extrajudicially."). In short, defendant's foreign precedent provides no basis to depart from Illinois law.

F. The evidence sufficed to demonstrate defendant's knowing entry.

Defendant argues for the first time in this Court that he did not know that his entry of Liggett's residence was without authority because he was unaware that Liggett's consent did not override his bond conditions. Def. Br. 15-17. But under the statute's plain reading, the mental-state requirement applies only to his entry and not the authority element: he needed to knowingly enter, while his entry simply needed to be without authority. *See* 720 ILCS 5/19-6(a) ("A person . . . commits home invasion when without authority he or she knowingly enters the dwelling place of another . . ."); *see also* Ill. Pattern Jury Instr. – Criminal 11.54 ("That the defendant knowing and without authority entered the dwelling place of another"). Indeed, "[s]hort of including an explicit statement that no mental state applied to the 'without authority' element, we can think of no other way that the legislature

could have made it more clear that it intended absolute liability for the 'without authority' element." *People v. Davis*, 2012 IL App (2d) 100934, ¶ 17.

Even if the home invasion statute required that the lack of authority be knowing, knowledge of the relevant facts suffices. *See People v. Hollins*, 2012 IL 112754, ¶ 34 ("ignorance of the law is no defense"); *People v. Sevilla*, 132 Ill. 2d 113, 125 (1989) ("Knowledge generally refers to an awareness of the existence of the facts which make an individual's conduct unlawful."); *see also* 720 ILCS 5/4-3(c) ("Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such."); 720 ILCS 5/4-8(b) (listing circumstances when reasonable belief that conduct does not constitute offense can be affirmative defense, none of which are applicable here). Defendant admitted that he signed the bond order and was aware both of its provisions and that he was violating them on the night of the assault. RX VIII 309-10.

Finally, defendant's resort to the rule of lenity is unavailing, as this Court has made clear that it "is subordinate to our obligation to determine legislative intent, and the rule of lenity will not be construed so rigidly as to defeat legislative intent." *People v. Gutman*, 2011 IL 110338, ¶ 12. Moreover, as discussed above, the statute's plain language, *Priest*, *Howell*, and subsection (d) all alerted defendant that entering Liggett's residence in violation of a court order was unauthorized.

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

Even if Liggett could provide authority for defendant to enter her residence notwithstanding the bail condition, she did not do so on the facts of this case. The People's opening brief established that the lower courts reached an incorrect legal conclusion based upon facts that they merely assumed to be true. Peo. Br. 10-22. The trial judge 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. Both lower courts incorrectly concluded that this factual inference — that because Liggett knew defendant was going to come back, she consented to his later entry — had the legal effect of establishing authority to enter under the home invasion statute.

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). 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. *People v. Bush*, 157 Ill. 2d 248, 254, 257 (1993). And authority to enter in specific circumstances does not constitute carte blanche authority to enter at will.

Thus, the fact 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. Nor did it mean that defendant had authority to enter her home in the middle of the night and enter her bedroom while she slept. *See People v. Reynolds*, 359 Ill. App. 3d 207, 212-13 (2d Dist. 2005) (that defendant sometimes entered house without explicit permission when one occupant knew he was coming over, including during the night, did not mean he had authority to enter the house in middle of the night without prior permission). Above all, it did not mean he had authority to enter and 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.

A. Forfeiture does not apply.

Defendant argues that the People forfeited their limited-authority doctrine argument because it was not raised in the petition for leave to appeal. Def. Br. 19. But "this [C]ourt may affirm a trial court's judgment on any grounds which the record supports even if those grounds were not argued by the parties." *In re Det. Of Stanbridge*, 2012 IL 112337, ¶ 74; *see also People v. Ligon*, 2016 IL 118023, ¶ 32 ("this court may affirm the trial court's judgment on any basis established by the record"); *People v. Mosley*,

2015 IL 115872, ¶ 25 n.7 ("Regardless, we may affirm or reject the lower court's holdings based on any reason supported by the record.").

Moreover, the purpose of the forfeiture doctrine is not served here. *See People v. Denson*, 2014 IL 116231, ¶ 13 ("This court's forfeiture rules exist to encourage defendants to raise issues in the trial court, thereby ensuring both that the trial court has an opportunity to correct any errors prior to appeal and that the defendant does not obtain a reversal through his or her own inaction."). Here, whether defendant entered without authority was a central issue at every stage of the proceedings, including the petition for leave to appeal, and the specific argument regarding whether the victim's conduct established consent was squarely presented to both the trial and appellate court. *See*, *e.g.*, A6; RV XII 321, 340. Accordingly, forfeiture does not apply.

B. The trial court did not make a factual finding that defendant had "authority."

Defendant argues that the trial court made a factual finding defeating the People's argument that, under the limited authority doctrine, defendant was without authority to enter the victim's residence. Def. Br. 20-22. Defendant is incorrect.

Defendant asserts that the trial court "made the specific finding that the State had not proven that Witherspoon had entered with the intent to commit battery." Def. Br. 20. Defendant cites to record page "R.XI. 343," but there does not appear to be such a page in the record. Presumably defendant meant to cite R.XII. 343, where the trial court stated that "by her own

testimony [defendant] had authority to enter the residence," as "she said, well, he took they keys, and he took the car" so "I knew he was going to be back." *Id.* But the court's statement is not a finding about defendant's intent; it concerns only the victim. To the contrary, that the trial court found defendant guilty of domestic battery, which (assuming Liggett's testimony was true, as the trial court did) defendant committed directly after he entered the apartment and while she was sleeping, and reflects a factual finding that defendant entered with the intent to batter Liggett. This Court must resolve whether, as a legal matter, the fact that Liggett knew that defendant would return constitutes her consent to his later entry, where that entry was made with intent to batter her. As discussed, it does not.

Finally, defendant asserts, as did the appellate court, that acceptance of the People's argument would violate defendant's double jeopardy rights. Def. Br. 21. But neither defendant nor the appellate court cites any precedent to support the proposition that affirming a conviction on an alternative ground violates double jeopardy principles. To the contrary, as discussed above, *see supra* 15, this Court frequently does so. Defendant's entry was unauthorized both because it was prohibited by his bond conditions and because Liggett's statement that she knew defendant would return did not authorize him to enter with the intent to batter her.

CONCLUSION

This Court should reverse the judgment of the appellate court.

July 31, 2018

Respectfully submitted,

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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, and the certificate of service, is eighteen pages.

/s/ Eldad Z. Malamuth
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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 July 31, 2018, the foregoing **Reply Brief 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:

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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.

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