2018 IL App (2d) 151032-U
No. 2-15-1032
Order filed August 27, 2018

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 14-CF-1496
DEONTE GREEN,	)	Honorable James C. Hallock,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justice Birkett concurred in the judgment.
Justice Zenoff dissented.

ORDER

¶ 1 *Held*: The trial court abused its discretion in refusing to instruct the jury on criminal trespass to a residence as a lesser included offense of residential burglary, as some evidence supported a conviction of the lesser included offense.

¶ 2 Defendant, Deonte Green, appeals from his conviction of residential burglary (720 ILCS 5/19-3(a) (West 2014)), arguing that the trial court erred by refusing to instruct the jury on the lesser included offense of criminal trespass to a residence (720 ILCS 5/19-4(a)(1) (West 2014)). We hold that, because there was some evidence to support a conviction of the lesser included

offense, the trial court abused its discretion in refusing to provide the instruction. Thus, we vacate defendant's conviction of residential burglary and we remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 On December 17, 2014, defendant was indicted on one count of residential burglary. The indictment alleged that, on August 13, 2014, "defendant knowingly and without authority, entered into the dwelling place of Jose Luna, located at 1114 Pearl Street #2R, Aurora, Kane County, Illinois, with the intent to commit a theft therein."

¶ 5 A jury trial commenced on June 15, 2015, and the following relevant evidence was presented. Samary Luna testified that, on the date of the incident, she was 17 years old and lived with her parents and two siblings in the rear apartment at 1114 Pearl Street in Aurora. At 10 a.m. on that day, she was watching television in her brother's bedroom with her brother's girlfriend, Jarita Sierra. No one else was home. Samary heard noises coming from her parents' bedroom and went to investigate. Through the open door of the bedroom, Samary saw an African-American male (later identified as defendant) in the bedroom "digging through [her] parents' stuff." Samary testified that defendant was facing toward her with nothing covering his face. He was wearing jeans, a tan or light brown hat, and a red and white jersey with a shirt underneath. She testified that he was about six feet tall, "[r]eally skinny," and had "dreads, braids." She had never seen him before. Upon discovering defendant in her parents' bedroom, Samary screamed. When she did so, defendant put his hands up. Samary returned to her brother's bedroom and told Sierra that someone was in the house. Sierra called 911.

¶ 6 According to Samary, three police officers arrived in about five minutes. After speaking with the officers, Samary and Sierra accompanied an officer in a patrol car to Talma Street, which was about two to three minutes away. When they arrived, Samary saw a police officer

standing next to a man who was wearing a black T-shirt backward. When she first saw the man, Samary was in the squad car about 10 feet away. Samary testified that the man "was trying to cover his face with his dreads," moving his face from side to side, turning his body, and looking in different directions. She did not see a hat or a jersey. Samary asked the officer to drive closer to the man, and the officer was able to get about six feet closer. Samary then identified defendant as the individual she saw in her parents' bedroom.

¶ 7 Samary testified further that her parents kept a portable safe on the floor next to their bed. When Samary encountered defendant in her parents' bedroom, she saw the safe on the bed. According to Samary, on the night before the incident, she had seen the safe on the floor.

¶ 8 Jose Luna, Samary's father, testified that, when he left for work on the morning of the incident, his safe was on the floor in the corner of his bedroom.

¶ 9 Bonnie McGraw testified that, at the time of the incident, she lived on the corner of Simms Street and Talma Street, next to the Miller family residence on Talma Street. That morning, she was on her porch and saw a man (later identified as defendant) walk up to the front door of the Millers' house. Defendant looked in the window of the door and then looked to his left and to his right. He returned to the sidewalk and walked north on Talma Street. McGraw did not see whether defendant tried to open the door. She called the police. A short time later, the police arrived and took McGraw in a squad car to a location about two blocks north on Talma Street. She saw a man standing next to an officer. They asked her if she could identify the man as the one she saw at the door of the Millers' house. From a distance of about two houses away, McGraw identified defendant.

¶ 10 John Miller testified that he lived next door to McGraw. He was not home at the time of the incident. He did not know defendant.

¶ 11 Aurora police officer Nikole Petersen testified that, at approximately 10:28 a.m. on the day of the incident, she went to 1114 Pearl Street in response to a dispatch about a burglary in progress. She spoke with Samary, who described the offender as a skinny African-American male, who was about six feet tall and had long braids. Samary told her that the man was wearing a tan floppy hat and a red and white jersey with a shirt underneath. Petersen walked through the house to make sure that no one else was present, and she saw a safe on a bed. About 17 minutes after she arrived, she heard a call on her police radio that an African-American male had been seen looking into another house. She next heard that a suspect had been detained about four blocks away. Samary and Sierra agreed to go with Petersen to the location where the suspect was being detained. According to Petersen, when they arrived at the location, she saw defendant standing next to two officers. The squad car was about 30 feet away from defendant. Defendant was moving around, putting his head down, and attempting to hide his face with his braids. Using her radio, Petersen asked the officers to have defendant stand up straight and look at the squad car. When defendant did so, Samary stated, " 'That's him.' " Again using her radio, Peterson informed the officers that "it was a positive ID." Immediately thereafter, defendant ran away.

¶ 12 Petersen testified further that, when she saw defendant with the officers, he was not wearing the jersey or hat that Samary had described. Peterson searched the area for those articles of clothing. She looked in back yards and garbage cans. She was not able to locate the clothing. She further testified that it was garbage day and that the garbage truck had been going down the street removing the garbage from the cans. On cross-examination, Petersen testified that she did not stop the garbage truck or speak to its driver. In addition, she testified that, in her police report, she noted that defendant had a goatee, a mustache, and braids.

¶ 13 Aurora police officer Rose O'Brien testified that she was on patrol the morning of the incident when she was dispatched to the area of Talma Street and Simms Street to search for a subject. At about 10:53 a.m., she located defendant in the 500 block of Talma Street. She detained him because he matched the description provided by Peterson. Peterson arrived on the scene in a squad car with a witness, and O'Brien communicated with her over the radio. Peterson told O'Brien via the radio that the witness had identified defendant. O'Brien then attempted to handcuff defendant, but defendant ran away. She and other officers attempted to catch defendant, but they were unable to do so.

¶ 14 Aurora police officer Gregory Spayth, along with a partner, was on patrol in an unmarked squad car just after midnight on August 20, 2014, when he spotted defendant walking. Defendant then ran away. The officers chased defendant and eventually caught him.

¶ 15 Mike Dieser, an investigator with the Aurora Police Department, testified that he, along with fellow investigator Kyle Scifert, interviewed defendant on August 20, 2014. Defendant admitted to running from the police on August 13, 2014, when he heard somebody say " 'That's him.' " He did not tell the investigators where he ran. He told the investigators that he was wearing black on that day. According to Dieser, Scifert explained to defendant the difference between burglary and criminal trespass to a residence.

¶ 16 Scifert testified that he was present, along with Dieser, for defendant's interview. Scifert conducted the interview. Neither he nor Scifert told defendant about any of the facts or evidence regarding the offense. Scifert explained to defendant the difference between burglary and criminal trespass to a residence. Defendant asked whether an offense would be considered burglary or criminal trespass to a residence if he was at the scene of a burglary and moved things around. Defendant never admitted that he went into the Lunas' house.

¶ 17 Julie Smith, a certified latent print examiner, testified that she examined fingerprints that had been taken from a nightstand in the bedroom but that they were not detailed enough to allow for comparison. She also examined fingerprints taken from the safe. There was only one print with sufficient detail to allow for comparison, and it matched a member of the Luna family.

¶ 18 David Turngren testified as an expert in DNA analysis. He tested a swab that police recovered from the safe handle and discovered that it contained a mixture of incomplete DNA profiles from at least two people. The profiles were insufficient for comparison to a known standard.

¶ 19 At the close of the State's case, defendant moved for a directed verdict, arguing that the "ID process was not reasonable and reliable." Counsel argued that "[Samary's] testimony is inconsistent and her identification at show-up is very suggestive." Counsel argued that it was a "one[-]person line-up" and further that Samary "did not have enough time and degree of attention to have a positive identification of the Defendant." Counsel also stated that "the State failed to prove that there was any intent to steal." The trial court denied the motion. The defense rested.

¶ 20 During the jury instruction conference, defendant requested that the jury be instructed on the lesser included offense of criminal trespass to a residence. The trial court denied the request. Although the court agreed that criminal trespass to a residence was a lesser included offense of residential burglary, it found that the instruction was inappropriate where the defense theory was misidentification.

¶ 21 During closing arguments, defense counsel began by stating: "Suggestive, conducive, speculative." Counsel went on to challenge Samary's identification of defendant. Counsel noted that Samary never described defendant as having a mustache and goatee. Counsel challenged the

show-up conducted by the officers, noting that defendant was the only individual presented. Counsel argued that Samary was in the car when she identified defendant and that she had stated that she needed to get closer. Counsel argued that defendant was not wearing the clothes that Samary told the officers the suspect had been wearing. Counsel pointed out that defendant did not run when he was initially approached by the officers and that, if he had committed the offense, he would have run. Counsel argued that there was no fingerprint or DNA evidence linking defendant to the bedroom. Counsel argued:

> "[W]here is the evidence of him moving the safe if nobody saw it? Samary did not say that she saw him, this person was moving the safe, only thing we know is that safe was in the corner last night, and then it was on the bed. But did we hear about all other family members, especially I wanted to hear from Angie. Did Angie move it? Or brother moved it? Or wife moved it for some purpose to put something in it or not? Do we have that evidence? No. Do you have evidence that this man moved the safe? And this man is [defendant]."

Counsel argued that nothing was missing from the house. Counsel further argued that there was no hat or jersey found in the area. Counsel concluded that the State failed to prove that defendant entered the house or had any intent to steal.

¶ 22 During deliberations, the jury sent the judge a note asking for " 'any documentation testimony regarding Defendant asking Investigators about trespass versus "burglary[.]" ' " The court interpreted the question as a request for transcripts of Scifert's and Dieser's testimony and, over defendant's objection, directed the court reporter to prepare the transcripts for the jury. The court told the jury that it would have the transcripts in two hours and that the jury should

continue deliberating in the meantime. Before receiving the transcripts, the jury returned a guilty verdict.

¶ 23 Defendant filed a motion for a judgment notwithstanding the verdict or a new trial. The trial court denied the motion. The trial court sentenced defendant to nine years in prison. Following the denial of his motion for reconsideration of his sentence, defendant timely appealed.

¶ 24 II. ANALYSIS

¶ 25 Defendant argues that the trial court erred in refusing to instruct the jury on the lesser included offense of criminal trespass to a residence. According to defendant, "the evidence could have left the jury with a reasonable doubt as to whether the defendant entered the apartment with the intent to commit a theft, making it possible for the jury to find the defendant guilty of criminal trespass to a residence without finding him guilty of residential burglary." The State responds that there was no evidence presented that would have permitted the jury to find defendant guilty of criminal trespass to a residence.

¶ 26 Due process requires that a lesser-included-offense instruction be given when the evidence warrants such an instruction. *Hopper v. Evans*, 456 U.S. 605, 611 (1982). The court's examination of the evidence should focus on whether there was *any* evidentiary basis to support a conviction of the lesser included offense. *Id.* "Although the lesser included offense doctrine developed at common law to assist the prosecution in cases where the evidence failed to establish some element of the offense originally charged, it is now beyond dispute that the defendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater." *Keeble v. United States*, 412 U.S. 205, 208 (1973). Our supreme court recently stated that

> "the appropriate standard for determining whether a defendant is entitled to a jury instruction on a lesser-included offense is whether there is *some evidence* in the record that, if believed by the jury, will reduce the crime charged to a lesser offense, not whether there is *some credible* evidence. It is not the province of the trial court to weigh the evidence when deciding whether a jury instruction is justified. [Citations.] Requiring that credible evidence exist in the record risks the trial court invading the function of the jury and substituting its own credibility determination for that of the jury." (Emphases in original.) *People v. McDonald*, 2016 IL 118882, ¶ 25.

The evidence to support the instruction can be, and often is, "contained solely in the State's case." *People v. Simpson*, 74 Ill. 2d 497, 501 (1978). We review for an abuse of discretion a trial court's decision that there is insufficient evidence to justify giving a jury instruction. *Id.* ¶ 42.

¶ 27 The issue here is whether there was "some evidence" presented at trial, whether through express testimony or through inference from the testimony, that would have permitted the jury to find defendant guilty of criminal trespass to a residence. "A person commits residential burglary when he or she knowingly and without authority enters *** the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft." 720 ILCS 5/19-3(a) (West 2014). "A person commits criminal trespass to a residence when, without authority, he or she knowingly enters *** any residence." 720 ILCS 5/19-4(a)(1) (West 2014). Thus, to require an instruction on criminal trespass to a residence, there must have been some evidence that would have permitted the jury to conclude that defendant entered the residence without authority but lacked the requisite intent to commit a felony or theft.

¶ 28 To be sure, the circumstantial evidence presented supports the jury's finding that defendant was guilty of residential burglary. "Criminal intent is a state of mind that not only can be inferred from the surrounding circumstances [citations], but usually is so proved [citations]." *People v. Maggette*, 195 Ill. 2d 336, 354 (2001). "A [fact finder] may infer the offender's intent to commit a residential burglary from proof that the offender unlawfully entered a building containing personal property that could be the subject of a larceny." *In re Matthew M.*, 335 Ill. App. 3d 276, 282-83 (2002). "The inference is grounded in human experience which justifies the assumption that the unlawful entry was not purposeless, and, in the absence of other proof, indicates theft as the most likely purpose." *People v. Rossi*, 112 Ill. App. 2d 208, 212 (1969). Other relevant circumstances include the time, place, and manner of entry into the premises, the offender's activity within the premises, and any alternative explanations offered for the offender's presence. *Maggette*, 195 Ill. 2d at 354. The evidence here established that defendant unlawfully entered a residence containing personal property. In addition, defendant was seen "digging through" personal property belonging to the residents, and a portable safe that was last seen on the floor in the corner of the bedroom had been moved to the bed.

¶ 29 However, we agree with defendant that the evidence was such that the jury could have also concluded that defendant entered the residence without the intent to commit a theft. There was no direct evidence of defendant's intent to steal, much less his intent when he entered the residence. He did not confess to burglary, instead suggesting that he might have merely committed a trespass. He did not possess any burglary tools. His fingerprints or DNA were not recovered from the safe or the nightstand, and the State failed to establish that someone other than a family member moved the safe. In addition, there was no evidence that defendant had taken anything from the residence; nothing was missing. The inferences from this evidence

would have permitted the jury to conclude that defendant did not have the intent to steal. As noted, it is not the province of the trial court to weigh the evidence in deciding whether a lesser-included instruction is warranted. *McDonald*, 2016 IL 118882, ¶ 25. The question is simply "whether there is *some evidence* in the record that, if believed by the jury, will reduce the crime charged to a lesser offense." (Emphasis in original.) *Id.* Thus, because there was some evidence to support giving the instruction, the trial court abused its discretion in refusing to give it.

¶ 30 The State's reliance on *People v. Austin*, 216 Ill. App. 3d 913 (1991), does not warrant a different conclusion as it is readily distinguishable. In *Austin*, the defendant was indicted on two counts of residential burglary. *Id.* at 915. One count alleged that the defendant without authority entered a residence with the intent to commit a theft. The other count alleged that the defendant without authority entered a residence with the intent to commit an unlawful restraint. At trial, a woman named Mary testified that she fell asleep on her living room couch on a very muggy evening in July. She awoke at 2:30 a.m. and saw a man standing next to her. He was wearing yellow gloves and had his hand near her mouth. She saw his face for about five seconds. She yelled to her husband that a man was in the house, and the man fled, without touching her or taking anything from the house. Mary's neighbor testified that she had earlier observed a suspicious car in the neighborhood and written down the license plate number. She later saw a man run to the car, get in, and drive away. When the police arrived at Mary's house, the neighbor gave them the license plate number. The defendant was located in the car about two miles away. *Id.* At the jury instruction conference, the defendant asked that the jury be instructed on the lesser included offense of criminal trespass to a residence. *Id.* at 915-16. The trial court refused. *Id.* at 916.

¶ 31 On appeal, the defendant argued that the trial court erred in refusing to submit his proffered jury instructions. *Id.* We disagreed. We found that, although criminal trespass to a residence was a lesser included offense of residential burglary, an instruction on a lesser included offense was required " 'only in cases where the jury could rationally find the defendant guilty of the lesser offense and not guilty of the greater offense.' " *Id.* at 917 (quoting *People v. Perez*, 108 Ill. 2d 70, 81 (1985)). We stated:

> "In this case, although nothing was taken from the residence and defendant did not touch Mary ***, the jury could not have rationally convicted defendant of criminal trespass to residence and acquitted defendant of residential burglary. To prove intent to commit a theft or unlawful restraint, the State presented evidence that at 2:30 a.m. defendant entered [Mary's] residence through a rear door. Defendant was wearing rubber gloves on a hot, muggy July night. Defendant also had one hand near Mary['s] mouth as his other hand reached to turn off the light. Defendant offered no evidence to refute this testimony. The only defense arising from the evidence and from defense counsel's arguments was misidentification. Defendant was either guilty of the offenses as charged or not guilty. Thus, the trial court properly refused defendant's instructions on the lesser-included offense." *Id.*

¶ 32 Here, unlike in *Austin*, defendant entered the house during the day and was not wearing gloves. In addition, unlike in *Austin*, defense counsel did argue that the State failed to prove intent to steal. Defense counsel also observed that defendant's fingerprints were not recovered from the safe and that the State failed to call family members to testify that someone other than a family member had moved the safe.

¶ 33 Moreover, we note that *Austin* relied on *People v. Moore*, 206 Ill. App. 3d 769 (1990), for the proposition that the trial court was not required to give the lesser-included instruction on criminal trespass to a residence. In *Moore*, the two defendants, who were charged with residential burglary, were seen "coming through the front of the house carrying a large refrigerator." *Id.* at 771. There was a van backed up to the front door with its two doors wide open. *Id.* at 770. The defense requested instructions on the lesser included offenses of burglary (arguing that the house was not a dwelling) and criminal trespass to a residence. *Id.* at 772. The trial court denied the request. On appeal, the First District affirmed, concluding that the evidence was "undisputed that [the] defendants knowingly and without authority entered the house. Furthermore, [the] defendants *were seen carrying a refrigerator* out of the house and *several other items were missing from the house*." (Emphases added.) *Id.* at 775. As noted above, the present case is quite different.

¶ 34 The State suggested during oral argument that we would be "elevating a reasonable hypothesis of innocence" if we held that a lesser-included instruction was required in this case. We note, however, that the case in which our supreme court dispensed with the "reasonable theory of innocence" jury charge was a circumstantial-evidence case in which the court held that a lesser-included instruction "should have been given." *People v. Bryant*, 113 Ill. 2d 497, 505-07 (1986). The defendant in *Bryant*, like defendant here, "did not present any evidence." *Id.* at 501. The defendant in *Bryant*, like defendant here, argued that the greater charge of attempted burglary "would require proof of the defendant's intent to commit a burglary." *Id.* at 506. In *Bryant*, police were called to a service station after a nearby resident heard glass breaking. A police officer saw the defendant running away from the building. The officer yelled stop twice before the defendant stopped and was arrested. Items inside the building had been disturbed, and

the chain-link fence covering the rear window had been pried and some of the panes had been broken. Nothing was missing from the building. The defendant was not wearing a shirt when he was arrested, and a torn shirt was found next to the fence in the neighbor's yard. Fabric impressions taken from pieces of glass found below the window were consistent with the shirt, and glass fragments from the defendant's shoes were consistent with the window glass at the station. *Id.* at 500-01. As in *Bryant*, defendant's argument in this case on appeal is "consistent with the view proposed at trial." *Id.* at 506.

¶ 35 The State argued in its brief that, "[c]ontrary to defendant's current position, *there can be no dispute* that defendant's *sole theory* at trial was mistaken identity or misidentification." (Emphases added.) This statement is, at worst, false, and at best, disingenuous. It is disingenuous to argue that there can be no dispute and false to claim that there was only one theory or claim raised at trial, that is, misidentification. And again, at oral argument, the State argued: "Also in his motion for directed verdict, he did not argue lack of intent in his motion for directed verdict." This statement is similarly defective.

¶ 36 During the hearing on defendant's motion for a directed verdict, defendant argued both that the evidence was insufficient to prove that he committed the crime "and also, Your Honor, that the State *failed to prove that there was any intent to steal*." (Emphasis added.) During the jury instruction conference, in requesting an instruction on criminal trespass to a residence, defendant argued that, even if the jury found that he committed the crime, there was a question of "whether they could have enough evidence to determine there was an intent to steal." And during closing arguments, defendant again argued that the State failed to prove an intent to steal.

¶ 37 Despite the State's claim, the record contains language related by the defense clearly establishing that the defense was both misidentification and lack of sufficient proof of intent to

commit a theft. We note that even defendant's brief inaccurately characterized his defense, in that his brief asserted that he "did not argue 'misidentification.' " We are troubled by the conduct of appellate counsel, with respect to failing to conform their representations both in their briefs and at oral argument with the record. We expect and are entitled to an accurate account of the contents of the record. See Ill. S. Ct. R. 341(h)(6) (eff. Nov. 1, 2017) (facts are to be stated "accurately and fairly"). Anything less would be inconsistent with Illinois Rule of Professional Conduct 3.3(a)(1) (eff. Jan. 1, 2010), which requires candor toward the tribunal: "A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

¶ 38 Based on the foregoing, because there was some evidence presented that would have permitted the jury to acquit defendant of residential burglary and to convict him of criminal trespass to a residence, we hold that the trial court abused its discretion in refusing to instruct the jury on criminal trespass to a residence.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we vacate the judgment of the circuit court of Kane County and remand the cause for a new trial.

¶ 41 Vacated and remanded.

¶ 42 JUSTICE ZENOFF, dissenting:

¶ 43 A defendant is entitled to an instruction on a lesser included offense only if "the evidence would permit a jury *rationally* to find him guilty of the lesser offense and acquit him of the greater." (Emphasis added.) *Keeble*, 412 U.S. at 208. In my view, after examining the evidence presented here, no rational jury could have found that defendant entered the residence without intending to commit a theft. Thus, no rational jury could have found defendant guilty of criminal

trespass to a residence and not guilty of residential burglary. Accordingly, defendant was not entitled to an instruction on criminal trespass to a residence, and I respectfully dissent.

¶ 44 As the majority acknowledges, human experience "justifies the assumption that [an] unlawful entry was not purposeless, and, in the absence of other proof, indicates theft as the most likely purpose." *Rossi*, 112 Ill. App. 2d at 212. Here, that assumption was overwhelmingly confirmed by the evidence. As the majority accurately notes, the evidence established that defendant not only unlawfully entered the Lunas' residence, but was seen "digging through [their] stuff." Their safe, which earlier that morning had been on the floor, was now on the bed. In my view, the only rational inference is that defendant entered the residence with the intent to commit a theft.

¶ 45 The majority observes that defendant's fingerprints were not on the safe and that he did not actually take anything. But the safe was out of its usual place in the same room where defendant was "digging through" the Lunas' things. Despite the absence of defendant's fingerprints on the safe, no rational jury could have deemed this a mere coincidence. And although defendant did not actually take anything, this obviously was not for lack of looking. Although he did not complete a theft—interrupted, as he was, by Samary—the only rational inference is that he entered the residence with the intent to commit one.

¶ 46 I stress here that to no extent am I weighing the evidence. Rather, I am properly evaluating only whether the evidence supports more than one rational inference. If the facts here had permitted the jury to rationally infer that defendant entered the residence with some other purpose, I would concur in the majority's holding that the jury should have been given that opportunity.

¶ 47 But the facts here point only one way. Defendant unlawfully entered the Lunas' residence and was caught "digging through" their things. What could a rational jury have found his purpose to be, if not to commit a theft? The majority does not answer this question, and its silence speaks volumes.

¶ 48 I dissent.