

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

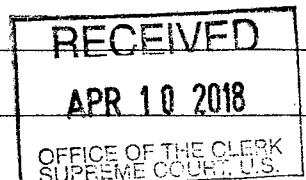
RICHARD RICHMOND - PETITIONER

VS.

PEOPLE OF THE STATE OF ILLINOIS - RESPONDENT

On Petition for Writ of Certiorari
From the Illinois Court of Appeals for the
Fourth Judicial District

PETITION FOR WRIT OF CERTIORARI



Richard Richmond M48515

Pro Se Representation

Menard Correctional Center

P.O. Box 1000, Menard IL 62259

QUESTIONS PRESENTED

Was Petitioners right to due process violated when he was convicted of home invasion for entering his place of residence in which he had resided at for years?

LIST OF PARTIES

Richard Richmond M48515

Petitioner

Menard Correctional Center

PO Box 1000

Menard, IL 62259

Pro Se representation for Petitioner

Lisa Madigan

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Representation for Respondent

TABLE OF CONTENTS

QUESTIONS PRESENTED	i.
LIST OF PARTIES	ii.
INDEX OF AUTHORITIES	iv.
OPINIONS	1.
JURISDICTION	1.
CONSTITUTIONAL PROVISIONS AND STATUTES	2.
STATEMENT OF THE CASE	2.
REASONS FOR GRANTING THE WRIT	5.
CONCLUSION	9.

INDEX TO APPENDICES

APPENDIX A - Circuit Court Judgement

APPENDIX B - Appellate Court Judgement

APPENDIX C - Supreme Court of Illinois Opinion

INDEX OF AUTHORITIES

Authority	Page
720 ILCS 5/12-11(a)	5
Faison v. RTFX, Inc., 2014 IL App (1st) 121893 (2014)	7
Fortech, L.L.C. v. R.W. Duntzman Co., Inc., 366 Ill.App.3d 804 (2006)	8
People v. Delacruz, 352 Ill.App.3d 801 (2004)	5,6
People v. Evans, 163 Ill.App.3d 561 (1987)	7
People v. Howard, 374 Ill.App.3d 705 (2007)	6
People v. Richmond, 2017 IL App (1st) 143571-U (2017)	4,7
People v. Taylor, 318 Ill.App.3d 464 (2000)	5,6
Seidelman v. Kouvarous, 57 Ill.App.3d 350 (1978)	7
Strong v. Soodvoisky, 141 Ill.App.183 (1908)	8

Petitioner, Richard Richmond, respectfully prays that this Honorable Court issue a Writ of Certiorari to review the judgement and opinion of the Courts below.

I.

OPINIONS

The original judgement of conviction of Petitioner in the Circuit Court for the First Judicial District, Cook County Illinois was not reported and is attached hereto as Appendix "A".

The original judgement of conviction of Petitioner was appealed to the Appellate Court of Illinois, First Judicial District, which affirmed in part and vacated in part and is unpublished and is attached hereto as Appendix "B".

The judgement of the decision of the Appellate Court of Illinois, First Judicial District was appealed to the Illinois Supreme Court which denied the Petition for Leave to Appeal and is attached hereto as Appendix "C".

II.

JURISDICTION

The judgement of the Appellate Court of Illinois, First Judicial District was entered on September 29, 2017. A Petition for Leave to Appeal to the Illinois Supreme Court was denied on January 18, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

III.

CONSTITUTIONAL PROVISIONS AND STATUTES

The statute involved and under review is Illinois Compiled Statute 720 ILCS 5/12-11(a) which states:

"A person who is not a peace officer acting in the line of duty commits home invasion when without authority he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present or he or she knowingly enters the dwelling place of another and remains in such dwelling place until he or she knows or has reason to know that one or more persons is present"

IV.

STATEMENT OF THE CASE

Petitioner was charged with multiple counts of attempt first degree murder, home invasion, aggravated battery, and aggravated domestic battery in connection with a confrontation he had with his wife, Nicole Howard.

The trial evidence established that in September of 2011, Richard and Nicole were married and living together in an apartment on Chicago's south side along with their daughter and Nicole's son from a previous relationship. Richard and Nicole had been married for nine years, and had been in a relationship for 18 years.

On September 25, 2011, Nicole confronted Richard with allegations that

he had molested her niece in the past. When Richard denied the allegations, Nicole kicked him out of the apartment and had the locks changed.

According to Nicole, up until the time she kicked Richard out, he lived with her in the apartment; he slept there, he ate there, he kept possessions there, he contributed to the monthly bills and rent, and he had his own set of keys. Although Nicole indicated that Richard sometimes stayed at his sister's house, she attested that he lived at the apartment with her for the majority of the time. There was no evidence that he kept possessions anywhere but the apartment.

Nine days after being kicked out, Richard returned to the apartment directly after his release from the hospital where he had been for about five days due to heart issues. During his stay in the hospital, Nicole, her son and her daughter came to visit Richard. During their visit, Nicole never informed Richard that she had changed the locks at the apartment, or that Richard should not return to their apartment. Nicole, upon visiting Richard at the hospital violated the restraining order which she obtained, but did not inform Richard about.

Upon Richard arriving at the apartment, Richard found his keys no longer worked so he entered the apartment through a window at the back of the apartment. Once inside, he had a confrontation with Nicole and her son. During this confrontation, Nicole was shot, but she was not fatally wounded and survived. Nicole and her son testified that they believed that Richard intentionally shot Nicole. Richard testified that the shooting was accidental and a result of him grabbing the gun out of Nicole's son's hand.

After a bench trial, Richard was found guilty and sentenced on all

counts. After a notice of appeal was filed, the court sua sponte vacated the sentences on the aggravated battery and aggravated domestic battery counts and merged those counts into the attempted murder count.

On appeal, Richard argued that the State failed to prove him guilty of either attempt murder or home invasion beyond a reasonable doubt, and because the trial court's order merging the aggravated battery count and aggravated domestic battery counts were void due to lack of jurisdiction, those counts should be vacated on one-act, one-crime grounds. See People v. Richmond, 2017 IL App (1st) 143571-U, ¶ 2.

Relevant here, Richard argued that the State did not prove him guilty of home invasion beyond a reasonable doubt when it failed to establish that he knowingly entered the dwelling place of another. He maintained that the evidence that he lived at the apartment most of the time, kept possessions there, and contributed to the monthly rent established that the apartment was his dwelling place, and, although Nicole obtained an order of protection against him, he was never informed of the order, even when she came to the hospital violating this order herself. The State conceded that Richard was never made aware of the order of protection, but argued that the apartment was not Richard's dwelling place because he had neither a tenancy or possessory interest in the apartment.

The appellate court affirmed Richard's attempt murder and home invasion convictions. People v. Richmond, 2017 IL App (1st) 143571-U, ¶ 1. As for the home invasion conviction, the court held that he did not have a tenancy or possessory interest in the apartment at the time of the offense, and therefore, it was not his dwelling. Id. at ¶¶ 45-53. The court vacated Richard's aggravated battery and aggravated domestic battery convictions. Id. at ¶ 1.

REASONS FOR GRANTING THE PETITION

A person cannot commit home invasion by entering his own dwelling. Rather, a person commits home invasion "when without authority he or she knowingly enters the dwelling place of another." 720 ILCS 5/12-11(a) (West 2010). However, there is a conflict in the courts regarding how to determine whether the dwelling in question is the petitioner's dwelling as opposed to the dwelling of another. This case is emblematic of that conflict.

The appellate court's conclusion in this case that the apartment was not Richard's dwelling because he did not have formal legal title is in direct conflict with the State's holdings in People v. Delacruz, 352 Ill.App.3d 801 (2004), and People v. Taylor, 318 Ill.App.3d 464 (2000). Furthermore, the appellate court's conclusion that Richard had no tenancy or possessory interest in the apartment once Nicole kicked him out is inconsistent with the general principles of real property law. This Court's review is needed to resolve these conflicts.

Richard was charged with home invasion after returning to the apartment he shared with his wife nine days after she kicked him out. The evidence established that, while Richard was not on the lease, he lived at the apartment most of the time, had his own set of keys, kept his property there, and contributed to the monthly rent. Under the appellate court's holdings in People v. Delacruz, 352 Ill.App.3d 801, 810-11 (2004) (although the defendant was not on the lease, the fact that the defendant was living at the apartment, kept possessions there, and contributed to the rent established it as his dwelling), and People v. Taylor, 318 Ill.App.3d 464, 473 (2000) (apartment

was codefendant's dwelling where evidence established that he had been "staying with" the victim "for a while", these facts would establish that the apartment was Richard's dwelling.

The appellate court in People v. Delacruz, 352 Ill.App.3d 801 (2004) held that, "when determining whether a dwelling place is that of the defendant rather than that of another, court's should "look beyond the form of the tenancy relationship and determine the substance of the relationship, considering formal legal documents, informal arrangements, and any other evidence in the record." Delacruz at 810-11. Accordingly, the court concluded that, although the defendant was not on the lease of the apartment, he was charged with entering, because the evidence established that he was living at the apartment, kept possessions there, and contributed to rent, the apartment was his dwelling, and therefore he could not be convicted of home invasion.

Similarly, in Taylor, the appellate court held that the defendant could not be convicted of home invasion on a accountability theory because the evidence established that his codefendant had been "staying with" the victim "for a while," and thus, the apartment was his dwelling place. People v. Taylor, 318 Ill.App.3d at 473.

Thus, under the holdings in Delacruz and Taylor, the fact that Richard lived at the apartment most of the time, had his own keys, kept property there, and contributed to the monthly rent established that the apartment was his dwelling place.

In stark contrast to the holding in Delacruz and Taylor, the appellate court in People v. Howard, 374 Ill.App.3d 705 (2007), held that a premises is the dwelling of the defendant only if the defendant has some form of a formal legal title to the premises. Id at 711-12. The appellate court in this

case, following the holding in Howard, concluded that, for the purposes of the home invasion statute, a defendant must have both a tenancy and possessory interest in a dwelling for it to be considered his dwelling, and therefore, the apartment was not Richard's dwelling because he was not on the lease and his wife had kicked him out. People v. Richmond, 2017 IL App (1st) 143571-U, ¶¶ 49-53.

The appellate court's holding here and in Howard cannot be reconciled with the court's holdings in Delacruz and Taylor. Under the later, Richard's home invasion conviction cannot be sustained while under the former it can.

The appellate court's conclusion that the apartment was not Richard's dwelling because he did not have formal legal title to the apartment is in direct conflict with the court's holdings in Delacruz and Taylor.

The appellate court's conclusion that Richard had no tenancy or a possessory interest in the apartment once his wife kicked him out cannot be reconciled with general principles of real property law. Because Richard was living at the apartment and contributed to the monthly rent, Richard was effectively a month-to-month subtenant, and therefore, under Illinois forcible entry and detainer laws, his wife could not effectuate a self-help eviction or could not terminate either his tenancy or possessory interest in the apartment without first giving him 30 day's notice. See Faison v. RTEX, Inc., 2014 IL App (1st) 121893, ¶ 82 (acceptance of monthly rental payments creates a month-to-month tenancy that can be terminated on 30 days notice); Seidelman v. Kouvarus, 57 Ill. App.3d 350, 352 (1978) (payment of month-to-month rent gives rise to month-to-month tenancy);

Under Illinois law, a co-occupant, even the property owner, cannot evict a co-occupant without a court order. People v. Evans, 163 Ill. App.3d 561, 564-65

(1987) (forcible entry and detainer action was homeowner's sole means of obtaining eviction of co-occupant). Illinois forcible entry and detainer statute prohibits self-help evictions. Fortech, L.L.C. v. R.W. Duntzman Co., Inc., 366 Ill.App.3d 804, 814 (2006) ("The [forcible entry and detainer] statute prohibits any actual or constructive self-help through force, including changing locks or locking someone out of his land.").

And so, Nicole could not terminate Richard's month-to-month tenancy interest or his possessory interest in the apartment without first giving him 30-day's notice. Strong v. Soodvoisky, 141 Ill.App.3d 183, 185 (1908) (occupancy and payment of monthly rent creates a month-to-month tenancy that may not be terminated except by the giving of 30 day's notice). Thus, Richard still had a tenancy and possessory interest and it was still his dwelling place when he returned just nine days after Nicole kicked him out.

The appellate court's decision that Richard did not have a tenancy or a possessory interest in the apartment because he was not on the lease and because Nicole kicked him out nine days prior to his return completely ignores long-standing Illinois law.

Because the appellate court's holding is contrary to the principles of real property law, long standing precedent, and affects not only Richard's conviction for home invasion, but untold others who sublet or reside with another while not being on a lease, this Court's guidance is needed to resolve conflicting decisions, including this case.

V.I.

CONCLUSION

Because the Illinois courts have created opposing positions on the issues stated herein, this Court's guidance is needed to resolve these conflicts therefore this petition for writ of certiorari should be granted.

Dated: 4-6-2018

Respectfully Submitted,

Richard Richmond

Richard Richmond

Pro Se Representation