No. 123318

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, Third District,
Plaintiff-Appellant,	)	No. 3-15-0352
	)	
	)	There on Appeal from the Circuit
v.	)	Court for the Fourteenth Judicial
	)	Circuit, Whiteside County, Illinois,
	)	No. 14-CF-254
	)	
DARREN JOHNSON,	)	The Honorable
	)	John Hauptman,
Defendant-Appellee.	)	Judge Presiding.

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

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ORAL ARGUMENT REQUESTED

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11/7/2018 1:46 PM
Carolyn Taft Grosboll
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POINTS AND AUTHORITIES

NATURE OF THE ACTION

Following a jury trial, defendant was convicted of burglary for entering a retail store without authority and with the intent to commit a theft therein. The appellate court reversed the conviction, holding that the evidence was insufficient to establish that defendant entered the store without authority because he entered during business hours and did not access any areas off limits to the public. This is an appeal of the appellate court's judgment. No issue is raised concerning the sufficiency of the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether, under the limited authority doctrine of *People v. Weaver*, 41 Ill. 2d 434 (1968), a person lacks authority to enter an open retail store if he enters with the intent to commit a theft inside.

JURISDICTION

This Court granted the People's petition for leave to appeal on May 30, 2018. Jurisdiction lies under Supreme Court Rules 315 and 612(b).

STATUTE INVOLVED

> A person commits burglary when without authority he or she knowingly enters or without authority remains within a building, . . . or any part thereof, with intent to commit therein a felony or theft.

720 ILCS 5/19-1(a).

STATEMENT OF FACTS

Defendant was charged with burglary and retail theft. The burglary count alleged that defendant, "without authority, knowingly entered a

building of Wal-Mart . . . with the intent to commit therein a theft." C9.[1] The retail theft count alleged that defendant stole from the Walmart various items of merchandise with a total value of less than $300. C10.

The evidence, including eyewitness testimony and video surveillance footage, showed that defendant and an accomplice entered the Walmart's vestibule area, placed two backpacks on top of a coin-exchange machine, and then entered the store. Peo. Exh. 2 ("ENTvest" at 1:20-1:33). Inside the store, a customer observed the two men "walking around with a bunch of stuff [that looked like clothes] in their hands" and noticed that "they would kind of veer off in other directions" when she approached them. R1039. The two men later returned to the vestibule separately, each retrieving one of the backpacks from the top of the coin-exchange machine, and then met near some vending machines outside the building. Peo. Exh. 2 ("ENTvest" at 4:15-4:45, 4:59-5:20).[2] The customer, who by this time was in the parking lot, saw defendant standing guard as the other man removed items from his shirt and pants and stuffed them into one of the backpacks. R1039-42.

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[1] The common law record is cited as "C__"; the report of proceedings as "R__"; and this brief's appendix as "A__." People's Exhibit 2, a DVD containing multiple files of video surveillance footage, is cited as "Peo. Exh. 2" with the particular camera and time range noted parenthetically.

[2] The customer testified that she saw the two men retrieve the backpacks from behind the vending machines, R1039-40, rather than from the coin-exchange machine in the vestibule, as the surveillance footage shows.

As the customer called the police, defendant and the other man returned to the vestibule, again placed their backpacks on top of the coin-exchange machine, and re-entered the store. R1040-43; Peo. Exh. 2 ("ENTvest" at 5:25-6:33). Defendant later returned to the vestibule area alone, retrieved one of the backpacks from the coin-exchange machine, and exited the store. R1043; Peo. Exh. 2 ("ENTvest" at 14:12-14:33). By this time, three police officers had arrived. Two of the officers observed defendant exit the store after retrieving the backpack, and they followed him on foot. R1080-81, 1112-13. The third officer pulled his car alongside defendant and got out to talk to him. R1096. The officer asked defendant if he had stolen items from the Walmart, and defendant said that he had. *Id.* The officers escorted defendant to the store manager's office, where defendant removed from his backpack or person fourteen items of girls' clothing with a total retail value of $76.91 and admitted that he had taken the items for his daughter. R1083-86, 1116-18, 1126, 1142, 1148-49, 1152-53.

The judge instructed the jury on the elements of burglary and retail theft. R1223-26. As relevant here, those instructions explained that a person "commits the offense of burglary when he, without authority, knowingly enters a building with the intent to commit therein the offense of theft." R1225. The judge also delivered the pattern jury instruction on the limited authority doctrine, stating that:

> The defendant's entry into a building is "without authority" if, at the time of entry, the defendant has an intent to commit a

> criminal act within the building regardless of whether the defendant was initially invited in or received consent to enter.
>
> However, the defendant's entry into the building . . . is "with authority" if the defendant enters without criminal intent and was initially invited in or received consent to enter, regardless of what the defendant does after he enters.

R1225; *see* Illinois Pattern Jury Instructions (IPI), Criminal, No. 14.07A.

The jury returned verdicts finding defendant guilty of burglary and not guilty of retail theft. R1247. In a motion for new trial, defendant argued that, in light of his acquittal on the retail theft charge, the evidence was insufficient to prove that he entered the Walmart with the intent to commit a theft. C244. The judge denied the motion and sentenced defendant to eight years in prison. R1272-73, 1290; C252.[3]

On appeal, defendant argued that the evidence was insufficient to establish that he entered the Walmart store without authority because he entered during business hours and remained in publicly accessible areas of the store. A3, ¶ 17.[4] The appellate court agreed, citing two reasons for

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[3] Although burglary is a Class 2 felony with a sentencing range of three to seven years, *see* 720 ILCS 5/19-1(b); 730 ILCS 5/5-4.5-35(a), defendant was subject to a Class X sentencing range of six to thirty years due to his criminal history, *see* 730 ILCS 5/5-4.5-95(b), 730 ILCS 5/5-4.5-25(a).

[4] Defendant also argued that the evidence was insufficient to prove that he entered the store with the intent to commit a theft, that the trial court committed reversible error by prohibiting the jurors from taking notes during trial, and that his fines should be partially offset by *per diem* credit for time spent in pretrial custody. A3, ¶ 14. The appellate court did not address defendant's alternative sufficiency argument or his request to reduce his fines; and while the appellate court noted that the trial court erred in prohibiting juror notetaking, it did not decide whether that error required

refusing to apply the limited authority doctrine of *People v. Weaver*, 41 Ill. 2d 434 (1968), which provides that "authority to enter a business building, or other building open to the public, extends only to those who enter with a purpose consistent with the reason the building is open" and not to those who enter "with intent to commit a theft" inside. *Id.* at 439. First, the appellate court concluded that *Weaver* is not controlling because its underlying facts are "distinguish[able]." A4, ¶ 23. In the appellate court's view, the fact that the defendant in *Weaver* entered an open laundromat and used a key to open a locked vending machine inside suggested that the burglary conviction there rested not on the defendant's entry into the laundromat with the intent to commit a theft but on his "use[ ] [of] burglary tools to access [a] nonpublic area[ ]" of the laundromat. *Id.*

Second, the appellate court held that this Court's decision in *People v. Bradford*, 2016 IL 118674, "effectively overrule[d]" the doctrine that "one who intends to commit retail theft lacks authority to enter a store." A5, ¶ 28. *Bradford* did not question *Weaver*'s holding that "evidence that a defendant enters a place of business in order to commit a theft is sufficient to satisfy the 'without authority' element of burglary by *entering*," but it declined to extend that principle to a defendant's act of *remaining within* an open business (there a retail store) with intent to commit a theft. 2016 IL 118674, ¶¶ 23-25

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reversal. A6, ¶¶ 38-39. If this Court reverses the appellate court's judgment, it should remand for consideration of defendant's remaining arguments.

(emphasis added). The Court explained that extending the limited authority doctrine in that manner would be "unworkable" — because "it is not clear what evidence would be sufficient to establish that a defendant 'remains' within a public place in order to commit a theft" — and would produce "absurd[ ]" results by "arbitrarily distinguish[ing] between a defendant who shoplifts one item in a store and leaves immediately afterward, and a defendant who shoplifts more than one item or lingers inside a store before leaving." *Id.* ¶¶ 25-26. The Court also expressed concern that extending the limited authority doctrine to the act of remaining within a retail store with intent to commit a theft would "effectively negat[e] the retail theft statute" by converting "nearly all cases of retail theft" into burglary. *Id.* ¶ 27. Finally, *Bradford* concluded that it would be inconsistent "with the historical development of the burglary statute" to apply the limited authority doctrine in cases of burglary based on remaining in a building without authority because the burglary statute's "remains within" language evolved from an earlier law that applied only when a person was "found or discovered [in a building or area that] was closed to him or the public." *Id.* ¶¶ 29-30.

Despite *Bradford*'s narrow holding that the limited authority doctrine does not apply to burglary based on unauthorized remaining, the appellate court concluded that *Bradford*'s "rationale" similarly forecloses application of the limited authority doctrine to burglary based on unauthorized entry. A6, ¶ 33. In the appellate court's view, "[i]f forming the intent to shoplift does not

revoke one's authority to remain in a store, then it cannot logically revoke one's authority to enter either." *Id.* The appellate court also concluded that allowing prosecutors to bring burglary charges when a defendant enters an open retail store with the intent to commit a theft "disregards the purpose of criminalizing burglary" and "negates the retail theft statute." *Id.* ¶ 35.[5]

STANDARD OF REVIEW

Although challenges to the sufficiency of the evidence are generally reviewed with deference to the jury's verdict, defendant's contention that a person does not enter a retail store without authority if he enters during business hours and remains in publicly accessible areas, even if he enters with the intent to commit a theft, presents a question of law that is reviewed de novo. *See People v. Bradford*, 2016 IL 118674, ¶¶ 12, 14-15.

In the appellate court, defendant separately challenged the sufficiency of the evidence in support of the jury's finding that he entered the store with the intent to a commit a theft, but for purposes of the issue presented here, he did "not dispute the facts underlying his conviction" and argued only "that they cannot support a burglary conviction as a matter of law." A3, ¶ 17. Thus, in resolving the issue presented here, it must be assumed that defendant entered with intent to a commit a theft.

[5] The Second and Fourth Districts have expressly disagreed with the Third District's decision. *See People v. Moore*, 2018 IL App (2d) 160277, ¶¶ 25-27, petition for leave to appeal pending, *People v. Moore*, No. 123736; *People v. Burlington*, 2018 IL App (4th) 150642, ¶ 32.

ARGUMENT

Under *Weaver*'s Limited Authority Doctrine, Defendant Lacked Authority to Enter Walmart Because He Entered with Intent to Commit a Theft.

"A person commits burglary when without authority he or she knowingly enters or without authority remains within a building . . . with intent to commit therein a felony or theft." 720 ILCS 5/19-1(a). In other words, "there are two ways to commit the crime of burglary: (1) by entering without authority and with the intent to commit a felony or theft, or (2) by remaining without authority and with the intent to commit a felony or theft." *People v. Bradford*, 2016 IL 118674, ¶ 13. This case involves the first type of burglary. Defendant was convicted of burglary for entering a retail store without authority and with the intent to commit a theft therein. He contends that, as a matter of law, he cannot be held to have entered the store without authority, despite having already formed the intent to commit a theft inside, because he entered during business hours and never ventured into any areas of the store that were off limits to the public. But this Court rejected the very same argument in *People v. Weaver*, 41 Ill. 2d 434 (1968). In adopting what has come to be known as the limited authority doctrine, *Weaver* held that a person has "authority to enter a business building, or other building open to the public," only for "a purpose consistent with the reason the building is open," rendering "[a]n entry with intent to commit a theft" unauthorized. *Id.* at 439.

The appellate court gave two reasons for refusing to apply the limited authority doctrine here, but neither withstands scrutiny. First, the appellate court held that *Weaver* is distinguishable on its facts. But nothing in *Weaver* suggests that its broad holding was limited to its particular facts. Second, the appellate court thought that *Bradford* silently jettisoned application of the limited authority doctrine to situations in which a person enters an open retail store with intent to commit a theft. In *Bradford*, however, this Court merely declined to extend the limited authority doctrine to cases in which a defendant is charged with burglary based on *remaining within* an open retail store with intent to commit a theft. And it did so based on considerations that are not present when a charge of burglary is based on unauthorized entry.

In the half-century since this Court decided *Weaver*, the appellate court has consistently applied the limited authority doctrine to hold that authority to enter an open business establishment, including a retail store, does not extend to one who enters with intent to commit a theft. And while the General Assembly has repeatedly amended the burglary statute in that period, it has made no effort to undo *Weaver*. Because no special justification exists for departing from the principle of *stare decisis*, this Court should reaffirm *Weaver*'s holding that a person who enters an open business with the intent to commit a theft therein enters without authority.

A. *Weaver* is controlling.

In *Weaver*, the defendant was convicted of burglary after police observed him standing near a vending machine in an open laundromat and found $50 worth of coins and keys to the vending machine in his possession. 41 Ill. 2d at 435-36. On appeal, this Court rejected Weaver's contention that the evidence was insufficient to establish that he entered the laundromat without authority because "the laundromat was open to the public at the time." *Id.* at 438. The "authority to enter a business building, or other building open to the public," the Court held, "extends only to those who enter with a purpose consistent with the reason the building is open." *Id.* at 439. And "[a]n entry with intent to commit a theft cannot be said to be within the authority granted patrons of a laundromat." *Id.* Although Weaver testified that he had entered the laundromat because his companion wanted to use a telephone, other evidence — including the fact that there was an available telephone outside, that neither Weaver nor his companion had laundry, and that they were in possession of keys that opened the laundromat's vending machine — sufficed to establish that Weaver entered the laundromat with the intent to steal and thus entered without authority. *Id.*

The appellate court here seized on the fact that the defendant in *Weaver* "used burglary tools" (the keys) "to access [a] nonpublic area[ ]" of the laundromat (the vending machine) and concluded that this fact "distinguish[ed]" *Weaver* from this case. A4, ¶ 23. But *Weaver*'s holding that

the evidence supported a burglary conviction did not rest on the defendant's *use* of the keys to access the vending machine, but rather on his *possession* of the keys, which (in addition to other circumstantial evidence) established that he had "entered [the laundromat] with an intent to commit a theft." 41 Ill. 2d at 439. And that intent, the Court held, vitiated any authority that he otherwise had to enter the open business, because "authority to enter a business building, or other building open to the public, extends only to those who enter with a purpose consistent with the reason the building is open" and not to those who enter "with intent to commit a theft" inside. *Id.*

The same principle applies here. Just as the evidence in *Weaver* established that the defendant entered the laundromat with the intent to commit a theft, the evidence here — which showed that defendant and another man placed two backpacks on a coin-exchange machine in the Walmart vestibule, entered the store proper, and a short time later returned to retrieve the backpacks and stuff Walmart merchandise into them — was sufficient, when viewed in the light most favorable to the State, to prove that defendant entered the store with the intent to commit a theft.[6] Accordingly,

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[6] As discussed above, for purposes of resolving the legal issue presented here, this Court must assume that the evidence was sufficient to establish defendant's intent to steal upon entry. *See supra* p.7. If this Court reverses the appellate court's judgment, it should remand to that court to consider, in the first instance, defendant's separate argument challenging the sufficiency of the evidence with respect to his intent, as well as the additional arguments that defendant raised below but that the appellate court did not address. *See supra* p. 4 n.4.

under *Weaver*'s limited authority doctrine, defendant's entry into the store was without authority and a burglary conviction was proper.

B. *Bradford* does not undermine *Weaver*'s application to burglary based on unauthorized entry of a retail store.

In addition to its attempt to distinguish *Weaver*, the appellate court held that this Court's decision in *Bradford* forecloses application of the limited authority doctrine in all cases where, as here, a defendant is charged with burglary of an open retail store. *See* A5, ¶ 28 (concluding that *Bradford* "change[d] the law and effectively overrule[d]" a string of appellate court decisions holding that "one who intends to commit retail theft lacks authority to enter a store"). But *Bradford*'s refusal to extend the limited authority doctrine to cases of burglary based on remaining in a building without authority rested on the unique history of the burglary statute's "remains within" language and on concerns that applying the limited authority doctrine to that type of burglary charge would be unworkable and would produce absurd and unintended results. Because those concerns do not arise in cases of burglary based on unauthorized entry, *Bradford* does not undermine the continuing application of the limited authority doctrine to such charges, even in cases involving retail stores.

The defendant in *Bradford* was charged with burglary for remaining in an open retail store without authority and with intent to commit a theft. 2016 IL 118674, ¶¶ 4, 14. Applying the limited authority doctrine, the appellate court held that Bradford's authority "to remain in the store was

implicitly withdrawn once he formed the intent to steal." *Id.* ¶ 9 (internal quotation marks omitted). In the appellate court's view, this conclusion was dictated by *Weaver*: "just as a defendant's *entry* is 'without authority' if it is accompanied by a contemporaneous intent to steal, so too must a defendant's *remaining* be 'without authority' if it also is accompanied by an intent to steal." *Id.* ¶ 24 (internal quotation marks omitted). The appellate court "did not identify the precise moment at which [the] defendant began to unlawfully remain in the store"; rather, it held that he "remained without authority as he moved through the store and stole merchandise." *Id.* ¶ 9 (internal quotation marks omitted).

This Court rejected the appellate court's approach, holding that the limited authority doctrine does not apply to charges of burglary by remaining. *See id.* ¶ 31. Nothing in this Court's decision, however, supports the appellate court's conclusion here that *Bradford*'s "rationale" applies equally to charges of burglary based on unauthorized entry. A6, ¶ 33. First, *Bradford* concluded that it would be "unworkable" to apply the limited authority doctrine in situations in which a defendant enters an open store with no intent to commit a theft (thus entering with authority) but subsequently develops the intent to commit a theft while in the store. 2016 IL 118674, ¶ 25. The Court explained that, in such cases, "it is not clear what evidence would be sufficient to establish that a defendant 'remain[ed]' within a public place in order to commit a theft" and thereby transformed his

authorized entry into an unauthorized remaining. *Id.* ¶ 26. As the Court noted, there is simply no way to define "what a defendant must do, or what duration of time he must spend in a place, to remain there without authority." *Id.*

By contrast, the question of whether a person *entered* a store with intent to commit a theft presents no such difficulties. Unlike the amorphous concept of an "act of remaining," *id.* ¶ 9, an entry is a discrete event in time. And assessing a person's intent at the time of his entry is a task that is well within a court's competency, even if it must "often be proved by circumstantial evidence." *People v. Richardson*, 104 Ill. 2d 8, 13 (1984); *compare Weaver*, 41 Ill. 2d at 439 (concluding that circumstantial evidence established that defendant entered open business with intent to commit theft); *People v. Rudd*, 2012 IL App (5th) 100528, ¶¶ 14-16 (same); *People v. Smith*, 264 Ill. App. 3d 82, 87-88 (3d Dist. 1994) (same), *with People v. Durham*, 252 Ill. App. 3d 88, 92-93 (3d Dist. 1993) (concluding that evidence was insufficient to establish that defendant intended to commit theft when entering store).

Bradford also relied on the related concern that applying the limited authority doctrine to hold that a person "remained without authority as he moved through [a] store and stole merchandise," as the appellate court had done, 2016 IL 118674, ¶ 9, would produce "absurd[ ]" results by "arbitrarily distinguish[ing] between a defendant who shoplifts one item in a store and

leaves immediately afterward, and a defendant who shoplifts more than one item or lingers inside a store before leaving," *id.* ¶¶ 25-26. But applying the limited authority doctrine in cases of burglary based on unauthorized entry creates no similarly arbitrary distinctions. Rather, the only relevant distinction in such cases is between a person who enters with intent to commit a theft and one who does not. *See Weaver*, 41 Ill. 2d at 439 ("A criminal intent formulated after a lawful entry will not satisfy the statute."). That distinction is far from arbitrary, as "one who enters a store with a preconceived plan to steal merchandise is at least arguably more culpable than one who, once inside a store, impulsively takes merchandise." *People v. Moore*, 2018 IL App (2d) 160277, ¶ 24.

Bradford's refusal to apply the limited authority doctrine to a charge of burglary based on unauthorized remaining also rested on the recognition that one who innocently enters a store and later commits a theft inside necessarily formed the intent to steal while in the store. Using the limited authority doctrine in such cases — to hold that "a defendant who develop[ed] an intent to steal *after* his entry into a public building" is guilty of burglary based on unauthorized remaining — would convert "nearly all cases of retail theft" into burglary, "effectively negating the retail theft statute." 2016 IL 118674, ¶ 27 (internal quotation marks omitted; emphasis added).

By contrast, application of the limited authority doctrine to persons who *enter* with intent to commit a theft presents no such concern. When a

defendant enters a retail store and commits a theft inside, the State will be able to secure a conviction for burglary based on unauthorized entry only if the evidence establishes that the defendant intended to commit a theft when he entered the store, because an intent to steal "formulated after a lawful entry" would not establish an unauthorized entry. *Weaver*, 41 Ill. 2d at 439. And the mere fact that a person commits a theft after entering a store will not establish that he intended to commit a theft upon entry. Rather, there must be "independent evidence" — even if circumstantial — "supporting a finding that the defendant entered the premises with the requisite intent." *Smith*, 264 Ill. App. 3d at 87; *compare id.* at 87-88 (finding evidence sufficient to support element of entry with intent to commit theft where (1) defendant entered clothing store with plastic bag used to hide stolen leather coat and (2) wire cutters used to remove coat from rack were found in defendant's car), *with Durham*, 252 Ill. App. 3d at 92 (reversing burglary conviction of defendant who stole men's suit from a department store where he "carried nothing into the store that would indicate an intent to commit a theft" and his "conduct in the store . . . was that of a shopper browsing through various racks and displays of men's clothing"). There is thus no cause for concern that applying the limited authority doctrine to charges of burglary based on unauthorized entry will transform all (or even a substantial number of) retail thefts into burglaries.

The appellate court speculated that "it is a miniscule percentage of shoplifters who form the intent to steal only after entering a store." A6, ¶ 33. Even were that true, however, the relevant question is whether, in run-of-the-mill retail theft cases, the State will have sufficient evidence to prove beyond a reasonable doubt that the defendant entered the store with the intent to steal. As the Second District noted, "[g]iven the difficulty of proving a defendant's intent at the moment he or she enters a store, it is more probable that the vast majority of cases [will be] charged as retail theft" rather than burglary. *Moore*, 2018 IL App (2d) 160277, ¶ 27.

This Court's final reason for declining to apply the limited authority doctrine to charges of burglary based on unauthorized remaining likewise has no bearing here. In *Bradford*, the Court concluded that extending the limited authority doctrine in that manner would be "at odds with the historical development of the burglary statute." 2016 IL 118674, ¶ 29. In particular, the Court traced the current burglary statute's "remains within" language to a pre-1961 statutory provision that made it unlawful to be "found in any building . . . with intent to commit . . . [a] larceny or other felony." *Id.* (internal quotation marks omitted). That provision, the Court noted, "necessarily implie[d] . . . that the building or area where a defendant [was] found or discovered was closed to him or the public." *Id.* ¶ 30. Because the current burglary statute was intended to "codif[y] the existing law of burglary," the Court concluded that its "remains within" language, like its

"burglar found in building" predecessor, must be limited to "those individuals who are found or discovered in a place where they are not authorized to be." *Id.* ¶¶ 29-30.

The history of the unauthorized entry portion of the burglary statute does not support a similar conclusion. Prior to 1961, the burglary statute made it unlawful to "willfully and maliciously, without force . . .[,] enter[ ] into any . . . building, with intent to commit . . . [a] felony or larceny." Ill. Rev. Stat. 1959, ch. 38, ¶ 84. "It was of no consequence under that statute whether the entry was with or without authority," the relevant question instead being whether the evidence "show[ed] the requisite intent at the time of [the] defendant's entry." *People v. Schneller*, 69 Ill. App. 2d 50, 53 (1st Dist. 1966). Thus, unlike the burglary statute's "remains within" language, the historical development of the statute's unauthorized entry language does not suggest that it is incompatible with the limited authority doctrine.

C. No special justification exists for departing from *stare decisis*.

Weaver was decided fifty years ago. In the years since, this Court has reaffirmed the limited authority doctrine's application under the burglary statute, *see People v. Blair*, 52 Ill. 2d 371, 374 (1972), and has applied the doctrine to the similarly worded home invasion statute, *see People v. Bush*, 157 Ill. 2d 248, 253-54 (1993). The Illinois Pattern Jury Instructions suggest that the doctrine likewise applies under the residential burglary statute. *See* IPI, Criminal, Nos. 11.53A and 14.13. The appellate court, moreover, has

consistently applied the doctrine in cases where, as here, a defendant enters an open retail (or similar type of) store with the intent to commit theft. *See, e.g.*, *Rudd*, 2012 IL App (5th) 100528, ¶¶ 13-14 (retail store); *People v. Szydloski*, 283 Ill. App. 3d 274, 275, 278 (3d Dist. 1996) (grocery store); *Smith*, 264 Ill. App. 3d at 83, 87 (clothing store); *People v. Stager*, 168 Ill. App. 3d 457, 458-60 (2d Dist. 1988) (grocery store). And while the General Assembly has amended the burglary statute numerous times in the half-century since *Weaver* was decided,[7] it has never acted to reverse *Weaver*'s interpretation of the statute. That interpretation has thus become "part of the statute" and "clearly implicate[s]" "*stare decisis* concerns," *People v. Williams*, 235 Ill. 2d 286, 293 (2009), because "[w]hen the legislature chooses not to amend a statute following a judicial construction, it [is] presumed that the legislature has acquiesced in the court's statement of the legislative intent," *People v. Espinoza*, 2015 IL 118218, ¶ 27.

"The doctrine of *stare decisis* expresses the policy of the courts to stand by precedents and not to disturb settled points." *Id.* ¶ 26 (internal quotation marks omitted). While it "is not an inexorable command," any "departure from *stare decisis* must be specially justified." *Id.* ¶ 30. A "prior decision[ ] should not be overruled absent good cause or compelling reasons," such as where it proves "unworkable or badly reasoned" and "is likely to result in

[7] *See* Public Act 77-906, § 1; Public Act 77-2638, § 1; Public Act 78-255, § 61; Public Act 82-238, § 1; Public Act 91-360, § 5; Public Act 91-928, § 5; Public Act 96-556, § 5; Public Act 97-1108, § 10-5; Public Act 100-3, § 15.

serious detriment prejudicial to public interests." *Id.* (internal quotation marks omitted). Where, as here, a prior decision involved an issue of statutory construction, "'*stare decisis* considerations are at their apex.'" *Id.* ¶ 29 (quoting *Williams*, 235 Ill. 2d at 295); *see also Kimble v. Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409 (2015) ("*stare decisis* carries enhanced force when a decision . . . interprets a statute" because the legislature remains free to "correct any mistake it sees" in the decision).

No special justification for overruling *Weaver* exists. For one thing, as discussed above, *see supra* pp. 13-14, applying the limited authority doctrine to burglary based on unauthorized entry, as opposed to unauthorized remaining, is not unworkable. Nor was *Weaver* badly reasoned. Rather, *Weaver* recognized the common sense notion that a business which has opened its doors to the public has not thereby extended an invitation to those who would enter to steal from it. *See Schneller*, 69 Ill. App. 2d at 54 ("it would be contrary to reason and ordinary human understanding to deduce that the welcome extended [to members of the public] includes authority to enter for [a] purpose [that] is unlawful or criminal"); *People v. Barry*, 94 Cal. 481, 483 (1892) ("a party who enters [a grocery store during business hours] with the intention to commit a felony enters without an invitation"; "[h]e is not one of the public invited, nor is he entitled to enter"). What is more, a decision overruling *Weaver* could call into question the limited authority doctrine's application to the home invasion and residential burglary statutes,

see supra p. 18, "unsettl[ing] stable law" in those areas. *Kimble*, 135 S. Ct. at 2411.

The appellate court thought that the limited authority doctrine "ignores the purpose for criminalizing burglary," which historically applied to "'criminal invasion of premises under circumstances likely to terrorize occupants.'" A6, ¶ 34 (quoting Model Penal Code § 221 (Explanatory Note)). But "the modern-day offense commonly known as burglary bears little relation to its common-law ancestor," which applied only to "the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony." 3 W. LaFave, *Substantive Criminal Law* § 21.1 (3d ed. 2017). Regardless, the General Assembly could reasonably conclude that entry into an open retail store with the intent to commit a theft inside creates the potential for distinct harms in addition to the harm caused by any subsequent theft, including the possibility of injuries to customers and store employees resulting from a confrontation between the person who has entered for nefarious purposes and the store's security personnel or other employees. Indeed, in *People v. Miller*, 238 Ill. 2d 161 (2010) — where a defendant was convicted of both burglary and retail theft after he entered an open drugstore during business hours with the intent to commit a theft and then, once inside, committed a theft, *see id.* at 163 — this Court recognized that "allowing convictions on both . . . offenses" in such circumstances

"ensure[s] that defendants are held accountable for the full measure of their conduct and harm caused." *Id.* at 173.

Nor does the retail theft statute, enacted after *Weaver*, "occup[y] the field of shoplifting crimes" and thus undermine the foundation for applying the limited authority doctrine in cases where a defendant enters an open retail store with the intent to steal, as the appellate court concluded. A5, ¶ 31. In the appellate court's view, provisions in the retail theft statute prohibiting both the "[t]ransfer[ ] [of] any merchandise . . . in a retail [store] from the container in . . . which [it] is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise," 720 ILCS 5/16-25(a)(3), and the "[u]se[ ] or possess[ion] [of] any theft detection shielding device or theft detection device remover with the intention of using such device" to steal merchandise, 720 ILCS 5/16-25(a)(7), suggest that the statute was intended to provide the exclusive means of prosecuting "all manifestations of retail theft, regardless of whether shoplifters form the requisite intent before or after entering the store." A5, ¶ 31.

But neither provision requires proof that a defendant entered a retail store with intent to commit a theft, as the burglary statute does. Rather, these provisions of the retail theft statute criminalize certain actions, or the use or possession of certain items, that make it easier to successfully commit retail theft. In other words, the burglary statute and these provisions of the

retail theft statute address distinct conduct and distinct harms, and allowing a defendant to be convicted under both statutes when his conduct satisfies the elements of both offenses "ensure[s] that defendants are held accountable for the full measure of their conduct and harm caused," consistent with the legislature's intent when it enacted separate burglary and retail theft statutes. *Miller*, 238 Ill. 2d at 173 ("Had the legislature intended that a defendant could only be convicted of one of [these offenses] where they are based on conduct that occurred during the same criminal transaction, it clearly could have said so. It did not.").

Finally, for the same reason, the appellate court's concern about prosecutorial discretion to charge burglary rather than (or in addition to) retail theft was unfounded. The appellate court believed that applying the limited authority doctrine to hold that a person lacks authority to enter a retail store if he does so with intent to commit a theft will "provide prosecutors unbridled discretion to arbitrarily charge some shoplifters with . . . burglary and others with . . . retail theft under similar circumstances." A5, ¶ 30. But a prosecutor's charging discretion in this area is constrained by the fact that each offense contains at least one element that the other does not. *See Miller*, 238 Ill. 2d at 176. Retail theft generally requires proof that the defendant took possession of an item offered for sale in a retail store without fully paying for it but does not require proof of any intent to steal upon entering the store. *See* 720 ILCS 5/16-25(a)(1). Burglary

based on unauthorized entry, on the other hand, requires proof that the defendant entered a building with intent to commit a theft but requires no proof that a theft was ultimately committed. *See* 720 ILCS 5/19-1(a). The State will thus be able to secure a conviction for burglary (rather than, or in addition to, retail theft) only if it can satisfy "the difficult[ ]" burden "of proving a defendant's intent at the moment he or she enter[ed] [the] store." *Moore*, 2018 IL App (2d) 160277, ¶ 27. Because burglary and retail theft do not share identical elements, prosecutorial discretion to bring burglary charges in appropriate cases poses no threat of "effectively nullify[ing]" the retail theft statute. *People v. Christy*, 139 Ill. 2d 172, 180 (1990); *see also People v. Perry*, 224 Ill. 2d 312, 339-40 (2007) (when offenses have different elements, prosecutor has discretion to decide which charge to bring); *People v. Barlow*, 58 Ill. 2d 41, 44 (1974) (if two statutes require different proof, no equal protection violation when charges brought under statute with greater penalty).

CONCLUSION

This Court should reverse the appellate court's judgment and remand for consideration of defendant's remaining arguments on appeal.

November 7, 2018

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages 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-five pages.

/s/ Eric M. Levin
ERIC M. LEVIN
Assistant Attorney General

APPENDIX

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Illinois Official Reports

Appellate Court

***People v. Johnson*, 2018 IL App (3d) 150352**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DARREN JOHNSON, Defendant-Appellant.
District & No.	Third District Docket No. 3-15-0352
Filed	January 29, 2018
Decision Under Review	Appeal from the Circuit Court of Whiteside County, No. 14-CF-254; the Hon. John L. Hauptman, Judge, presiding.
Judgment	Reversed.
Counsel on Appeal	Michael J. Pelletier, Patricia Mysza, and Gilbert C. Lenz, of State Appellate Defender's Office, of Chicago, for appellant. Terry Costello, State's Attorney, of Morrison (Patrick Delfino, Lawrence M. Bauer, and Dawn Duffy, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE SCHMIDT delivered the judgment of the court, with opinion. Presiding Justice Carter and Justice Holdridge concurred in the judgment and opinion.

OPINION

¶ 1 On July 22, 2014, Rock Falls police arrested defendant, Darren Johnson, for shoplifting $76.91 worth of clothing from a local Wal-Mart. The State charged defendant with retail theft and burglary. After his first trial resulted in a hung jury, a second jury acquitted defendant of retail theft but convicted him of burglary. The Whiteside County circuit court sentenced defendant to eight years in prison. We reverse.

¶ 2 BACKGROUND

¶ 3 The State charged defendant by information with burglary and retail theft on July 23, 2014. Defendant waived his right to counsel on August 26. His first trial resulted in a hung jury on October 22. His second trial began on November 18. Before opening statements, the trial court prohibited the jury from taking notes. The judge told the jury: "I do not allow note taking ***. I am a firm believer *** in the collective memory of the jury. *** [A]nd I do not want you to be distracted by note taking."

¶ 4 During the State's case, Amanda Peppers testified that she saw defendant and another man inside the Rock Falls Wal-Mart on July 22, 2014, while she was shopping with her nephew. The two men "were kind of walking around with a bunch of stuff in their hands," and "they would kind of veer off in other directions" when Peppers approached them. As she left the store and walked to her car, Peppers saw the two men retrieve backpacks from behind vending machines outside the store's entrance. The men removed stolen items that they concealed in their clothes and placed them in the backpacks. Peppers called the police.

¶ 5 Before police arrived, Peppers saw the men walk toward a Coinstar machine in the store's vestibule. After the men briefly reentered the store without their backpacks, Peppers saw defendant exit the store, retrieve his backpack, and walk toward the parking lot.

¶ 6 Officer James Hollaway of the Rock Falls Police Department testified that he responded to Peppers's call with Sergeant John Worcester and Officer Jarrett Ludwig at 7:16 p.m. While Worcester and Ludwig walked toward the store's entrance, Hollaway sat in the parking lot and observed defendant retrieve his backpack from atop the Coinstar machine before he walked toward the parking lot. Hollaway stopped defendant to ask him if he took items from the store without paying for them; defendant lowered his head and answered "yes."

¶ 7 Ludwig testified that he escorted defendant to the manager's office inside the store. He read defendant his *Miranda* rights with Worcester and Donna Courtney, the Wal-Mart manager, present. Ludwig searched defendant and found 14 items of girls' clothing in his backpack and on his person.

¶ 8 Courtney testified that defendant told her he took the clothes because his ex-girlfriend prohibited him from seeing their daughter unless he bought her school clothes. Courtney described defendant as "very distraught." He offered to clean the windows, clean the floor, or provide whatever labor necessary to repay the store for the stolen clothes. Courtney processed a receipt showing the stolen items' retail value totaled $76.91.

¶ 9 She also copied footage from six surveillance cameras onto a digital versatile disc (DVD). None of the cameras covered the girls' clothing section. The State played portions of the DVD that contained footage from four of the six cameras. In relevant part, the video showed defendant entering the vestibule area, placing a backpack on the Coinstar machine, and

retrieving his backpack when he left the store. Defendant elected not to testify on his own behalf.

¶ 10 During the first day of deliberations, the jury sent the court four notes. The first note requested to see Peppers's written police statement (which the State did not admit into evidence) and to review Courtney's DVD. With the parties' consent, the court declined the jury's requests. The second note requested Ludwig's police report. The court declined the jury's request without objection. The third note reported that the jury reached a verdict on one charge but remained split on the other.

¶ 11 The jury's final note reported that the jury reached an impasse; the jury again requested to review Courtney's DVD to help resolve the deadlock. Without objection, the court again declined the jury's request to review the DVD. The court also issued a *Prim* instruction (see *People v. Prim*, 53 Ill. 2d 62, 71-76 (1972)). At 10:20 p.m. on November 19, the court sent the jury home.

¶ 12 Proceedings resumed at 9 a.m. the following morning. At 10:30 a.m., the jury returned its verdict. It found defendant not guilty of retail theft but guilty of burglary. The court appointed posttrial counsel pursuant to defendant's request.

¶ 13 The court denied defendant's posttrial motion before his sentencing hearing on March 27, 2015. Although burglary is a Class 2 felony with a three-to-seven-year sentencing range (720 ILCS 5/19-1(b) (West 2014); 730 ILCS 5/5-4.5-35(a) (West 2014)), the court sentenced defendant as a Class X offender because his criminal record contained prior theft and burglary felony convictions within 20 years. 730 ILCS 5/5-4.5-95(b) (West 2014). The court sentenced defendant to eight years in prison. It denied defendant's motion to reconsider his sentence on May 13, 2015.

¶ 14 On appeal, defendant raises four challenges. The first two challenges attack the sufficiency of the State's evidence on both burglary elements—entering the store without authority and intending to commit theft therein (720 ILCS 5/19-1 (West 2014)). Defendant also seeks a new trial because the court violated section 115-4(n) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-4(n) (West 2014)) when it prohibited jurors from taking notes during trial. Finally, he seeks to reduce his monetary assessments from $557 to $490 because the trial court "failed to grant the mandatory $5-per-day credit against three [assessments]." We address the relevant issues below.

¶ 15 ANALYSIS

¶ 16 I. Sufficiency of the Evidence

¶ 17 Defendant does not dispute the facts underlying his conviction. Instead, he claims that they cannot support a burglary conviction as a matter of law. The crux of his argument is that he *could not* enter Wal-Mart "without authority" because he entered and exited the store during business hours and remained in designated public areas. This argument presents a question of statutory construction that we review *de novo*. *People v. Bradford*, 2016 IL 118674, ¶¶ 14-15.

¶ 18 The burglary statute identifies two ways in which a person commits the offense: "A person commits burglary when without authority he or she knowingly enters or without authority remains within a building, *** or any part thereof, with intent to commit therein a felony or theft." 720 ILCS 5/19-1(a) (West 2014). To commit either manifestation of burglary, the offender must lack authority to be present within the building.

¶ 19 Defendant relies on *Bradford*, 2016 IL 118674, where our supreme court held that an offender commits "burglary by remaining" only if "he exceeds his physical authority to be on the premises." *Id.* ¶ 31. Defendant claims *Bradford* applies to either manifestation of burglary: "[A]n individual who enters a building lawfully, shoplifts merchandise within areas which are open to the public, then leaves during business hours, is guilty of ordinary retail theft." *Id.*

¶ 20 The State argues that defendant never entered the building lawfully; therefore, *Bradford* does not require reversal. The State relies on the "limited-authority doctrine," which states that "one's otherwise valid authority to be in certain premises is vitiated when that individual acts in a manner inconsistent with the authority originally granted." *People v. Wilson*, 155 Ill. 2d 374, 378 (1993). According to the State, shoplifters who form the intent to steal before entering a store lack authority to enter. They commit burglary the instant they cross the building's threshold.

¶ 21 A. The Limited Authority Doctrine

¶ 22 The limited authority doctrine, relied upon by the State, took shape before Illinois passed its retail theft statute in 1975 (720 ILCS 5/16-25 (West 2014)). In *People v. Schneller*, 69 Ill. App. 2d 50 (1966), the State charged defendant with burglary after he stole antique guns from a public museum's showcase. Police responded to an alarm at the museum. They found a screwdriver, long-nosed pliers, sunglasses, a handkerchief, a flashlight, an automatic pistol, and the previously displayed antique guns in a duffle bag on the floor. A museum employee testified that he encountered the defendant after working hours two days prior—in a restricted area where the museum stored "prized possessions." Although defendant attempted the heist during working hours, the court held that "it would be contrary to reason and ordinary human understanding" to conclude the defendant possessed authority to enter the museum for "unlawful or criminal" purposes. *Id.* at 54. For clarity's sake, we make clear that we are not questioning the holding in *Schneller*, as there the court addressed materially different facts.

¶ 23 Two years later, our supreme court applied the doctrine in *People v. Weaver*, 41 Ill. 2d 434 (1968). In *Weaver*, police discovered the defendant standing near an open Laundromat vending machine. Police found keys to the vending machine inside the defendant's vehicle and $50 worth of coins in his pockets. The court held that "authority to enter a business building, or other building open to the public, extends only to those who enter with a purpose consistent with the reason the building is open." *Id.* at 439. Notably, the defendants in *Schneller* and *Weaver* both used burglary tools to access nonpublic areas—a locked museum display and a vending machine. These facts distinguish those cases from the one before us.

¶ 24 B. *Bradford* and Retail Theft

¶ 25 The supreme court recently held that the limited authority doctrine does not apply in "burglary by remaining" shoplifting cases. *Bradford*, 2016 IL 118674. In *Bradford*, the defendant walked into a Wal-Mart with another man and immediately stole two DVDs from a display near the cash registers. He took these DVDs to the customer service desk and "exchanged" them for a Wal-Mart gift card. Next, he walked to the men's clothing department where he selected a hat, removed the price tag, and wore it. He then retrieved a pair of shoes from the shoe department and placed them in a Wal-Mart bag that he concealed in his pocket—presumably to represent that he already purchased the shoes. He wore the hat and carried the shoes to the cash registers, where he rejoined the other man. He paid for the man's

merchandise with the gift card he received in exchange for the DVDs and exited the store without paying for the hat or shoes.

¶ 26 The appellate court, citing *Weaver*, applied the limited authority doctrine and held that the defendant remained in the store without authority once he formed the intent to shoplift. *People v. Bradford*, 2014 IL App (4th) 130288, ¶¶ 31, 33-34. The supreme court reversed the appellate court's decision.

¶ 27 The court emphasized that the legislature enacted the retail theft statute in 1975, 14 years after enacting the burglary statute and 7 years after *Weaver*. Based on this timeline, "it strains logic to presume that the legislature intended most incidents of retail theft to be prosecuted as burglaries." *Bradford*, 2016 IL 118674, ¶ 28. The court reasoned that charging every shoplifter with burglary by remaining would "effectively negat[e] the retail theft statute." *Id.* ¶ 27. Because stores are often "building[s]" or trailers (720 ILCS 5/19-1(a) (West 2014)), virtually every retail theft would also constitute a burglary if one's "authority" hinged on whether he or she intended to shoplift merchandise.

¶ 28 To be fair, a long line of cases supports the State's position that one who intends to commit retail theft lacks authority to enter a store. See, *e.g.*, *People v. Rudd*, 2012 IL App (5th) 100528, ¶ 13; *People v. Bridgewater*, 388 Ill. App. 3d 787, 801 (2009); *People v. Szydloski*, 283 Ill. App. 3d 274, 278 (1996); *People v. Smith*, 264 Ill. App. 3d 82, 87 (1994); *People v. Hopkins*, 229 Ill. App. 3d 665, 670-71 (1992); *People v. Stager*, 168 Ill. App. 3d 457, 459 (1988); *People v. Boose*, 139 Ill. App. 3d 471, 473 (1985). As explained below, we feel that *Bradford* changes the law and effectively overrules the law upon which the State relies.

¶ 29 The retail theft statute's punishments range from a Class A misdemeanor to a Class 2 felony. 720 ILCS 5/16-25 (West 2014). The statute considers several factors, including the value and nature of the stolen merchandise, the defendant's criminal history, and how the defendant stole the property. *Id.*; *Bradford*, 2016 IL 118674, ¶ 27. A first-time minor shoplifting offense under the retail theft statute could warrant up to 364 days in jail.

¶ 30 On the other hand, the burglary statute "does not consider any of these proportionality factors." *Bradford*, 2016 IL 118674, ¶ 27. Thus, the limited authority doctrine provides a prosecutor discretion to charge and convict a first time offender who enters a store with intent to steal a candy bar with burglary, a felony, or retail theft, a misdemeanor. Courts should not interpret criminal statutes to provide prosecutors unbridled discretion to arbitrarily charge some shoplifters with Class 2 felony burglary and others with Class A misdemeanor retail theft under similar circumstances; " 'prosecutorial discretion is not a reason for courts to give improbable breadth to criminal statutes.' " *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 633 (2012) (quoting *Abuelhawa v. United States*, 556 U.S. 816, 823 n.3 (2009)).

¶ 31 Another reason not to "give improbable breadth" to our burglary statute in retail theft cases is that the retail theft statute occupies the field of shoplifting crimes. Particularly relevant to this case, the statute covers situations where shoplifters knowingly transfer merchandise "to any other container with the intention of depriving the merchant of the full retail value." 720 ILCS 5/16-25(a)(3) (West 2014). It also covers situations where shoplifters knowingly use a "theft detection shielding device," which is "any laminated or coated bag or device designed and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor." *Id.* § 16-25(a)(7), (e). Obviously, persons who enter a store with any of these items formed the intent to commit theft before entering. The statute contemplates all manifestations of retail theft, regardless of whether shoplifters form the requisite intent before or after entering

the store.

¶ 32 C. *Bradford*'s Application to the Instant Case

¶ 33 The State claims that this case is distinguishable from *Bradford* because the State charged defendant with "burglary by entering," whereas *Bradford* addressed "burglary by remaining." This attempt to distinguish *Bradford* does not logically follow the supreme court's rationale. Under either manifestation of burglary, the offender must lack "authority." If forming the intent to shoplift does not revoke one's authority to remain in a store, then it cannot logically revoke one's authority to enter either. We suspect that it is a miniscule percentage of shoplifters who form the intent to steal only after entering a store.

¶ 34 The State's position also ignores the purpose for criminalizing burglary. The "crime of burglary reflects a considered judgment that especially severe sanctions are appropriate for criminal invasion of premises under circumstances likely to terrorize occupants." Model Penal Code § 221.1 (Am. Law Inst. 2017) (Explanatory Note). In other words, burglary aims to punish circumstances where a trespass and unwelcomed criminal intent combine to harm the victim more than either individual crime; the whole is greater than the sum of its parts.

¶ 35 Applying the limited authority doctrine to shoplifting cases disregards the purpose of criminalizing burglary, negates the retail theft statute, and conflicts with *Bradford*. We hold that *Bradford*'s physical authority test applies to all retail theft cases, regardless of when the defendant forms the intent to shoplift.

¶ 36 In this case, the State alleged that defendant stole $76.91 worth of merchandise from Wal-Mart. Defendant entered the store during its business hours, remained in public areas while inside, and left the store before it closed. He never exceeded his physical authority. We reverse his burglary conviction.

¶ 37 II. Juror Note Taking

¶ 38 Although we need not decide the other issues presented, we feel compelled to briefly address defendant's claim regarding juror note taking. Before opening statements, the trial court told the jury:

> "I, I do not allow note taking and I have a, I have a reason for this. I am a firm believer in the ability of jurors to remember the testimony and I, I am a firm believer in the collective memory of the jury. That's why we have 12 people, I mean it's, it's meant to be give and take and that sort of thing, and my concern about taking notes is that sometimes people are so busy concentrating on taking, on writing down what was said that they may miss something else that was said. Or, somebody might be worried that, well, this lady or this man took better notes than me. Well that's what the whole process is about, is to work through these things collectively, and I do not want you to be distracted by note taking."

¶ 39 Section 115-4(n) of the Code states, *inter alia*: "The members of the jury *shall* be entitled to take notes during the trial, and the sheriff *** shall provide them with writing materials for this purpose." (Emphasis added.) 725 ILCS 5/115-4(n) (West 2014). This statutory provision is mandatory. *People v. Strong*, 274 Ill. App. 3d 130, 135-37 (1995). It is a measure to protect defendants' constitutional rights to fair trials. It is also the jurors' right. See *People v. Layhew*,

139 Ill. 2d 476, 492-93 (1990). Trial courts lack discretion to ignore this direct mandate.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, we reverse the judgment of the circuit court of Whiteside County.

¶ 42 Reversed.

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
vs.	)	NO. 14CF254
	)	
DARREN JOHNSON,	)	
Defendant.	)	

FILED
CIRCUIT COURT WHITESIDE COUNTY
DATE 5-19-15
CLERK

NOTICE OF APPEAL

An appeal is taken from the judgment described below:

1. Court to which appeal is taken:
   Appellate Court of Illinois, Third Appellate District

2. Name and address of appellant:
   DARREN JOHNSON
   Illinois Department of Corrections

3. Name and address of attorney for appellant:
   Appellant is indigent, has no attorney and requests the appointment of an attorney.

4. Date of judgment or order being appealed:
   November 20, 2014 - Finding of Guilty; and
   March 27, 2015 - Denial of Motion for New Trial
   March 27, 2015 - Sentence; and
   May 13, 2015 - Denial of Motion to Reconsider

5. Offense of which convicted or nature of order:
   Finding of Guilty for offense(s) of Burglary
   Denial of Motion for New Trial
   Sentencing Order - March 27, 2015
   Denial of Motion to Reconsider - May 13, 2015

6. Sentence:
   Burglary - 8 years DOC + 2 MSR

DARREN JOHNSON, Defendant

By: _____
James F. Heuerman
Public Defender

Dated: May 19, 2015

123318

IN THE CIRCUIT COURT OF WHITESIDE COUNTY, ILLINOIS
FOURTEENTH JUDICIAL CIRCUIT

Date of Sentence 3/27/15
Date of Birth 10/6/70
(Defendant)

PEOPLE OF THE STATE OF ILLINOIS)
vs.)
Darren Johnson)
Defendant)

Case No. 14CF254

FILED
CIRCUIT COURT WHITESIDE COUNTY
MAR 27 2015
CIRCUIT CLERK

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	
1	Burglary	7/22/14	720 ILCS 5/19-1(a)	2	8 Yrs. ___ Mos.	3 Yrs.

To run (concurrent with)(consecutively to) count(s) _____ and served at 50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3

_____ _____ _____ 720 ILCS _____ _____ ___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

_____ _____ _____ 720 ILCS _____ _____ ___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

The Court finds that the defendant is:

☒ Convicted of a class 2 offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-4.5-95(b)

The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of _____ days as of the date of this order) from (specify dates)_____. 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 the 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 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 .50 = _____ 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.

☐ IS FURTHER ORDERED that the sentence(s) imposed on count(s)_____ be (concurrent with) (consecutive to) 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: 3-27-15

ENTER: John L. Hauptman

JOHN L. HAUPTMAN
(PLEASE PRINT JUDGE'S NAME HERE)

C-252

Index to the Record on Appeal

Common Law Record
(Two Volumes)

SXH-1 (2 DVDs)

People's Exhibit 2 (July 22, 2014 Rock Falls, IL Walmart)
Photos of Defendant and Stolen Items

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 November 7, 2018, the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the email addresses of the persons named below:

Gilbert C. Lenz
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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 13 copies of the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Eric M. Levin
ERIC M. LEVIN
Assistant Attorney General