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.

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

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ORAL ARGUMENT REQUESTED

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ARGUMENT

Under this Court's long-settled interpretation of the burglary statute, a person has no authority to enter a building — even one that is open to the public — if he enters with intent to commit theft. *People v. Weaver*, 41 Ill. 2d 434, 439 (1968). That limited authority doctrine controls this case. Just as Weaver was guilty of burglary for entering an open laundromat with the intent to steal coins from a vending machine, defendant here committed burglary when he entered an open Walmart store with the intent to steal merchandise. Defendant had no more authority to enter the Walmart store with that intent than Weaver had to enter the laundromat. Under the limited authority doctrine, it makes no difference that Walmart is a retail store and the laundromat was not. Nor does it matter that defendant intended to steal clothing that was displayed for sale, while the coins Weaver intended to steal were in a locked vending machine. Both businesses opened their doors to the public, but neither business invited members of the public to enter for the purpose of stealing.

Defendant does not ask the Court to overrule *Weaver*, and he offers no principled basis for distinguishing it. Instead, he argues that *Weaver*'s limited authority doctrine should not apply in the scenario presented here — when a person enters an open retail store with the intent to shoplift. But *People v. Bradford*, 2016 IL 118674, the primary decision on which he relies, provides no support for defendant's shoplifting-based exception to the limited

authority doctrine. Although *Bradford* happened to involve a defendant who shoplifted from a retail store, the decision did not question the limited authority doctrine's application to unauthorized-*entry* burglary (as charged here and in *Weaver*) but merely declined to extend the doctrine to the distinct unauthorized-*remaining* burglary charge at issue there.

Defendant's additional arguments are equally unavailing. He does not dispute that, in the fifty years since *Weaver* was decided, the General Assembly has not amended the burglary statute to eliminate or otherwise restrict the scope of the limited authority doctrine. Rather, he contends that the legislature implicitly exempted the act of entering an open retail store with the intent to shoplift from the scope of the *burglary* statute by enacting the *retail theft* statute several years after *Weaver*. But nothing in the retail theft statute indicates a legislative intent to accomplish that result. At bottom, defendant's argument rests on the erroneous premise that the limited authority doctrine permits mere shoplifting or theft — rather than the separate act of entering a building with the intent to commit one of those offenses — to be prosecuted as burglary.

A similarly flawed premise underlies defendant's absurdity argument, as he fails to acknowledge that the harm one causes by entering an open store with the intent to steal can reasonably be viewed as distinct from, and more serious than, the harm caused by the commission of any subsequent theft itself. In particular, by entering a store with intent to steal, a person

knowingly creates the possibility of a confrontation with store personnel that might frighten or injure employees or customers. The likelihood and severity of those consequences, and the appropriate penalty necessary to address them, are questions properly addressed by the legislature, not the courts. The distinction between persons who enter with intent to steal and those who steal only after entering innocently — and the conclusion that the evils produced by the former are a more serious threat to public safety than the latter — flows from *Weaver*'s construction of the burglary statute, which the General Assembly has accepted as correct through lengthy acquiescence. There is thus no basis to conclude that the differing punishments dictated by *Weaver* are inconsistent with legislative intent.

In short, because this case is squarely governed by *Weaver* — and because defendant has forfeited any argument for overruling that decision — this Court should reverse the appellate court's judgment and reinstate defendant's burglary conviction.

A. *Weaver* is materially indistinguishable.

Defendant suggests that *Weaver* is distinguishable because Weaver entered the laundromat with the intent to steal from a locked vending machine that "the public had no authority to enter," Def. Br. 12, whereas defendant entered the Walmart store with the intent to steal merchandise that was displayed for public inspection. But that distinction is immaterial. Weaver's lack of authority to enter the laundromat was not based on the

nature of the theft he intended to commit or the manner in which he intended to commit it, but on the fact that he possessed the intent to commit theft when he entered. That was so because "[a]n entry with intent to commit a theft cannot be said to be within the authority granted patrons of a laundromat." *Weaver*, 41 Ill. 2d at 439. In other words, Weaver had no authority to enter the open laundromat because his intent to commit theft therein was not "a purpose consistent with the reason the building [was] open." *Id.* The same principle applies here. The Walmart store that defendant entered was open to the public, but defendant had no authority to enter the store with intent to steal merchandise — a purpose that is unquestionably inconsistent with the reason the store was open to the public.

B. *Bradford* does not exempt retail stores from the scope of the limited authority doctrine.

As the People's opening brief explained, *Bradford* declined to extend the limited authority doctrine from unauthorized-*entry* burglary (as in *Weaver*) to unauthorized-*remaining* burglary, but nothing in that decision casts doubt on the doctrine's continued application to unauthorized-entry burglary. *See* Peo. Br. 12-18. Defendant takes a far more sweeping view of *Bradford*'s holding. Because the building at issue there was a retail store, he contends, *Bradford* forecloses application of the limited authority doctrine in all burglary cases involving retail stores and stands for the broad proposition that a person's presence in such a store is unauthorized only if he "exceeds his physical authority as a member of the public to be in the store," such as

by accessing an area of the store that is "off-limits to the public." Def. Br. 2 (internal quotation marks omitted).

Defendant asserts that, "[b]y its plain terms, [*Bradford*'s] holding is not limited to unlawful-remaining burglary," Def. Br. 19, and that it "did not hinge on a distinction between the two forms of burglary" but instead rested on the ground that the limited authority doctrine "should not apply to shoplifting cases at all," *id.* at 7. But *Bradford*'s own summary of its holding refutes that view:

> We thus hold that an individual commits burglary by remaining in a public place only where he exceeds his physical authority to be on the premises. Under this definition, burglary by remaining includes situations in which an individual enters a public building lawfully, but, in order to commit a theft or felony, (1) hides and waits for the building to close, (2) enters unauthorized areas within the building, or (3) continues to remain on the premises after his authority is explicitly revoked. Conversely, an 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.

2016 IL 118674, ¶ 31 (internal citations omitted).

This passage demonstrates that *Bradford*'s holding was carefully confined to unauthorized-remaining burglary. Not only did the Court refer solely to "burglary by remaining" when formulating its holding, but it further clarified that the physical authority test it adopted in place of the limited authority doctrine applies only when a person initially "enters a public building lawfully." Of course, under *Weaver*, which *Bradford* did not question, one who enters a public building with intent to steal does *not* enter

lawfully. *See Weaver*, 41 Ill. 2d at 439 (using "lawful entry" and "authority to enter" interchangeably). The above passage also makes clear that *Bradford*'s holding did not rest on any distinction between retail stores and other types of buildings open to the public, but instead applies to any "public place" in which a defendant is accused of remaining without authority. Thus, to accept defendant's contention that "the logic of *Bradford* applies equally to unlawful-entry burglary," Def. Br. 2, would require the Court to overrule *Weaver* and abandon the limited authority doctrine entirely, despite defendant's insistence that neither *Weaver* nor "[t]he general vitality of the limited authority doctrine is . . . at issue here," *id.* at 20.[1]

Defendant's position finds no more support in *Bradford*'s reasoning. As the People's opening brief explained, *Bradford* relied on the practical and doctrinal problems that would arise if the limited authority doctrine were extended to unauthorized-remaining burglary, but none of those problems arise when the doctrine is applied to unauthorized-entry burglary, even in cases involving retail stores. *See* Peo. Br. 12-18. First, *Bradford* concluded that, when a person develops the intent to steal only after entering a store, there is no workable way to determine whether (or when) he subsequently

[1] The People's opening brief explained that, because *Weaver* involved an issue of statutory construction, it is entitled to heightened *stare decisis* effect and argued that no sufficient basis for overruling it exists. Peo. Br. 18-24. In response, defendant makes no argument that *Weaver* should be overruled, instead contending that the People's "invocation of *stare decisis* is a red herring." Def. Br. 14. Defendant has thus forfeited any argument for overruling *Weaver* and this Court should decline to revisit it.

remained in the store with intent to steal without arbitrarily distinguishing between a person who steals one item and leaves and a person who lingers while stealing multiple items. 2016 IL 118674, ¶ 26. But determining whether a person had intent to steal when he *entered* a store is a straightforward factual question that presents no conceptual difficulty. *See* Peo. Br. 13-14. Defendant does not dispute this point but instead merely casts it aside as a "straw m[a]n." Def. Br. 18.

Likewise, determining whether a person entered a store with the intent to steal does not depend on drawing any arbitrary distinctions. *See* Peo. Br. 14-15. All that matters is whether the person formed an intent to steal before or after entry. Defendant questions whether the General Assembly "intended such a distinction at all." Def. Br. 16. But differentiating between those who enter a store with the intent to steal and those who form that intent only after entry has long been at the heart of unauthorized-entry burglary and is reflected in the burglary statute itself. *See* 720 ILCS 5/19-1(a) ("A person commits burglary when without authority he or she knowingly enters . . . a building . . . with intent to commit therein a felony or theft."); *Weaver*, 41 Ill. 2d at 439 ("A criminal intent formulated after a lawful entry will not satisfy the statute."). Moreover, for the half century following *Weaver*, the limited authority doctrine has been "part of the statute," *People v. Williams*, 235 Ill. 2d 286, 293 (2009), and by not amending the relevant statutory language in that time, the legislature "has acquiesced

in the court's statement of the legislative intent," *People v. Espinoza*, 2015 IL 118218, ¶ 27.

Nor is the distinction arbitrary. The distinction rejected in *Bradford* — between a person who steals a single item and a person who steals several items with the same total value, *see* 2016 IL 118674, ¶ 26 — was arbitrary because it imposed different punishments on persons who caused the same harm. By contrast, a person who enters a store with the intent to commit theft causes harm above and beyond that caused by any subsequent theft, and that harm exists even if no theft or only a relatively minor theft is ultimately committed. As the People's opening brief explained, *see* Peo. Br. 15, 21, a person "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, because the former knowingly creates the potential for a dangerous confrontation with store personnel by his very entry.

Second, *Bradford* concluded that applying the limited authority doctrine to unauthorized-remaining burglary involving a retail store would be inconsistent with the retail theft statute. *See* 2016 IL 118674, ¶¶ 27-28. Because anyone who innocently enters a store and then commits theft necessarily formed the intent to steal at some point while remaining in the store, applying the limited authority doctrine in those circumstances would allow the fact of the theft itself to establish that the person remained in the

store without authority, thus converting "nearly all cases of retail theft" into unauthorized-remaining burglary and "effectively negating the retail theft statute." *Id.* at ¶ 27. But applying the limited authority doctrine to a charge of unauthorized-*entry* burglary does not present the same problem because evidence of a theft alone cannot establish that the entry was unauthorized. Rather, such cases require "independent evidence supporting a finding that the defendant entered the premises with the requisite intent." *People v. Smith*, 264 Ill. App. 3d 82, 87 (3d Dist. 1994). Contrary to the concern in *Bradford* that application of the limited authority doctrine would transform virtually all instances of retail theft into unauthorized-remaining burglary, "the difficulty of proving a defendant's intent at the moment he or she enters a store" suggests that, in "the vast majority of cases," a person who enters a store and shoplifts will be "charged [with] retail theft" rather than unauthorized-entry burglary. *Moore*, 2018 IL App (2d) 160277, ¶ 27.[2]

Third, *Bradford* concluded that the unique history of the burglary statute's unauthorized-remaining prong made it incompatible with the limited authority doctrine. 2016 IL 118674, ¶¶ 29-30. The People's opening brief explained that the unauthorized-entry prong's history does not support

[2] Defendant does not appear to dispute this point. And it is telling that, in support of his argument that the limited authority doctrine produces absurd results when applied to unauthorized-entry burglaries involving retail stores, he is forced to resort to the exceedingly unlikely factual scenario of a person who tells "an undercover police officer" of his intent "to steal a candy bar" from a convenience store as he stands on the sidewalk outside the store and then commits burglary by entering the store. Def. Br. 10-11.

a similar conclusion, *see* Peo. Br. 17-18, and defendant again does not appear to dispute that assessment, *see* Def. Br. 18. Instead, he contends that "it would be incongruous" to apply the limited authority doctrine to one type of burglary but not the other. Def. Br. 15. But this argument implies that *Weaver* itself was wrongly decided, despite defendant's insistence that "[t]he general vitality of the limited authority doctrine is not at issue here." Def. Br. 20. Regardless, this Court was unswayed by a similar appeal to symmetry in *Bradford*, *see* 2016 IL 118674, ¶ 24 (noting appellate court's reasoning that "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") (internal quotation marks omitted), and defendant offers no reason to embrace it here.

Finally, defendant notes that *Bradford* favorably cited *People v. McDaniel*, 2012 IL App (5th) 100575, where the appellate court reversed an unauthorized-remaining burglary conviction under facts similar to those in *Bradford*. *See* Def. Br. 8-9. He contends that *Bradford* thus "fully endorsed" *McDaniel*'s suggestion (made without mentioning *Weaver*) that a person has unlimited authority to enter "the general customer area of a retail store" because such stores "permit[ ] and . . . encourage[ ] members of the public . . . to enter with the hope and expectation that they will examine merchandise and decide to purchase the store's wares." 2012 IL App (5th)

100575, ¶ 11. But the jury acquitted McDaniel of unauthorized-entry burglary, finding that he had "not . . . entered the building with intent to commit a theft," *id*. at ¶ 18, and so any discussion of whether such an intent would have rendered his entry unlawful was *dicta*. The only issue on appeal was whether McDaniel's subsequently formed intent to steal (evidenced by his actual theft) supported a conviction for unauthorized-remaining burglary. *Id.* at ¶ 11. *Bradford*'s approval of *McDaniel*'s holding concerning unauthorized-remaining burglary cannot be read as an endorsement of its *dicta* regarding unauthorized-entry burglary, particularly where that *dicta* flatly contradicts *Weaver*.

C. The retail theft statute did not remove retail stores from the scope of the limited authority doctrine.

Defendant also argues that applying the limited authority doctrine to unauthorized-entry burglary involving a retail store is inconsistent with the General Assembly's intent in enacting the retail theft statute. *See* Def. Br. 14. As discussed above, *Bradford* concluded that applying the doctrine to unauthorized-*remaining* burglary involving a retail store would "conflict[ ] with the legislative intent in enacting the retail theft statute." 2016 IL 118674, ¶ 27. That finding was premised on the fact that applying the doctrine to such charges would "effectively negat[e]" the retail theft statute by converting "nearly all" acts of retail theft into burglary. *Id.* But as explained above, applying the limited authority doctrine to the unauthorized-

entry burglary of a retail store will not effectively negate the retail theft statute. *See supra* pp. 8-9.[3]

Defendant makes the broader argument that the legislature did not intend for the limited authority doctrine to apply to unauthorized-entry burglary involving retail stores following the enactment of the retail theft statute. But his argument relies on a fundamentally flawed premise. He repeatedly asserts that the General Assembly intended for acts of shoplifting to be punished under the retail theft statute rather than the burglary statute. *See* Def. Br. 5-6, 11, 13, 18, 20, 22. While true, that misses the point. Defendant's alleged act of shoplifting *was* prosecuted as retail theft. He was convicted of burglary, by contrast, for his distinct act of entering a store with the intent to shoplift. The limited authority doctrine underlying that conviction was well-settled by the time the retail theft statute was enacted, and nothing in the retail theft statute evinces a legislative intent to abrogate the doctrine with respect to burglaries motivated by the desire to shoplift. *See People v. Jones*, 214 Ill. 2d 187, 199 (2005) (because legislature

[3] Defendant's repeated reliance on *People v. Christy*, 139 Ill. 2d 172 (1990), *see* Def. Br. 6, 11, 13, is misplaced for the same reason. There, the Court held that the state constitution's proportionate penalties clause was violated by two statutes that shared identical elements but imposed different punishments, because prosecutorial discretion to charge the offense with the greater penalty would "effectively nullify" the other offense. *Id.* at 180. But applying the limited authority doctrine to unauthorized-entry burglary of a retail store does not "effectively nullify" the retail theft statute because the burglary charge requires proof of an element — entry with intent to steal — not required under the retail theft statute. *See* Peo. Br. 23-24.

is presumed to "act[ ] with full knowledge of previous judicial decisions," a new statute generally "will not be construed to change the settled law of the state unless its terms clearly require such a construction"). To the contrary, the fact that the legislature that enacted the retail theft statute did not also amend the burglary statute to exclude shoplifting-motivated entries of open retail stores from its reach suggests a legislative intent to enforce both the burglary statute as interpreted in *Weaver* and the newly enacted retail theft statute in order to "ensure that defendants are held accountable for the full measure of their conduct and harm caused." *People v. Miller*, 238 Ill. 2d 161, 173 (2010).

Nor is there any principled basis supporting defendant's proposed exemption for retail stores. If prosecuting a person for burglary for entering an open retail store with intent to shoplift were incompatible with the retail theft statute, then, by the same logic, prosecuting a person for burglary when he entered any other type of open building, such as a laundromat, with intent to commit a conventional theft would be inconsistent with the general theft statute. But that result cannot be squared with *Weaver* or the limited authority doctrine generally. It is no answer that the retail theft statute "punishes retail theft according to the value of the stolen merchandise," Def. Br. 5, because the general theft statute likewise classifies offenses based on the value of the property stolen. *Compare* 720 ILCS 5/16-1(b)(1) (theft of property not from the person and not exceeding $500 in value is Class A

misdemeanor), and 720 ILCS 5/16-1(b)(4) (theft of property between $500 and $10,000 in value is Class 3 felony), *with* 720 ILCS 5/16-25(f)(1) (retail theft of items not exceeding $300 is Class A misdemeanor), and 720 ILCS 5/16-25(f)(3) (retail theft of items exceeding $300 is Class 3 felony).[4]

Like the appellate court, defendant cites the provision of the retail theft statute criminalizing 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), which he contends demonstrates the General Assembly's intent "to prosecute shoplifting offenses under the retail theft statute, even where the intent to steal existed before the entry to the store." Def. Br. 10. Again, while it is true that the legislature intended the retail theft statute to be the vehicle for prosecuting shoplifting offenses, that does not mean (or even suggest) that the legislature

[4] As *Bradford* noted, the General Assembly enacted the retail theft statute "for the purpose of combating the growing problem of retail theft in Illinois." 2016 IL 118674, ¶ 27. But it did not do so by creating stiffer penalties for retail theft than existed under the general theft statute. In fact, when it was enacted, the retail theft statute and the general theft statute differentiated Class A misdemeanors from Class 3 felonies with the same $150 cutoff. *See* Ill. Rev. Stat. 1975, ch. 38, ¶ 16-1(e); Ill. Rev. Stat. 1975, ch. 38, ¶ 16A-10. Rather, to address the fact that shoplifting had "not effectively been deterred within the confines of the traditional theft statute[ ]," *People v. McNeal*, 120 Ill. App. 3d 625, 629 (2d Dist. 1983), the retail theft statute defined the offense to better capture real-world conduct, *see*, *e.g.*, 720 ILCS 5/16-25(a)(2) (prohibiting attempt to purchase item with knowingly altered price tag at less than full retail value), and otherwise made the offense easier to prove, *see* 720 ILCS 5/16-25(c) (allowing inference of intent to steal if person conceals merchandise and knowingly passes beyond last payment station).

likewise intended to curtail the reach of the burglary statute as interpreted by *Weaver*.

Rather, as the People's opening brief explained, *see* Peo. Br. 22-24, the offenses of burglary and retail theft each include at least one element that the other does not, and each is designed to address a distinct harm. *See Miller*, 238 Ill. 2d at 173, 176. Burglary requires proof that a person entered a building without authority and with the intent to commit a theft or felony therein, but does not require proof that any theft or felony was actually committed. 720 ILCS 5/19-1(a). Retail theft, on the other hand, generally requires proof that a person took possession of an item displayed for sale in a retail store without paying its full value, but it requires no proof that the person entered the store with the intent to commit the theft. 720 ILCS 5/16-25(a)(1). Indeed, the provision of the retail theft statute criminalizing the use or possession of a theft detection shielding device does not require proof that a person *entered* a retail store at all, but merely that he possessed the device with intent to use it to commit retail theft. *See* 720 ILCS 5/16-25(a)(7). That provision is a prophylactic measure designed to deter retail thefts, not to address the distinct harm caused by unauthorized entry into a retail store with the intent to shoplift.

And as the Court recognized in *Miller*, the legislature created the separate offenses of burglary and retail theft to "ensure that defendants are held accountable for the full measure of their conduct and harm caused." 238

Ill. 2d at 173. Defendant resists the import of *Miller* by noting that the issue addressed there was whether the defendant's convictions for both offenses were proper under the one-act, one-crime doctrine. *See* Def. Br. 22. But the Court's resolution of that question rested, in part, on its understanding of legislative intent, which is the very issue presented here. *See 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."). Just as the legislature intended to allow convictions for both burglary and retail theft when a person enters an open Walgreens store with the intent to steal and then does so (as in *Miller*, *see* 238 Ill. 2d at 163-64), it intended to allow a burglary conviction alone when a person enters an open Walmart store with intent to steal but, for whatever reason, does not accomplish the theft.

D. It is not absurd to apply the limited authority doctrine when a person enters a retail store with intent to shoplift.

Finally, defendant argues that applying the limited authority doctrine to a person who enters a retail store with the intent to shoplift creates absurd results that the General Assembly cannot have intended. *See* Def. Br. 10-11. In particular, he contends that the legislature could not have intended to impose harsher punishment on a person who enters an open retail store with the intent to commit a relatively minor theft (that he ultimately may not

commit) than is imposed on a person who actually commits a more serious retail theft after entering a store innocently. *Id.* But "[t]he most reliable indicator of legislative intent is found in the language of the statute itself." *People v. Hanna*, 207 Ill. 2d 486, 497 (2003). And while the General Assembly did not explicitly define the term "without authority" in the burglary statute's text, the limited authority doctrine became "part of the statute" following this Court's decision in *Weaver* and the legislature's subsequent acquiescence. *Williams*, 235 Ill. 2d at 293; *see also Ray Schools–Chicago, Inc. v. Cummins*, 12 Ill. 2d 376, 380 (1957) ("When a statute has been judicially construed by the highest court having jurisdiction to pass on it, such a construction is as much a part of the statute as if plainly written into it originally."). Because it is the legislatively accepted limited authority doctrine that compels more severe punishment for those who enter a store with intent to steal than for those who do not, there is no basis to conclude that the differing results bemoaned by defendant are inconsistent with legislative intent.

In any event, defendant's contention that "[t]here is no legal or logical justification" for applying the limited authority doctrine to the shoplifting-motivated entry of an open retail store, Def. Br. 3, rests on the mistaken premise that the harm caused by shoplifting and entering a store with the intent to shoplift are measured in the same way — by the value of the items that a person steals or intends to steal. But as discussed, a person who

enters a store with the intent to steal "is at least arguably more culpable" than a person who merely steals after entering innocently, *Moore*, 2018 IL App (2d) 160277, ¶ 24, because the former knowingly creates the potential for harm to store employees and customers by his very entry. It is reasonable to conclude that, having entered with a nefarious intent, the person is likely to be on guard for any employee or customer who may be monitoring him (as in fact occurred here, where a customer in the store grew suspicious of defendant's activities and called the police, *see* Peo. Br. 2-3) and may be prepared to react to any real or perceived suspicion in a manner that causes alarm or injury, such as by quickly fleeing, becoming violent, or otherwise causing a disturbance. That potential harm is distinct from the harm caused by the theft he intends to commit, and it is not negated merely because he intends to commit a relatively minor theft or ultimately commits no theft at all.

Defendant obviously disagrees with this assessment of the risk presented by his conduct compared to the harm caused by a shoplifter who impulsively steals after innocently entering a store, but "it is the legislature which has been empowered to declare and define conduct constituting a crime and to determine the nature and extent of punishment for it." *People v. Steppan*, 105 Ill. 2d 310, 319 (1985). That responsibility is delegated to the legislature because it is "institutionally . . . more aware than the courts of the evils confronting our society and, therefore, is more capable of gauging the

seriousness of various offenses." *Id.* Through its long acquiescence in *Weaver*'s interpretation of the burglary statute, the General Assembly has demonstrated its view that a person who enters an open business with the intent to steal causes the type of harm that deserves to be punished as burglary. Defendant's objections to that policy "are more appropriately directed to the legislature than to this court." *People v. Minnis*, 2016 IL 119563, ¶ 40.

CONCLUSION

For the reasons discussed above and in the People's opening brief, this Court should reverse the appellate court's judgment and remand for consideration of defendant's remaining arguments on appeal.

February 27, 2019

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(c) certificate of compliance, and the certificate of service is nineteen pages.

/s/ Eric M. Levin
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 27, 2019, the foregoing **Reply Brief 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:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 13 copies of the **Reply Brief 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
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