

CHAPTER TWELVE: BURGLARY, TRESPASS, ARSON, AND MISCHIEF

DEFINITION OF BURGLARY

Burglary, at common law was defined as the breaking and entering of the dwelling of another at night with the intent to commit a felony. Most states today, however, do not require a breaking. Burglary statutes recognize that there clearly is a difference in the degree of fear and terror and potential for violence resulting from an assault or theft in the home as opposed to an assault and theft on the street.

The Illinois State Statute for burglary recognizes not only the committing of burglary, but also possession of burglary tools, residential burglary, criminal trespass to a residence, and criminal fortification of a residence or building. The punishment for burglary can range anywhere from one year in jail to fifteen years in the penitentiary depending on the severity of the offense.

ILLINOIS STATE STATUTE FOR BURGLARY

(720 ILCS 5/) Criminal Code of 1961

Article 19. Burglary

(720 ILCS 5/19-1) (from Ch. 38, par. 19-1)

Sec. 19-1. Burglary.

(a) A person commits burglary when without authority he knowingly enters or without authority remains within a building, housetrailer, watercraft, aircraft, motor vehicle as defined in the Illinois Vehicle Code, railroad car, or any part thereof, with intent to commit therein a felony or theft. This offense shall not include the offenses set out in Section 4-102 of the Illinois Vehicle Code.

(b) Sentence.

Burglary is a Class 2 felony. A burglary committed in a school or place of worship is a Class 1 felony.

(Source: P.A. 91-360, eff. 7-29-99; 91-928, eff. 6-1-01.)

(720 ILCS 5/19-2) (from Ch. 38, par. 19-2)

Sec. 19-2. Possession of burglary tools.

(a) A person commits the offense of possession of burglary tools when he possesses any key, tool, instrument, device, or any explosive, suitable for use in breaking into a building, housetrailer, watercraft, aircraft, motor vehicle as defined in The Illinois Vehicle Code, railroad car, or any depository designed for the safekeeping of property, or any part thereof, with intent to enter any such place and with intent to commit therein a felony or theft.

(b) Sentence.

Possession of burglary tools in violation of this Section is a Class 4 felony.

(Source: P. A. 78-255.)

(720 ILCS 5/19-3) (from Ch. 38, par. 19-3)

Sec. 19-3. Residential burglary.

(a) A person commits residential burglary who knowingly and without authority enters or knowingly and without authority remains within the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft. This offense includes the offense of burglary as defined in Section 19-1.

(b) Sentence. Residential burglary is a Class 1 felony.

(Source: P.A. 91-928, eff. 6-1-01.)

(720 ILCS 5/19-4) (from Ch. 38, par. 19-4)

Sec. 19-4. Criminal trespass to a residence.

(a) (1) A person commits the offense of criminal trespass to a residence when, without authority, he knowingly enters or remains within any residence, including a house trailer.

(2) A person commits the offense of criminal trespass to a residence when, without authority, he or she knowingly enters the residence of another and knows or has reason to know that one or more persons is present or he or she knowingly enters the residence of another and remains in the residence after he or she knows or has reason to know that one or more persons is present.

(3) For purposes of this Section, in the case of a multi-unit residential building or complex, "residence" shall only include the portion of the building or complex which is the actual dwelling place of any person and shall not include such places as common recreational areas or lobbies.

(b) Sentence

(1) Criminal trespass to a residence under paragraph (1) of subsection (a) is a Class A misdemeanor

(2) Criminal trespass to a residence under paragraph (2) of subsection (a) is a Class 4 felony

(Source: P.A. 91-895, eff. 7-6-00,)

(720 ILCS 5/19-5) (from Ch. 38, par. 19-5)

Sec. 19-5. Criminal fortification of a residence or building.

(a) A person commits the offense of criminal fortification of a residence or building when, with the intent to prevent the lawful entry of a law enforcement officer or another, he maintains a residence or building in a fortified condition, knowing that such residence or building is used for the manufacture, storage, delivery, or trafficking of cannabis, controlled substances, or methamphetamine as defined in the Cannabis Control Act, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection Act.

(b) "Fortified condition" means preventing or impeding entry through the use of steel doors, wooden planking, crossbars, alarm systems, dogs, or other similar means.

(c) Sentence. Criminal fortification of a residence or building is a Class 3 felony.

(d) This Section does not apply to the fortification of a residence or building used in the manufacture of methamphetamine as described in Sections 10 and 15 of the Methamphetamine Control and Community Protection Act.

(Source: P.A. 94-556, eff. 9-11-05.)

BURGLARY CASES IN ILLINOIS

Attempt to apply the statute/s to the following cases:

People of the State of Illinois v. Glenn Hickman and Anthony Rock 12 Ill.App.3d 412, 297 N.E.2d 582 (1973)

The factual situation which resulted in the trial of the defendants occurred on the evening of April 2, 1970, at which time seventeen policemen from the police force of the city of Joliet were participating in a surveillance of a building known as the Illinois Wine and Liquor Warehouse. Among the officers involved in the surveillance was Sergeant James Cronk, who shortly before 10:15 P.M. noticed Robert Bruce Papes and the defendant Anthony Rock pass by the warehouse several times in a Cadillac automobile. Later several officers saw a Chevrolet automobile enter an alley south of the warehouse and stop at a side door of the building. Several people left the automobile and disappeared from sight into the doorway. The driver of this vehicle, who was Papes, walked a short distance, made a surveillance of the area, returned to the automobile and then drove out of the sight of the officers. After several minutes Papes was again seen walking in the alley and after once more looking over the area he again disappeared from the sight of the police officers when he went to the location of the side doorway of the warehouse. It was within a matter of a few seconds of Papes' disappearance that Sergeant Cronk saw three individuals exit from the side doorway of the warehouse, at which time he signaled the officers to close in from

various directions towards a concrete parking lot which was to the rear and west of the warehouse.

Papes and the defendants Rock and Hickman upon seeing the officers approaching them proceeded to run. Papes ran in a southwesterly direction and the defendants Rock and Hickman in a northwesterly direction towards some bushes located at the northwest corner of the parking lot. Papes was apprehended when a Sergeant Erwin pointed a shotgun at him. Papes submitted to an arrest and upon his person was found a [p. 414] loaded pistol and additional cartridges. As the defendant Rock was running he was carrying a small object in his hand. The defendant Hickman was carrying an attache case as he was fleeing.

The defendants Rock and Hickman ran through the bushes while in the meantime Sergeant Cronk ran to the rear of the warehouse where he noticed two people running in a northwesterly direction. Sergeant Cronk yelled 'halt--police' several times but his commands were ignored. He lost sight of the two fleeing individuals but within seconds thereafter saw a man carrying a handgun running towards the bushes at the northwest corner of the parking lot. Sergeant Cronk, believing that this approaching individual was one of the burglars of the Illinois Wine and Liquor Warehouse, and referring to the handgun, ordered the person to 'drop it.' When there was no compliance to this warning Sergeant Cronk fired his shotgun at the individual, who was later discovered to be Detective William Loscheider of the Joliet police force. Loscheider was killed by this shot from his fellow officer's gun.

Approximately one-half hour later the defendants Rock and Hickman were arrested as they were walking on a street approximately two and a half blocks from the warehouse. Neither of the defendants had a weapon on his person.

***Solorzano-Patlan v. INS*, 207 F.3d 869 (7th Cir. 2000)**

The United States Court of Appeals for the Seventh Circuit has ruled that a conviction for burglary in Illinois does not constitute an "aggravated felony" under section 101(a)(43) of the Immigration and Nationality Act because it is neither a "burglary offense" under subsection (G) of the statute, nor a "crime of violence" under subsection (F). The decision comes on a petition for review of a removal order issued by the Board of Immigration Appeals.

The respondent in the case, a Mr. Solarzano, entered the U.S. in 1980 and became a lawful permanent resident in 1989, at approximately age 12. In 1995 he was convicted of burglary under Illinois law and sentenced to 60 days' imprisonment and 24 months' probation, with community service, payment of fines, and restitution also required. In 1998 the Illinois court revoked Solarzano's probation because he failed to complete the community service and pay the fines, and sentenced him to three years' imprisonment while recommending that as an alternative to penal incarceration he be enrolled in "boot camp." This recommendation was denied because a detainer placed by the Immigration and Naturalization Service rendered him ineligible for the boot camp program. During his incarceration, the INS issued a Notice to Appear against Solarzano, initiating removal proceedings.

In removal proceedings, the immigration judge found that Solarzano's conviction constituted an aggravated felony, both as a "burglary offense" and as a "crime of violence." The BIA affirmed the IJ's decision, finding that the conviction "falls easily within the definition of a 'burglary offense.'" The BIA also concluded that the offense constitutes a crime of violence because "the burglary of a vehicle involves a substantial risk that physical force may be used against persons or property." Solarzano filed a petition for review of the BIA's decision.

In ruling on the petition for review, the court first found that although it would not have jurisdiction over the petition if Solarzano's conviction constituted an aggravated felony, the court does have jurisdiction to rule on this question. Thus, both the court's jurisdiction and the resolution of the case on the merits depended on whether the offense qualified as an aggravated felony.

Turning to the question of whether the conviction constitutes a "burglary offense" under INA section 101(a)(43)(G), the court noted that states define criminal conduct in a great variety of ways. Solarzano was charged with "knowingly entering a 1994 Ford Explorer belonging to [another without authority] with the intent to commit therein a theft" (verbatim quotation from the decision includes the bracketed insertion). While this is classified a "burglary" under Illinois law, in Wisconsin it would constitute "entry into a locked vehicle," which is a misdemeanor punishable by no more than nine months' imprisonment. The court concluded that the INA's use of the term "burglary" should be given a uniform interpretation and that "burglary" in its "generic sense" must "have the basic elements of unlawful entry into, or remaining in, a building or structure, with intent to commit a crime." Because Solarzano entered a vehicle rather than a building, the Seventh Circuit held, the statute does not apply to him.

The court also rejected the BIA's classification of the offense as a "crime of violence" under INA section 101(a)(43)(F). The court found that the INA requires a use of force greater than "merely opening a car door" and that there must be a use of force that is "violent in nature." Both criminal conduct that is violent in nature and conduct that is not are encompassed within the Illinois burglary statute under which Solarzano was convicted. Therefore, the court ruled, it was improper for the BIA to conclude that, based solely on the language and title of the state law, Solarzano's conviction constituted a crime of violence.

Accordingly, the court granted the petition for review, vacated the order of deportation, and remanded the case for further proceedings. Solarzano was represented by Lisa Palumbo of the Legal Assistance Foundation of Chicago.

DEFINITION OF ARSON

Arson at the common law was defined as the willful and malicious burning of the dwelling house of another. According to the Illinois law, a person commits arson, when by means of fire or explosion, he knowingly: damages any real property or any personal property having a value of \$150 or more, of another without his consent; or with intent to defraud an insurer, damages any property or any personal property having a value of \$150 or more. Depending on the type, the punishment for arson is a fine up to \$25,000 and/or 30 years in prison.

ILLINOIS STATUTE FOR ARSON

720 ILCS 5/20-1.1) (from Ch. 38, par. 20-1.1)

Sec. 20-1.1. Aggravated Arson.

(a) A person commits aggravated arson when in the course of committing arson he or she knowingly damages, partially or totally, any building or structure, including any adjacent building or structure, including all or any part of a school building, house trailer, watercraft, motor vehicle, or railroad car, and (1) he knows or reasonably should know that one or more persons are present therein or (2) any person suffers great bodily harm, or permanent disability or disfigurement as a result of the fire or explosion or (3) a fireman, policeman, or correctional officer who is present at the scene acting in the line of duty is injured as a result of the fire or explosion. For purposes of this Section, property "of another" means a building or other property, whether real or personal, in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may also have an interest in the building or property; and "school building" means any public or private preschool, elementary or secondary school, community college, college, or university.

(b) Sentence. Aggravated arson is a Class X felony.

(Source: P.A. 93-335, eff. 7-24-03; 94-127, eff. 7-7-05; 94-393, eff. 8-1-05.)

(720 ILCS 5/20-1.2)

Sec. 20-1.2. Residential arson.

(a) A person commits the offense of residential arson when, in the course of committing an arson, he or she knowingly damages, partially or totally, any building or structure that is the dwelling place of another.

(b) Sentence. Residential arson is a Class 1 felony.
(Source: P.A. 90-787, eff. 8-14-98.)

(720 ILCS 5/20-1.3)

Sec. 20-1.3. Place of worship arson.

(a) A person commits the offense of place of worship arson when, in the course of committing an arson, he or she knowingly damages, partially or totally, any place of worship.

(b) Sentence. Place of worship arson is a Class 1 felony.
(Source: P.A. 93-169, eff. 7-10-03.)

(720 ILCS 5/20-2) (from Ch. 38, par. 20-2)

Sec. 20-2. Possession of explosives or explosive or incendiary devices.

(a) A person commits the offense of possession of explosives or explosive or incendiary devices in violation of this Section when he or she possesses, manufactures or transports any explosive compound, timing or detonating device for use with any explosive compound or incendiary device and either intends to use such explosive or device to commit any offense or knows that another intends to use such explosive or device to commit a felony.

(b) Sentence.

Possession of explosives or explosive or incendiary devices in violation of this Section is a Class 1 felony for which a person, if sentenced to a term of imprisonment, shall be sentenced to not less than 4 years and not more than 30 years.

(c) (Blank).
(Source: P.A. 93-594, eff. 1-1-04; 94-556, eff. 9-11-05.)

ARSON CASES IN ILLINOIS

Attempt to apply the statute/s to the following cases:

People v. Macdonald No. 1-99-4233 (May 1, 2002) Between December 1993 and May 1995, defendant Harry McDonald lived in a second floor apartment at 5941 West North Avenue in Chicago. He lived alone, in apartment #204. He was in his forties and had long suffered from paranoid schizophrenia.

On May 6, 1995, the defendant set fire to a third floor apartment, #303, in his building. Eric West, Hardell Preston, and their three young children, Erica, Eric Jr., and Edonya, lived in that third floor apartment. Vera Holmes lived in another apartment on the third floor.

The defendant was charged with four counts of first degree murder for the deaths of Vera Holmes, Erica West, Edonya West, and Eric West, Jr., and one count of aggravated arson. A jury later found the defendant guilty but mentally ill of the four counts of first degree murder and of the one count of aggravated arson.

Following the jury trial, the trial judge sentenced the defendant to life in prison without the possibility of parole for each of the four first degree murder convictions and to a consecutive term of thirty years in prison for the aggravated arson conviction.

On appeal, the defendant contends (1) the jury's determination he was sane was against the manifest weight of the evidence. He also contends the trial court abused its discretion when it (2) denied his request to give his diaries to the jury during its deliberation; (3) limited his cross-examination of the State's expert, forensic psychiatrist Dr. Albert Stipes; (4) denied his request for second degree murder instructions; (5) denied his request for a non-IPI instruction recognizing the consequence of a verdict of not guilty by reason of insanity; and (6) refused to allow him to argue last -- in a rebuttal closing argument -- the issue of his sanity.

We affirm.

FACTS

The State's evidence at trial showed the defendant set fire to Eric West's apartment on May 6, 1995, because of a growing animosity between him and Eric, and because he suffered from a delusion that demons disguised as people, including Eric and his family, were stalking him, breaking into his apartment, and trying to kill him.

Specifically, nine months earlier, on August 17, 1994, the defendant got into a fight with Eric near the entrance to their apartment building. After that fight, the defendant intended to use a shotgun to kill Eric.

The defendant failed to buy a shotgun, however. His application for a firearm owner's identification card was denied. So the defendant decided to use fire to kill Eric.

On February 15, 1995, the defendant and Eric got into another fight. During that fight, the defendant repeatedly stabbed Eric with a homemade knife -- a broomstick handle with a nail driven into it. He stabbed Eric in his back and head.

Hardell Preston saw the defendant attack Eric and tried to pull Eric away from the defendant. After some time, Eric was able to break away from the defendant and escape through the front door of the building.

Later that night, the police arrested the defendant for attacking Eric. The defendant was charged with battery and the case against him was set for trial. Eric and Hardell were scheduled to testify. While in custody, the defendant tried to file a complaint against Eric. According to the defendant, the police refused to accept his complaint. As a result, the defendant decided to burn his whole apartment building. This way, he could kill Eric and everyone else in the building. He later decided, however, not to burn down the entire building. He did not think he could acquire enough gasoline to burn it all.

During the days between February 15, 1995, and April 4, 1995, the defendant went to the Chicago Public Library and researched how to use and control gasoline. He wanted to learn how to burn the building. Apparently, he did. After midnight on April 4, 1995, the defendant bought over two gallons of gasoline.

The defendant put the gasoline in a plastic container and took it home. When he returned to his apartment with the gasoline, he kept his window open and a fan running to clear the gasoline fumes. He was afraid the gasoline would catch fire before he had a chance to use it.

Eventually, the defendant had to transfer the gasoline to a larger 2.5-gallon plastic bottle -- the plastic container and the lid on the container softened. He then placed the plastic bottle into a 5-gallon plastic "Open Pit" barbecue sauce bucket. He got the bucket from the garbage of Joe's Barbecue -- a local restaurant located next to his building.

In the days before setting apartment #303 on fire, the defendant made some preparations. Specifically, he withdrew money from his bank account, over \$8,000, he packed a bag with some of his personal items, and he grabbed some matches.

At 4:00 a.m., on May 6, 1995, the defendant carried his money, bags, matches, and the bucket of gasoline up the stairs to apartment #303 -- Eric's apartment. The defendant chose that time because he thought that at four in the morning Eric would be asleep in his apartment.

Eric was not in the apartment. Eric had just left. He went to Joe's Barbecue to help clean up and make a little money. Joe's Barbecue closed at 4:00 a.m.

Hardell and her three children were in the apartment, however. Hardell was lying on the couch watching television. Her three children were sleeping. Apartment #303 was a studio, so Hardell and her children were in the same room: Erica, age four, was sleeping on the couch and was closest to the front door of the apartment; Edonya, age three, was sleeping on another couch next to Hardell; and Eric Jr., age two, was sleeping next to his mother, that is, with Hardell.

Just minutes after Eric left for Joe's Barbecue, the defendant banged on the front door to apartment #303. Hardell yelled out, but there was no response. She then went into the bathroom and partially closed the bathroom door.

The defendant broke the apartment door open. He emptied the gasoline from the 2.5-gallon plastic bottle, which he had in the "Open Pit" bucket, into the apartment. He poured the gasoline in such a way that the gasoline spread all over the floor of the apartment.

The defendant then lit one match. The gasoline did not catch fire. He lit a second match. The gasoline still did not catch fire. Finally, he lit a third match, and the gasoline ignited.

When the gasoline ignited, fire swept across the floor of the apartment and leapt to the ceiling. The fire engulfed the whole room. "It was like the sun in the apartment," said Hardell.

As the flames spread through the apartment, the children woke up and started to scream. Erica tried to run out the front door, but the defendant pushed her back into the apartment and closed the front door. Hardell fully opened the bathroom door to see if she could reach her children.

Erica saw her mother and tried to run to her. Because of the intense heat of the fire -- between 1,800 and 2,000 degrees Fahrenheit -- Erica was unable to reach her mother. And Hardell was unable to rescue her. Hardell was unable to rescue any of her children.

Feeling helpless, Hardell jumped out of the bathroom window to the rooftop of a one-story building next to the apartment building. When she landed on the rooftop, she broke her wrist and elbow. From the rooftop, Hardell yelled for someone to help her children. She could hear them screaming from within the apartment.

The children were not saved from the fire. They died in the apartment and were burned beyond recognition.

As the fire spread throughout the building, other residents of the building jumped out of their windows or were rescued by firefighters. Vera Holmes was one of those residents. She also lived on the third floor of the apartment building.

To avoid the fire and smoke that engulfed her apartment, Vera climbed out of her window and straddled the window ledge. Firefighter Darien Thomas and several other firefighters from the Chicago fire department tried to rescue Vera. However, she fell from the ledge and landed on firefighter Thomas. Because of the combination of her fall and carbon monoxide intoxication (she inhaled too much smoke and soot from the fire), Vera died from her injuries.

After setting fire to Eric's apartment, the defendant fled. He gathered his suitcase and the "Open Pit" bucket -- he left the 2.5-gallon plastic bottle in Eric's apartment -- and left the apartment building through the front door.

The defendant ran to the rear of the building. He went into an alley and threw the "Open Pit" bucket into a garbage container. Officer Barry Eichner of the Chicago Police Department recovered the "Open Pit" bucket and three plastic cigarette lighters from that garbage container. A latent fingerprint on the "Open Pit" bucket matched the defendant's middle finger on his left hand. After throwing away the "Open Pit" bucket, the defendant walked to the Greyhound bus station. There, he bought a bus ticket to California. He used a fake name to buy the ticket.

The defendant did not go to California. Instead, he bought bus tickets for several different places. He estimated he spent about \$1,000 on bus tickets.

From May 6, 1995, to June 10, 1995, the police tried to locate the defendant. During that time, the defendant missed his monthly appointments at Mt. Sinai hospital. He had been treated there on an outpatient basis since 1989 for paranoid schizophrenia. His missed appointments at Mt. Sinai were the first he had missed in over five years, having attended all previous 67 appointments.

On May 8, 1995, Chicago police detective Jerome Bogucki went to the defendant's apartment. He found the defendant's apartment door open. When he looked in, the detective saw an open closet with 5-gallon "Open Pit" barbecue sauce buckets on the shelves.

On May 9, 1995, a search warrant was issued for the defendant's apartment. Detective Bogucki and other detectives searched the defendant's apartment. In addition to the "Open Pit" buckets, the detective recovered a number of spiral binder notebooks with writing in them that detailed the defendant's delusions, advertisements from the Yellow Pages with handwriting on the back, 3-ring binders, a manila folder, homemade weapons made from wooden spikes, electrical timers, electrical wire, a .22 rifle, and parts for another .22 rifle.

On June 10, 1995, Chicago police arrested the defendant. When he was arrested, he held a bus ticket for travel departing from Miami, Florida, on June 7, 1995, and arriving in Chicago, Illinois, on June 9, 1995. The name on the ticket was "Joe Doss."

QUESTIONS FOR REVIEW

1. A person commits _____ when without authority he knowingly enters or without authority remains within a building, housetrailer, watercraft, aircraft, motor vehicle as defined in the Illinois Vehicle Code, railroad car, or any part thereof, with intent to commit therein a felony or theft.

- A. Arson
- B. Burglary
- C. Possession of Burglary Tools
- D. Residential Burglary

Answer: B

2. A person commits the offense of place of worship _____ when, in the course of committing an arson, he or she knowingly damages, partially or totally, any place of worship.

- A. Arson
- B. Burglary
- C. Theft
- D. Burning

Answer: A

3. A person commits the offense of _____ to a residence when, without authority, he knowingly enters or remains within any residence, including a house trailer.

- A. Burglary
- B. Arson
- C. Criminal Trespass
- D. Residential Burglary

Answer: C

4. A person commits the offense of _____ when he holds any key, tool, instrument, device, or any explosive, suitable for use in breaking into a building, housetrailer, watercraft, aircraft, or motor vehicle.

- A. Possession of Burglary Tools
- B. Residential Burglary
- C. Burglary
- D. Criminal Trespass

Answer: A

5. A person commits _____ when he or she knowingly damages, partially or totally, any building or structure, and (1) he knows or reasonably should know that one or more persons are present therein or (2) any person suffers great bodily harm, or permanent disability or disfigurement (3) a fireman, policeman, or correctional officer who is present at the scene acting in the line of duty is injured.

- A. Aggravated Burglary

- B. Second Degree Burglary
- C. Second Degree Arson
- D. Aggravated Arson

Answer: D

WEB RESOURCES

- <http://www.crimeandpunishment.net/IL/>: The State of Illinois Crime and Punishment Chart
- <http://www.nilc.org/immlawpolicy/removcrim/removcrim030.htm> National Immigration Law Center
- www.findlaw.com Find Law
- <http://www.interfire.org/features/legalview.asp?date=05062002> Inter-fire Online: Breaking Legal developments
- www.jmls.edu John Marshall Law School