

No. 20-_____

IN THE
SUPREME COURT OF THE UNITED STATES

SAMUEL ALEX GANN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit**

APPENDIX

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Assistant Federal Defender
Counsel of Record
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NOT RECOMMENDED FOR PUBLICATION
File Name: 20a0557n.06

No. 19-6287

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.)
)
 SAMUEL ALEX GANN,)
)
 Defendant-Appellant.)
)

FILED
Sep 29, 2020
DEBORAH S. HUNT, Clerk

Before: SILER, SUTTON, and LARSEN, Circuit Judges.

LARSEN, Circuit Judge. Samuel Alex Gann pleaded guilty to possessing a firearm and ammunition as a felon. Because he had four previous convictions for Tennessee burglary, he was sentenced as a career offender under the Armed Career Criminal Act (ACCA). Gann was sentenced to a within-Guidelines sentence of 180 months' imprisonment. On appeal, he challenges his ACCA classification. Because precedent forecloses his arguments, we AFFIRM.

I.

Officers with the Alcoa Police Department in Tennessee responded to a shoplifting complaint at a Walmart store. When the officers arrived to investigate, they made contact with Gann and discovered that he had a loaded firearm in his pocket. Gann later pleaded guilty to possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. § 922(g)(1). He was classified as an armed career criminal under 18 U.S.C. § 924(e) based on his three prior Tennessee convictions for aggravated burglary and one prior Tennessee conviction for burglary of a building.

See Tenn. Code Ann. §§ 39-14-402, 403. That classification resulted in an advisory Guidelines range of 180 to 210 months' imprisonment. Gann objected, arguing that his prior burglary convictions did not qualify as predicate offenses under ACCA and that his Guidelines range should instead be 30 to 37 months. Specifically, Gann argued that the entry element in each of his predicate offenses under Tennessee law is broader than the entry element of "generic" burglary and that his convictions therefore did not qualify as ACCA predicate offenses. Gann next argued that his three convictions for aggravated burglary are not "generic" because they did not require proof of intent to commit a crime at the time of his unlawful entry. And finally, he argued that the evidence of his prior aggravated burglary convictions did not establish that he committed those crimes on separate occasions.

The district court rejected Gann's arguments, finding the first two foreclosed by precedent and the last unsuccessful because the record demonstrated that he had committed his prior burglaries on separate occasions. The district court also rejected Gann's reconsideration request based on a new argument—that the variant of aggravated burglary involved in his convictions did not have an intent element. After considering the 18 U.S.C. § 3553(a) factors, the court sentenced Gann to a within-Guidelines sentence of 180 months' imprisonment. Gann timely appealed.

II.

Under ACCA, "a person who violates section 922(g) . . . and has three previous convictions . . . for a violent felony . . . committed on occasions different from one another . . . shall be . . . imprisoned not less than fifteen years." 18 U.S.C. § 924(e)(1). A "violent felony" is "any crime punishable by imprisonment for a term exceeding one year" that has "as an element the use, attempted use, or threatened use of physical force against the person of another" or "is burglary . . ." *Id.* § 924(e)(2)(B).

To determine whether a defendant's past convictions under Tennessee law qualify as "burglary," courts employ the categorical approach, comparing the elements of the "generic" crime—"the offense as commonly understood"—to the elements of the statute forming the basis of a defendant's conviction. *Descamps v. United States*, 570 U.S. 254, 257 (2013). A prior conviction qualifies as a predicate under ACCA if the statute's elements are "the same as, or narrower than, those of the generic offense." *Id.* The Supreme Court has defined "generic" burglary as "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." *Taylor v. United States*, 495 U.S. 575, 598 (1990).

The Tennessee burglary statute provides that a person commits burglary when, "without the effective consent of the property owner," he:

- (1) Enters a building other than a habitation (or any portion thereof) not open to the public, with intent to commit a felony, theft or assault;
- (2) Remains concealed, with the intent to commit a felony, theft or assault, in a building; [or]
- (3) Enters a building and commits or attempts to commit a felony, theft or assault[.]

Tenn. Code Ann. § 39-14-402(a)(1)–(3). Gann's prior conviction for burglary of a building falls under the (a)(1) variant of the offense, and Gann's three aggravated burglary convictions fall under the (a)(3) variant of the offense. We review *de novo* whether a defendant's prior conviction qualifies as a "violent felony" for purposes of ACCA. *United States v. Buie*, 960 F.3d 767, 770 (6th Cir. 2020).

On appeal, Gann offers three reasons why he should not have been sentenced as an armed career criminal. Precedent forecloses each one.

In *United States v. Nance*, we held that "an aggravated-burglary conviction under Tennessee law categorically counts as a burglary under the Supreme Court's generic definition and so falls within [ACCA]." *United States v. Brown*, 957 F.3d 679, 682 (6th Cir. 2020) (citing

United States v. Nance, 481 F.3d 882, 888 (6th Cir. 2007)). Ten years later, our court, sitting en banc, overruled *Nance*, *see United States v. Stitt*, 860 F.3d 854, 861 (6th Cir. 2017) (*Stitt I*), but then the Supreme Court overruled us, *see United States v. Stitt*, 139 S. Ct. 399, 403–04 (2018) (*Stitt II*). Thereafter, we held that *Nance* is “once again the law of this circuit.” *Brumbach v. United States*, 929 F.3d 791, 794 (6th Cir. 2019), *cert. denied*, 140 S. Ct. 974 (2020); *see also Brown*, 957 F.3d at 682.

Since then, we have repeatedly affirmed that “*Brumbach* closed the book on Tennessee aggravated burglary by holding, in a published opinion, that *Nance* once again controls.” *United States v. Tigue*, 811 F. App’x 970, 975 (6th Cir. 2020); *see also*, e.g., *Lurry v. United States*, No. 17-5941, 2020 WL 4581249, at *5 (6th Cir. Aug. 10, 2020) (“Simply stated, this court’s precedent after *Stitt II* forecloses his arguments that his prior Tennessee convictions do not qualify as violent felonies under the ACCA.” (citing *Brumbach*, 929 F.3d at 794)); *United States v. Morris*, 812 F. App’x 341, 347 (6th Cir. 2020) (Moore, J., concurring) (“Until this court grants en banc review, we must follow *Brumbach*, no matter how ‘weighty’ the underlying substantive issues or how thoughtfully the issues are addressed.”).

Several panels, moreover, have addressed and rejected each of the particular arguments Gann raises now. Gann argues, for example, that the entry element of Tennessee burglary makes it broader than the generic offense. But our cases foreclose this claim. *See Brown*, 957 F.3d at 683–89 (rejecting the entry-by-instrument argument, as we did in *Brumbach*, because a panel of this court cannot overrule *Nance*); *United States v. Yerkes*, No. 19-5768, 2020 WL 3889056, at *4 (6th Cir. July 10, 2020) (“But even if we are not bound by [Brown], we find *Brown*’s discussion—and rejection on the merits—of the entry-by-instrument argument persuasive.”)); *see also Buie*,

960 F.3d at 771 (concluding that the entry-by-instrument argument is both foreclosed by precedent under *Brumbach* and meritless under *Brown*). Gann concedes this point.

Gann also argues that the (a)(3) variant of Tennessee aggravated burglary does not qualify as generic burglary because it lacks generic burglary's intent-to-commit-a-crime element. *See* Tenn. Code Ann. §§ 39-14-402(a), 403. But several panels of this court have also treated this argument as foreclosed by *Brumbach*. *See, e.g., Booker v. United States*, 810 F. App'x 443, 445 (6th Cir. 2020) (acknowledging the intent argument but concluding that "*Brumbach* . . . makes clear that *Nance* is good law and leaves no room for raising still more arguments about Tennessee aggravated burglary"); *Lurry*, 2020 WL 4581249, at *5; *United States v. Schumaker*, No. 17-6535, 2020 WL 4013200, at *3 (6th Cir. July 16, 2020). In light of *Brumbach*, we do the same.

Lastly, Gann argues that the district court violated his Sixth Amendment right to a jury trial when, relying on *Shepard* documents, it found that Gann committed his three aggravated burglary offenses "on occasions different from one another," a prerequisite for ACCA liability. *See* 18 U.S.C. § 924(e)(1). Gann concedes, however, that "[t]his question was recently answered in *United States v. Hennessy*, 932 F.3d 437 (6th Cir. 2019), and not in [his] favor." Gann's candid concession is correct; *Hennessy* forecloses this argument. *See id.* at 444–45.

In light of our caselaw, the district court properly determined that Gann had at least three prior convictions for violent felonies under ACCA and sentenced him accordingly.

* * *

We AFFIRM the judgment of the district court.

No. 19-6287
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 06, 2020
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SAMUEL ALEX GANN,

Defendant-Appellant.

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O R D E R

BEFORE: SILER, SUTTON, and LARSEN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

UNITED STATES OF AMERICA

v.

SAMUEL ALEX GANN
USM#53457-074

JUDGMENT IN A CRIMINAL CASE
(For Offenses committed on or after November 1, 1987)

Case Number: **3:19-CR-00165-RLJ-HBG(1)**
3:18-CR-00088-RLJ-HBG(1)

Jonathan A. Moffatt
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to Count 1 of the Information.
- pleaded nolo contendere to count(s) which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense:

Title & Section	Nature of Offense	Date Violation Concluded	Count
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm and Ammunition	November 2, 2017	1

The defendant is sentenced as provided in pages 2 through of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. 3553.

- The defendant has been found not guilty on count(s).
- Count 1 of the Indictment in case number 3:18-CR-088 is dismissed upon motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

October 28, 2019
Date of Imposition of Judgment

s/ Leon Jordan
Signature of Judicial Officer

R Leon Jordan , United States District Judge
Name & Title of Judicial Officer

November 1, 2019
Date

DEFENDANT: SAMUEL ALEX GANN
CASE NUMBER: 3:19-CR-00165-RLJ-HBG(1)
3:18-CR-00088-RLJ-HBG(1)

Judgment - Page 2 of 7

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 180 months.

This sentence shall be served concurrently with Blount County, Tennessee, Circuit Court Docket Number C- 26101, because that case is sufficiently related to the instant offense.

Further, this Court's sentence shall be served concurrently with any sentence imposed for the pending probation violations in Blount County, Tennessee, Circuit Court Docket Numbers C-23421 and C-23422, and the pending charge in Blount County, Tennessee, Circuit Court Docket Number CR25244. The Court has carefully considered the factors set forth at U.S.S.G. § 5G1.3 (Notes 4(A) and (C)). In particular, because case number C-23422 is one of the defendant's Armed Career Criminal predicates, because the other two cases relate to that case in some degree, and because of the dramatic impact that the defendant's Armed Career Criminal designation has on his guideline range, the Court concludes that concurrent sentencing is just and appropriate in this case.

The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant receive 500 hours of substance abuse treatment from the BOP Institution Residential Drug Abuse Treatment Program. The court will further recommend the defendant undergo a complete mental health evaluation and receive appropriate treatment while serving his term of imprisonment. It is further recommended the defendant participate in educational classes and vocational training to learn a trade or marketable skills while incarcerated. Lastly, the court recommends the defendant be designated to FMC Butner, North Carolina or FCI Manchester, Kentucky.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on .

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on

to ,

at ,

with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

8a

DEFENDANT: SAMUEL ALEX GANN
CASE NUMBER: 3:19-CR-00165-RLJ-HBG(1)
3:18-CR-00088-RLJ-HBG(1)

Judgment - Page 3 of 7

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentencing of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: SAMUEL ALEX GANN
CASE NUMBER: 3:19-CR-00165-RLJ-HBG(1)
3:18-CR-00088-RLJ-HBG(1)

Judgment - Page 4 of 7

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the mandatory, standard, and any special conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

10a

DEFENDANT: SAMUEL ALEX GANN
CASE NUMBER: 3:19-CR-00165-RLJ-HBG(1)
3:18-CR-00088-RLJ-HBG(1)

Judgment - Page 5 of 7

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as you are released from the program by the probation officer.
2. You must participate in a program of mental health evaluation and treatment, as directed by the probation officer, until such time as you are released from the program by the probation officer. You must waive all rights to confidentiality regarding mental health treatment in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the mental health treatment provider.
3. If not obtained while in custody of the Bureau of Prisons, the defendant shall obtain a General Educational Development Degree.
4. You must take all medication prescribed by the treatment program as directed. If deemed appropriate by the treatment provider or the probation officer, you must submit to quarterly blood tests, to determine whether you are taking the medication as prescribed.
5. You must submit your person, property, house, residence, vehicle, papers, [computers (as defined in 18 U.S.C. § 1030(e)(1)], or other electronic communications or data storage devices or media,] or office, to a search conducted by a United States Probation Officer or designee. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: SAMUEL ALEX GANN
 CASE NUMBER: 3:19-CR-00165-RLJ-HBG(1)
 3:18-CR-00088-RLJ-HBG(1)

Judgment - Page 6 of 7

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
 The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options under the Schedule of Payments sheet of this judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: SAMUEL ALEX GANN
 CASE NUMBER: 3:19-CR-00165-RLJ-HBG(1)
 3:18-CR-00088-RLJ-HBG(1)

Judgment - Page 7 of 7

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** Lump sum payments of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or
- B** Payment to begin immediately (may be combined with C, D, or F below); or
- C** Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after the date of this judgment; or
- D** Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or
- E** Payment during the term of supervised release will commence within _____ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to **U.S. District Court, 800 Market Street, Suite 130, Howard H. Baker, Jr. United States Courthouse, Knoxville, TN, 37902**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
 See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
 Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

STATE BURGLARY STATUTES – 1986

Alabama: Ala. Code § 13A-7-5(a) (1975) (“with intent to commit a crime”); *id.* § 13A-7-6(a) (“with intent to commit theft or a felony”); *id.* § 13A-7-(6)(b) (“with intent to commit a theft or a felony”); *id.* § 13A-7-7(a) (“with intent to commit a crime”).

Alaska: Alaska Stat. § 11.46.310 (1978) (“with intent to commit a crime in the building”).

Arizona: Ariz. Rev. Stat. Ann. § 13-506 (1956) (“with the intent to commit any theft or felony therein”); *id.* § 13-1507 (1981) (“with the intent to commit any theft or felony therein”).

Arkansas: Ark. Code Ann. § 41-2002 (1977) (“with the purpose of committing therein any offense punishable by imprisonment”); *id.* § 41- 2003 (1975) (“for the purpose of committing a theft or felony”).

California: Cal. Penal Code § 459 (1985) (“with intent to commit grand or petit larceny or any felony”); *id.* § 464 (“with intent to commit a crime”).

Colorado: Colo. Rev. Stat. § 18-4-202 (1986) (“with intent to commit a crime therein”); *id.* § 18-4-203 (“with intent to commit therein a crime against a person or property”); *id.* § 18-4-204 (“with intent to commit a crime”).

Connecticut: Conn. Gen. Stat. § 53a-101 (1972) (“with intent to commit a crime therein”); *id.* § 53a-102 (“with intent to commit a crime therein”); *id.* § 53a-103 (“with intent to commit a crime therein”).

Delaware: Del. Code Ann. § 824 (1979) (“with intent to commit a crime therein”); *id.* § 825 (“with intent to commit a crime therein”); *id.* § 826 (“with intent to commit a crime therein”).

District of Columbia: D.C. Code § 22-1801 (1981) (“with intent to break or carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense”).

Florida: Fla. Stat. § 810.02 (1985) (“with the intent to commit an offense therein”).

Georgia: Ga. Code Ann. § 16-7-1 (1981) (“with the intent to commit a felony or theft therein”).

Hawaii: Haw. Rev. Stat. § 708-810 (1984) (with intent to commit therein a crime”); *id.* § 708-811 (“with intent to commit therein a crime”).

Idaho: Idaho Code § 18-1401 (1981) (“with intent to commit any theft or any felony”); *id.* § 18-1405 (1972) (“with intent to commit a crime”).

Illinois: 38 Ill. Comp. Stat. Ann. 19-1 (1982) (“with intent to commit therein a felony or theft”); *id.* 19-3 (“with the intent to commit therein a felony or theft”).

Indiana: Ind. Code § 35-43-2-1 (1984) (“with intent to commit a felony”).

Iowa: Iowa Code § 713.1 (1985) (“having the intent to commit a felony, assault or theft therein”); *id.* § 713.2 (“having the intent to commit a felony, assault or theft therein”).

Kansas: Kan. Stat. Ann. § 21-3715 (1974) (“with intent to commit a felony or theft therein”); *id.* § 21-3716 (“with intent to commit a felony or theft therein”).

Kentucky: Ky. Rev. Stat. Ann. § 511.020 (1980) (“with the intent to commit a crime”); *id.* § 511.030 (“with the intent to commit a crime”); *id.* § 511.040 (“with the intent to commit a crime”).

Louisiana: La. Stat. Ann. § 14:62 (1986) (“with the intent to commit a felony or any theft therein”); *id.* § 14:62.2 (“with the intent to commit a felony or any theft therein”); *id.* § 14:60 (“with the intent to commit a felony or any theft therein”).

Maine: Me. Rev. Stat. tit. 17-A § 401 (1964) (“with the intent to commit a crime therein”).

Maryland: Md. Code Ann. art. 27, § 30(a) (1967) (“with the intent to steal, take or carry away”); *id.* art. 27, § 30(b) (“with intent to commit murder or felony therein”); *id.* art. 27, § 32 (“with an intent to commit murder or felony therein, or with the intent to steal, take or carry away the personal good of another”).

Massachusetts: Mass. Gen. Laws. ch. 266, § 14 (1986) (“with intent to commit a felony”); *id.* § 15 (“with the intent mentioned in the preceding section”); *id.* § 16 (“with intent to commit a felony”); *id.* § 17 (“with intent to commit a felony”); *id.* § 18 (“with intent to commit a felony”).

Michigan: Mich. Comp. Laws § 750.110 (1968) (“with intent to commit any felony, or any larceny therein”); *id.* § 750.110 (“with intent to commit a felony or any larceny therein”); *id.* § 750.112 (“and for the purpose of committing any crime therein”).

Minnesota: Minn. Stat. § 609.582, subd. 1 (1986) (“with intent to commit a crime”); *id.* subd. 2 (“with intent to commit a crime”); *id.* subd. 3 (“with intent to steal or commit a felony”); *id.* subd. 4 (“with intent to commit a misdemeanor”).

Mississippi: Miss. Code Ann. § 97-17-19 (1973) (“with intent to commit a crime”); *id.* § 97-17-21 (“with intent to commit some crime therein”); *id.* § 97-17-23 (“with intent to commit some crime therein”); *id.* § 97-17-29 (“with intent to commit a crime”); *id.* § 97-17-27 (“with intent to commit any crime”); *id.* § 97-17-33 (“with intent to steal therein, or to commit any felony”); *id.* § 97-17-37 (“with intent to commit a crime”).

Missouri: Mo. Rev. Stat. § 569.160 (1986) (“for the purpose of committing a crime therein”); *id.* § 569.170 (“for the purpose of committing a crime therein”); *id.* § 569.170 (“for the purpose of committing a crime therein”).

Montana: Mont. Code Ann. § 45-6-204 (“with the purpose to commit an offense therein”).

Nebraska: Neb. Rev. Stat. § 28-507 (1985) (“with intent to commit any felony or with intent to steal property of any value”).

Nevada: Nev. Rev. Stat. § 205.060 (1986) (“with intent to commit grand or petit larceny, or any felony”); *id.* § 205.075 (“with intent to commit crime”).

New Hampshire: N.H. Rev. Stat. Ann. § 635:1 (1986) (“with purpose to commit a crime therein”).

New Jersey: N.J. Stat. Ann. § 2C:18-2 (1982) (“with purpose to commit an offense therein”).

New Mexico: N.M. Stat. Ann. § 30-16-3 (1978) (“with the intent to commit any felony or theft therein”); *id.* § 30-16-4 (“with intent to commit any felony or theft therein”)

N.Y. Penal Law § 140.20 (1965) (“with intent to commit a crime therein”); *id.* § 140.25 (1981) (“with intent to commit a crime therein”); *id.* § 140.30 (“with intent to commit a crime therein”).

North Carolina: N.C. Gen. Stat. § 14-53 (1979) (“with intent to commit any felony or larceny therein”); N.C. Gen. Sat. § 14-54 (1981) (“with intent to commit any felony or larceny therein”); N.C. Gen. Stat. § 14-56 (1979) (“with intent to commit any felony or larceny therein”); *id.* § 14-57 (“with intent to commit any felony or larceny therein”). *But see id.* § 14-53 (“or being in such a dwelling house, shall commit any felony or larceny therein”).

North Dakota: N.D. Cent. Code § 12.1-22-02 (1973) (“with intent to commit a crime therein”).

Ohio: Ohio Rev. Code Ann. § 2911.12 (1985) (“with purpose to commit therein any theft offense”); *id.* § 2911.13 (1982) (“with purpose to commit therein any theft offense”).

Oklahoma: Okla. Stat. tit. 21, § 1431 (1982) (“with intent to commit some crime therein”); *id.* § 1435 (“with intent to steal any property therein”); *id.* § 1438 (“with intent to commit any felony, larceny, or malicious mischief”).

Oregon: Or. Rev. Stat. Ann. § 164.215 (1983) (“with intent to commit a crime therein”).

Pennsylvania: 18 Pa. Cons. Stat. § 3502 (1972) (“with the intent to commit a crime therein”).

Rhode Island: 11 R.I. Gen. Laws § 11-8-3 (1981) (“with intent to commit murder, sexual assault, robbery, arson or larceny”); *id.* § 11-8-4 (“with intent to commit murder, rape, robbery or larceny”).

South Carolina: S.C. Code Ann. § 16-11-311 (1985) (“with intent to commit a crime therein”); *id.* § 16-11-312 (“with intent to commit a crime therein”); *id.* § 16-11-313 (“with intent to commit a crime therein”).

South Dakota: S.D. Codified Laws § 22-32-1 (1979) (“with intent to commit any crime therein”); *id.* § 22-32-3 (“with intent to commit any crime therein”); *id.* § 22-32-8 (“with intent to commit any crime”).

Tennessee: Tenn. Code Ann. § 39-3-401 (1982) (“with intent to commit a felony”); *id.* § 39-3-403 (“with intent to commit a felony”); *id.* 39-3-404 (“with the intent to commit a felony” and “with intent to commit crime”); *id.* § 39-3-406 (“with intent to steal therefrom”).

Texas: Tex. Penal Code Ann. §§ 30.02(1) and (2) (1974) (“with intent to commit a felony or theft”); *id.* § 30.04 (“with intent to commit any felony or theft”). *But see* Tex. Penal Code Ann. § 30.02(3) (1974) (“enters a building or habitation and commits or attempts to commit a felony or theft”).

Utah: Utah Code Ann. § 76-6-202 (1978) (“with intent to commit a felony or theft”); *id.* § 76-6-204 (“with intent to commit a felony or theft”).

Vermont: Vt. Stat. Ann. tit. 13, § 1201 (1982) (“with the intent to commit a felony, petit larceny, simple assault, or unlawful mischief”)

Virginia: Va. Code Ann. § 18.2-89 (1975) (“with intent to commit a felony or larceny therein”); Va. Code Ann. § 18.2-90 (1986) (“with intent to commit murder, rape or robbery”); *id.* § 18.2-91 (“with intent to commit larceny or any other felony”); *id.* § 18.2-92 (1986).

Washington: Wash. Rev. Code § 9A.52.020 (1985) (“with intent to commit a crime against a person or property therein”); *id.* § 9A.52.030 (“with intent to commit a crime against a person or property therein”); *id.* § 9A.52.040 (“with intent to commit a crime against a person or property therein”).

West Virginia: W. Va. Code § 61-3-11 (1977) (“with intent to commit a felony or any larceny therein”); *id.* § 61-3-12 (“with intent to commit a felony or any larceny”).

Wisconsin: Wis. Stat. § 943.10 (1982) (“with intent to steal or commit a felony”); *id.* § 943.11 (1978) (“with intent to steal therefrom”).

Wyoming: Wyo. Stat. Ann. § 6-3-301 (1986) (“with intent to commit larceny or a felony therein”).

STATE BURGLARY STATUTES – CURRENT OMITTING INTENT TO COMMIT A CRIME

Michigan: Mich. Comp. Laws Ann. § 750.110a(2) (“breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault”); *id.* § 750.110a(3) (“breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault”); *id.* § 750.110a(4)(a) (“breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling”).

Minnesota: Minn. Stat. § 609.582, subd. 1 (“Whoever . . . enters a building without consent and commits a crime while in the building); *id.* subd. 2(a) (“Whoever . . . enters a building without consent and commits a crime while in the building”); *id.* subd. 2(b) (“Whoever . . . enters a government building, religious establishment, historic property, or school building without consent and commits a crime”); *id.* subd. 3 (“Whoever . . . enters a building without consent and steals or commits a felony or gross misdemeanor while in the building”); *id.* subd. 4 (“Whoever . . . enters a building without consent and commits a misdemeanor other than to steal while in the building”).

North Carolina: N.C. Gen. Stat. § 14-53 (“If any person shall enter the dwelling house of another with intent to commit any felony or larceny therein, or being in such dwelling house, *shall commit any felony or larceny therein*, and shall, in either case, break out of such dwelling house in the nighttime”).

Tennessee: Tenn. Code Ann. § 39-14-402(a)(3) (“Enters a building and commits or attempts to commit a felony, theft, or assault”); *id.* § 39-14-402(a)(4) (“Enters any freight or passenger car, automobile, truck, trailer, boat, airplane or other vehicle . . . [and] commits or attempts to commit a felony, theft or assault”).

Texas: Tex. Penal Code Ann. § 30.02(a)(3) (“enters a building or habitation and commits or attempts to commit a felony, theft, or an assault”).