DePaul Law Review

Volume 27
Issue 3 *Spring 1978*

Article 12

Illinois Robbery Statute Construed: The Introduction of a Specific Intent Element - People v. White

Edward J. Murphy

ILLINOIS ROBBERY STATUTE CONSTRUED: THE INTRODUCTION OF A SPECIFIC INTENT ELEMENT—*PEOPLE V. WHITE*

At common law and throughout the development of the criminal law in this country, courts and legislatures have made the distinction between general intent and specific intent crimes.[1] Courts, in modern times, usually have looked to statutory wording to determine which of these categories are apposite.[2] Today, in most states, robbery is a specific intent crime,[3] either by legislative act[4] or by direct adherence to common law without statutory definition of the crime.[5]

---

1. People v. Hood, 1 Cal.3d 444, 456, 456 n.5, 82 Cal. Rptr. 618, 625, 625 n.5, 462 P.2d 370, 377, 377 n.5 (1969).

The line between specific and general intent is not always clearly defined, *see* J. HALL, GENERAL PRINCIPLES OF CRIMINAL LAW 141-45 (2d ed. 1947), but certain basic definitions can be elicited from the cases. A general intent crime is committed by doing certain forbidden acts while maintaining a particular level of awareness with respect to those acts. People v. Hood, 1 Cal.3d 444, 456-57, 462 P.2d 370, 377-78, 82 Cal. Rptr. 618, 625-26 (1969). *See also* Steele v. State, 189 Tenn. 424, 430, 225 S.W.2d 260, 262 (1949); ILL. REV. STAT. ch. 38, § 4-3 (1975). A specific intent crime includes an additional element, a conscious objective to achieve some further result at the time the proscribed acts are performed. People v. Hood, 1 Cal.3d 444, 456-57, 462 P.2d 370, 377-78, 82 Cal. Rptr. 618, 625-26 (1969). *See also* W. LAFAVE & A. SCOTT, HANDBOOK ON CRIMINAL LAW 202 (1972). For example, battery is a general intent crime, People v. Green, 130 Ill. App.2d 609, 612, 265 N.E.2d 184, 186 (2d Dist. 1970), which is committed by one who intentionally or knowingly causes bodily harm to another. ILL. REV. STAT. ch. 38, § 12-3 (1975). Burglary is a specific intent crime, People v. Loden, 27 Ill. App.3d 761, 762, 327 N.E.2d 58, 60 (2d Dist. 1975), which is committed by one who knowingly enters a building without authority while entertaining the intent to commit a theft or felony therein. ILL. REV. STAT. ch. 38, § 19-1 (1975). ILL. REV. STAT. ch. 38, § 4-4 (1975) provides that "a person intends or acts intentionally or with intent . . . when his conscious objective or purpose is to accomplish that result or engage in that conduct."

2. *See, e.g.*, People v. Freedman, 4 Ill.2d 414, 419, 123 N.E.2d 317, 319 (1954). *But see* People v. Hood, 1 Cal.3d 444, 462 P.2d 370, 82 Cal. Rptr. 618 (1969), in which the California Supreme Court construed the offense of assault to be a general intent crime despite the wording of the statute which defined assault as an "attempt . . . to commit a violent injury." *Id.* at 457-58, 462 P.2d at 378-79, 82 Cal. Rptr. at 626-27. The court reached this conclusion based on policy considerations involved in allowing voluntary intoxication as a defense to the crime of assault. Since intoxicated persons are more susceptible to passion and anger than sober persons, they are more likely to commit a crime such as assault. It would therefore be anomalous, the court felt, to allow a defendant to raise as a defense the voluntarily induced condition which precipitated the commission of the crime.

3. *See* People v. White, 40 Ill. App.3d 455, 457, 352 N.E.2d 243, 244 (1st Dist. 1976), *aff'd*, 67 Ill.2d 107, 365 N.E.2d 337 (1977).

4. *See, e.g.*, ME. REV. STAT. tit. 17, § 3401 (1964), *construed in* State v. McKeogh, 300 A.2d 755 (Me. 1973); LA. REV. STAT. ANN. § 14:64 (West 1974), *construed in* State v. May, 339 So.2d 764 (La. 1976).

5. *See* Boykin v. Alabama, 395 U.S. 238, 240 n.2 (1969); Burks v. Commonwealth, 259 S.W.2d 68, 70 (Ky. 1953).

However, some state legislatures have deleted any reference to a specific intent element in their robbery statutes and such statutes have been construed to require only general intent.[6]

In *People v. White*,[7] the Illinois Supreme Court held that the offenses of robbery[8] and armed robbery[9] include a specific intent element, without benefit of statutory wording to that effect. In so doing, the court has aligned Illinois with common law[10] and the vast majority of American jurisdictions. This inclusion of robbery in the specific intent category will change the complexion of robbery prosecutions in Illinois from charging through appeal and post-conviction proceedings.[11]

The purpose of this Note is to analyze the court's opinion in *White*. Particular attention will be given to the historical development of the offense of robbery in Illinois. This Note then will criticize the court's logic and use of precedent and attempt to forecast the impact of the *White* decision on Illinois practice.

EXAMINATION OF THE COURT'S OPINION

Joseph White was convicted of armed robbery in the Circuit Court of Cook County. The trial court, sitting without a jury, admitted the defendant's evidence of intoxication at the time of the crime, but held that this was not a defense to robbery.[12] The appellate court affirmed the conviction, stating that, "[s]ince intent is not a requisite element of the offense, . . . voluntary intoxication is not a defense to robbery."[13] On review, the Illinois Supreme Court held that the in-

---

6. *See, e.g.*, IND. CODE ANN. § 35-13-4-6 (Burns 1975), *construed in* Roberts v. State, —Ind.—, N.E.2d 825 (1977); OKLA. STAT. ANN. tit. 21, § 791 (West 1958), *construed in* Traxler v. State, 96 Okla. Crim. 231, 251 P.2d 815 (1952). *Cf.* N.Y. PENAL LAW § 160.00 (McKinney 1965) (Practice Commentaries 194-95) (statutory wording changed from "unlawful taking" to "forcible stealing" for the express purpose of including the element of the intent to steal lest the statute be construed to define a general intent crime).

7. 67 Ill.2d 107, 365 N.E.2d 337 (1977).

8. "A person commits robbery when he takes property from the presence or person of another by the use of force or by threatening the imminent use of force." ILL. REV. STAT. ch. 38, § 18-1 (1975).

9. "A person commits armed robbery when he violates section 18-1 while armed with a dangerous weapon." *Id.* § 18-2.

10. *See* United States v. Nedley, 255 F.2d 350, 357 (3d Cir. 1958).

11. *See* notes 60-114 and accompanying text *infra*. *See also* 67 Ill.2d at 126, 365 N.E.2d at 347 (Dooley, J., specially concurring). Justice Dooley expressed the view that the court had effected a far reaching and unwise change in the Criminal Code. He criticized the introduction of the "entirely new defense" of intoxication for robbery and registered concern that this defense may be expanded to include other crimes as well.

12. 67 Ill.2d at 109, 365 N.E.2d at 338.

13. 40 Ill. App.3d 455, 457, 352 N.E.2d 243, 244 (1st Dist. 1976).

tent to permanently deprive a person of the use or benefit of the property taken is an element of the crimes of robbery and armed robbery.[14] The supreme court further held that inability to form such intent due to voluntary intoxication is a valid defense.[15] However, White's conviction was affirmed because there was insufficient evidence of intoxication on the record from which the trier of fact could find that the defendant's intent to steal had been negated.[16]

In arriving at these conclusions the court attempted to discern the intentions of the drafters of the Illinois Criminal Code of 1961.[17] The Committee Comments accompanying the robbery provisions of the Code state:

> This section codifies the law in Illinois on robbery and retains the same penalty. No change is intended. . . . No intent element is stated as the taking by force or threat of force is the gist of the offense and no intent need be charged. (See *People v. Emerling*. . . .)[18]

The Committee's citation to the 1930 Illinois case of *People v. Emerling*[19] is significant. *Emerling* relied upon a statement made in another Illinois robbery case, *People v. Hildebrand*,[20] that "[n]o question of intent is involved. It is not required to be charged or

---

14. 67 Ill.2d at 117, 365 N.E.2d at 342.

15. *Id.*

16. The court focused on the defendant's demonstration of his physical and mental capabilities at the time of the robbery. The court noted that he was mentally alert enough to arm himself, subdue a security guard, order the hotel clerks to open the vault, and to flee upon arrival of police. The evidence also showed that he was able to jump over a desk, retrieve money from the cash register and climb a scaffold in attempting to escape. *Id.* at 120, 365 N.E.2d at 344.

Justice Dooley, in a special concurring opinion, disagreed with the majority's holdings on the specific intent and intoxication defense issues. Justice Dooley would refuse to infer a specific intent ingredient where the legislature has not specifically provided one. He expressed particular concern for allowing the intoxication of the defendant to excuse his actions. *Id.* at 126-27, 365 N.E.2d at 347 (Dooley, J., specially concurring).

17. *Id.* at 109-10, 365 N.E.2d at 338-39.

18. ILL. ANN. STAT. ch. 38, § 18-1 (Smith-Hurd 1970) (Committee Commentaries 213).

19. 341 Ill. 424, 173 N.E. 474 (1930). In *Emerling* the defendant was convicted of armed robbery and on appeal contended that the jury had been erroneously instructed on the intent element of the crime. The court affirmed the conviction holding that intent need not be charged nor proved.

20. 307 Ill. 544, 139 N.E. 107 (1923). In *Hildebrand* the defendants were convicted of armed robbery. On appeal it was asserted that the form of the verdict indicated that the jury had not found that the defendants had entertained the requisite intent for armed robbery. The defendants argued, therefore, that they had actually been found guilty of the lesser offense of robbery and that the sentence imposed had been excessive. The court affirmed the conviction holding that intent was not an element of armed robbery.

proved."[21] However, this statement was made with reference to specific intent language in the 1874 amendment to the Illinois robbery statute, which included an increased penalty for robbery committed by one who is armed with a dangerous weapon "with the intent, if resisted, to kill or maim."[22] By the time *Hilderbrand* was decided, the statute had been changed to eliminate this specific intent element for armed robbery.[23] Therefore, the *White* court reasoned that the language in *Hildebrand* concerning specific intent referred not to the intent to steal, but rather to the intent to maim or kill,[24] an element peculiarly involved in the robbery statute in force from 1874 to 1919. Having concluded that the Committee Comments regarding the absence of a specific intent element in the pre-1961 robbery law were based on a "confusion" in the case law, the *White* court chose to disregard these comments.[25] It relied, instead, upon the prior comment to the effect that no change was intended.[26]

The conclusion in *White* that robbery was a specific intent crime prior to 1961[27] was based in part on the fact that larceny was a lesser included offense, and that larceny was a specific intent crime.[28] The court also relied heavily on *People v. Ware*.[29] In *Ware*, the defen-

---

21. *Id.* at 555, 139 N.E. at 111.

22. Law of July 1, 1874, ch. 38, § 246, 1874 Rev. Stat. 348 (Hurd) (amended 1919).

23. The statute was changed to read: "or if he is armed with a dangerous weapon, or being so armed he wounds or strikes. . . ." Law of June 28, 1919, ch. 38, § 246, 1919 Ill. Laws 426 (amended 1927).

24. 67 Ill.2d at 114, 365 N.E.2d at 341.

25. *Id.*

26. *See* text accompanying note 18 *supra*.

27. 67 Ill.2d at 115, 365 N.E.2d at 341.

28. The two cases discussed by the *White* court were Burke v. People, 148 Ill. 70, 35 N.E. 376 (1893), and Hall v. People, 171 Ill. 540, 49 N.E. 495 (1898). In *Burke* the issue was the sufficiency of the evidence offered to prove robbery. The indictment, it was decided, contained sufficient surplusage to include both the crimes of robbery and larceny, but no evidence as to the value of the property taken was on the record. The court concluded that the proof was sufficient for robbery and that the value of the property need not be shown since it is only material to the crime of larceny. 148 Ill. at 74-75, 35 N.E. at 377. In *Hall* the issue before the court was whether the force allegedly used by the defendant to take the victim's pocketbook was sufficient to sustain a robbery charge. Deciding that this evidence was lacking the court reversed the conviction. 171 Ill. at 544, 49 N.E. at 496. There is dicta in these opinions to the effect that if the force or threat is not proved then the crime is that of larceny rather than robbery. The *Hall* court, citing *Burke*, stated:

> As distinguished from larceny from the person, the gist of the offense is the force or intimidation, and the taking from the person, against his will, a thing of value belonging to the person assaulted. (*Burke v. People*. . . .) The only difference between private stealing from the person of another, and robbery, lies in the force or intimidation used.

Hall v. People, 171 Ill. 540, 542, 49 N.E. 495-96 (1898).

29. 23 Ill.2d 59, 177 N.E.2d 362 (1961).

dant, an off-duty policeman armed with a revolver, *inadvertently* failed to return a cigarette lighter taken from the complainant in the course of an investigation. This case was decided under a pre-1961 robbery statute which proscribed "the felonious and violent taking of money [or] goods."[30] The conviction was reversed on the ground that there was no "felonious taking," since the defendant did not act "with a criminal purpose."[31] From this holding the court in *White* concluded that the implication in the Committee Comments that the intent of the defendant is immaterial was therefore clearly erroneous.[32] Having decided the intent question, the court held that voluntary intoxication is a valid defense to robbery prosecution.[33]

CRITICISM

The holding of *People v. White* rests upon two major premises: (1) that robbery has always been a specific intent crime in Illinois;[34] and (2) that the Criminal Code of 1961 did not eliminate the specific intent element.[35] As to the first of these premises, the court could not cite any prior Illinois case explicitly holding that robbery was a specific intent crime.[36] The court therefore resorted to dicta in *Hall v. People*[37] for the proposition that robbery includes the lesser offense of larceny.[38] Since larceny is held to contain the element of

30. Law of July 8, 1927, ch. 38, § 246, 1927 Ill. Laws 398 (repealed 1961).

31. People v. Ware, 23 Ill.2d 59, 62, 177 N.E.2d 362, 364 (1961).

32. 67 Ill.2d at 114, 365 N.E.2d at 341.

33. An Illinois statute provides explicitly that such a condition is a defense if it "[n]egatives the existence of a mental state which is an element of the offense." ILL. REV. STAT. ch. 38, § 6-3(a) (1975). This statute is a codification of a position held at common law and long followed by the Illinois courts. *See, e.g.*, Schwabacher v. People, 165 Ill. 618, 629-30, 46 N.E. 809, 813 (1897); Bartholomew v. People, 104 Ill. 601, 606 (1882).

The problem of the intoxicated offender has influenced at least one court in determining whether a given offense is a specific or general intent crime. *See* note 2 *supra*. However, the concept of differentiating specific intent crimes from general intent crimes has been criticized by many commentators as a poor device for dealing with the intoxicated offender. *See, e.g.*, Beck & Parker, *The Intoxicated Offender—A Problem of Responsibility*, 44 CAN. B. REV. 563, 608 (1966); Hall, *Intoxication and Criminal Responsibility*, 57 HARV. L. REV. 1045, 1066 (1944); Hasse, *Drug Intoxication and Criminal Responsibility: Old Dilemmas and a New Proposal*, 16 SANTA CLARA L. REV. 249, 252-58 (1976).

34. 67 Ill.2d at 115, 365 N.E.2d at 341.

35. *Id.* at 117, 365 N.E.2d at 342.

36. Several cases have held to the contrary. *See, e.g.*, People v. Cassidy, 394 Ill. 245, 68 N.E.2d 302, *cert. denied*, 329 U.S. 769 (1946); People v. Johnson, 343 Ill. 273, 175 N.E. 394 (1931); People v. Bartz, 342 Ill. 56, 173 N.E. 779 (1930). However, these cases suffer the same infirmity as *People v. Emerling*. They, too, have misread *People v. Hildebrand*. *See* notes 19-24 and accompanying text *supra*.

37. 171 Ill. 540, 49 N.E. 495 (1898).

38. *See* note 28 *supra*.

the specific intent to permanently deprive a person of his or her property,[39] the court deduced that robbery would also require specific intent. However, the validity of this conclusion is questionable. The cases relied upon in *White* involved fact situations in which the sufficiency of the evidence of force or intimidation accompanying the taking of property was in doubt, and these cases were resolved on that issue.[40] Dictum indicating that if force or intimidation is not adequately shown the crime committed is larceny rather than robbery is hardly dispositive of the issue of whether robbery contains all of the elements of larceny.

The court could find but a single authority specifically interpreting the words "felonious and violent taking," which appear in all pre-1961 robbery statutes.[41] That authority, *People v. Ware*,[42] defined these words to mean "with a criminal purpose" and "with the deliberate purpose of committing a crime."[43] This reliance by the *White* court also is questionable since there was no reference made in *Ware* to the intent to steal or to deprive permanently. By the *White* court's own interpretation[44] of *Ware*, the defendant in that case acted "inadvertently" in failing to return the property of the complaining witness.[45] The *Ware* holding leaves open the question as to whether the intent to steal must be proven or whether a showing of some other criminal intent will suffice, such as the temporary taking of property for use in the furtherance of an unconnected crime. For instance, if the defendant in *Ware* had taken the cigarette lighter from the complainant with the intent to use it in the commission of an arson, the *Ware* court may have affirmed the conviction.

A more persuasive rationale that the *White* court could have employed to reach its conclusion was suggested by the United States Supreme Court in *Morissette v. United States*.[46] In that case the defendant, charged with the offense of knowingly converting govern-

---

39. *See, e.g.*, People v. Pastel, 306 Ill. 565, 568, 138 N.E. 194, 195 (1923); Bartholomew v. People, 104 Ill. 601, 606 (1882); People v. Hargrave, 29 Ill. App.3d 89, 89, 329 N.E.2d 814, 814 (5th Dist. 1975); People v. Johnson, 136 Cal. App.2d 665, 673, 289 P.2d 90, 94 (1955). *See also* ILL. REV. STAT. ch. 38, § 16-1(a)(1) (1975).

40. *See* People v. Williams, 23 Ill.2d 295, 178 N.E.2d 372 (1961); People v. O'Connor, 310 Ill. 403, 141 N.E. 748 (1923); People v. Jones, 290 Ill. 603, 125 N.E. 256 (1919); People v. Ryan, 239 Ill. 410, 88 N.E. 170 (1909); People v. Campbell, 234 Ill. 391, 84 N.E. 1035 (1908); Steward v. People, 224 Ill. 434, 79 N.E. 636 (1906).

41. *See* notes 22, 23 & 30 *supra*.

42. 23 Ill.2d 59, 177 N.E.2d 362 (1961).

43. *Id.* at 62, 177 N.E.2d at 364.

44. 67 Ill.2d at 111, 365 N.E.2d at 339.

45. People v. Ware, 23 Ill.2d 59, 62, 177 N.E.2d 362, 364 (1961).

46. 342 U.S. 246 (1952).

ment property,[47] had sought to interpose the defense that he had honestly, though mistakenly, believed that the property had been abandoned.[48] According to the Court, however, this defense would be available only if the statute was construed as a traditional theft-type offense,[49] requiring specific intent to steal. The Supreme Court decided that such a defense was valid, holding that, in the absence of clear legislative intent to the contrary, a statute which adopts "a concept of crime already so well defined in common law and statutory interpretation by the states"[50] will be construed to carry similar *mens rea* elements.[51] Illinois law long has been in accord with this rule of construction[52] and the Illinois Supreme Court has construed the pre-1961 robbery statutes in accordance with common law regarding other elements of the offense.[53] Thus, the old statutes could have been interpreted simply to require the intent to steal in conformity with common law.[54]

The Illinois Supreme Court's reasoning regarding the legislative intent underlying the Criminal Code of 1961 presents some logical problems as well. The court is on firm ground in finding the drafter's reliance on *People v. Emerling*[55] misplaced, since that case was based on a misinterpretation of precedent.[56] Furthermore, the comment in the legislative history accompanying the 1961 amendments that "[n]o change is intended"[57] clearly seems to indicate that the legislature

---

47. The statute under which the defendant was prosecuted provides in part:

> Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another . . . any record, voucher, money, or thing of value of the United States . . . [s]hall be fined not more than $10,000 or imprisoned not more than ten years. . . .

18 U.S.C. § 641 (1970).

48. Morissette v. United States, 342 U.S. 246, 248-49 (1952).

49. *Id.* at 263.

50. *Id.* at 262.

51. *Id.* at 263.

52. In 1906 the Illinois Supreme Court held:

> It is a familiar rule of construction that when a statute uses words which have a definite and well known meaning at common law it will be presumed that the terms are used in the same sense in which they were understood at common law. . . .

O'Donnell v. People, 224 Ill. 218, 226, 79 N.E. 639, 642 (1906).

53. *Id.* at 226-27, 79 N.E. at 642 (construing the words "from the person" to include the taking of property from a railroad station which was guarded by a watchman); People v. O'Hara, 332 Ill. 436, 440, 163 N.E. 804, 806 (1928) (construing "from the person" to include taking property which is in the presence or under the immediate control of the person assaulted).

54. *See* note 10 and accompanying text *supra*.

55. 341 Ill. 424, 173 N.E. 474 (1930).

56. *See* notes 20-24 and accompanying text *supra*.

57. *See* note 18 and accompanying text *supra*.

did not believe that it was altering the intent element of the crime of robbery. However, the conclusion that the legislators intended to include an element in robbery which they believed never existed does not follow easily. Several appellate level cases construing the Illinois robbery statute have held to the contrary.[58] Also, similarly worded statutes have been construed by courts in other jurisdictions to define robbery as a general intent crime.[59] The *White* court could have followed this authority without violating the expressed intention of the drafters of the statute.

IMPACT

The effects of the holding in *People v. White* will be both immediate and long-lasting. The instant consequence of the decision is to cast doubt upon the indictments, complaints, and informations filed in pending prosecutions. Because the holding is expressed in retroactive terms,[60] past as well as current and future prosecutions also will be affected. It may be contended that charging documents not containing the allegation that the defendant had the requisite

---

58. *See, e.g.*, People v. Whelan, 132 Ill. App.2d 2, 3-4, 267 N.E.2d 364, 365-66 (2d Dist. 1971); People v. Charleston, 115 Ill. App.2d 190, 198, 253 N.E.2d 91, 95 (1st Dist. 1969), *rev'd on other grounds*, 47 Ill.2d 19, 264 N.E.2d 199 (1970); People v. Marshall, 96 Ill. App.2d 124, 127, 238 N.E.2d 182, 184 (1st Dist. 1968). *See also* cases cited at 67 Ill.2d at 124, 365 N.E.2d at 346 (Dooley, J., specially concurring).

59. *See, e.g.*, United States v. Brown, 547 F.2d 36, 38-39 (3d Cir. 1976); United States v. Klare, 545 F.2d 93, 94 (9th Cir. 1976); United States v. DeLeo, 422 F.2d 487, 490-91 (1st Cir. 1970). These cases construed the Federal Bank Robbery Statute ("Whoever, by force and violence, or by intimidation, takes . . . from the person or presence of another any property. . . ." 18 U.S.C. § 2113(a) (1970)) to require only proof of general intent. *Contra*, United States v. Howard, 506 F.2d 1131, 1133 (2d Cir. 1974). *See also* State v. Thompson, 221 Kan. 165, 558 P.2d 1079 (1976). *Thompson* construed the Kansas robbery statute ("Robbery is the taking of property from the person or presence of another by threat of bodily harm to his person or the person of another or by force." KAN. STAT. § 21-3426 (1974)) as requiring only general intent. The court compared the previous Kansas statute which was based on common law and required a "felonious taking." 221 Kan. at 173-74, 558 P.2d at 1086-87. *Accord*, Traxler v. State, 96 Okla. Crim. 231, 251 P.2d 815 (1952). *Cf.* State v. Klein, — Mont. —, 547 P.2d 75 (1976). *Klein* construed Montana's robbery statute ("A person commits the offense of robbery if, in the course of committing theft. . . ." MONT. REV. CODES ANN. § 94-5-401 (1974)) to require no specific intent other than to purposely or knowingly put any person in fear of bodily injury, in spite of reference to "theft" in the statute.

60. The holding in *White* clearly indicates the court's belief that robbery was a specific intent crime both before and after the enactment of the Criminal Code of 1961.

> [A]t the time of the enactment of the Criminal Code of 1961 intent was an element of crimes of robbery and armed robbery. . . . [T]he General Assembly, upon enactment of sections 18-1 and 18-2 of the Criminal Code of 1961, intended no change in the existing law. . . .

67 Ill.2d at 115, 117, 365 N.E.2d at 341, 342.

intent do not adequately charge the commission of the offense.[61] Redrafting and re-indictment may be necessary to correct these problems in cases still in pre-trial phases,[62] although it has been recognized in the past that indictments framed in statutory language are sufficient.[63] Cases in more advanced stages may create greater difficulties.[64] Jury instructions must be altered as well.[65]

Long-range ramifications include new defenses at trial, and corollary arguments raised on appeal and in post-conviction proceedings. The inclusion of a specific intent element will significantly affect three types of cases at trial: (1) those in which the defense is based on negation of intent by intoxication or insanity;[66] (2) those in which the requisite specific intent admittedly does not obtain;[67] and (3) those involving situations in which the existence of intent may be unclear to the fact finder.[68]

---

61. *See* People v. Edge, 406 Ill. 490, 493, 94 N.E.2d 359, 361 (1950); People v. White, 29 Ill. App.3d 438, 438, 330 N.E.2d 521, 521 (5th Dist. 1975); People v. Huckaba, 23 Ill. App.3d 555, 557, 319 N.E.2d 573, 575 (4th Dist. 1974); ILL. REV. STAT. ch. 38, § 111-3(a)(3) (1975).

62. The statute of limitations is tolled by the original indictment. People v. Hobbs, 361 Ill. 469, 469-70, 198 N.E. 224, 224 (1935); ILL. REV. STAT. ch. 38, § 3-7(c) (1975).

63. People v. Marshall, 96 Ill. App.2d 124, 127, 238 N.E.2d 182, 184 (1st Dist. 1968).

64. *See* notes 66-114 and accompanying text *infra*.

65. Currently, Illinois juries sitting in robbery cases are read the statutory definition of robbery, *see* note 8 *supra*, and then instructed as follows:

> To sustain the charge of robbery, the state must prove the following propositions:
> *First:* That the defendant took —— from the person or presence of ——; and
> *Second:* That the defendant did so by the use of force or by threatening the imminent use of force.

Illinois Pattern Instructions—Criminal §§ 14.03-.04 (1968).

For an example of a set of instructions which enunciate the specific intent element of robbery, *see* 2 DOWSEY, CHARGES TO THE JURY AND REQUESTS TO CHARGE IN A CRIMINAL CASE IN NEW YORK 13-3 (1968):

> Our Revised Penal Law defines robbery as forcible stealing. . . . The gist of robbery is the act of committing larceny by force. Before treating the question of force, I will charge you on the law of stealing or larceny. If you do not reach a determination that defendant committed larceny, you must return a verdict of not guilty.
>
> Under the Revised Penal Law, a person steals property and commits larceny when, with intent to deprive another of property or to appropriate such property to himself or to a third party, he wrongfully takes, obtains and withholds such property from an owner, which includes a person having a right to possession thereof.
>
> . . .
>
> And if you find that the taking by defendant, even if effected by force, was for purposes of borrowing with the intent of returning the property, you must render a verdict of innocence of robbery.

66. *See, e.g.*, People v. Herrin, 295 Ill. App. 590, 592-93, 15 N.E.2d 598, 598-99 (4th Dist. 1938).

67. *See, e.g.*, Traxler v. State, 96 Okla. Crim. 231, 251 P.2d 815 (1952) (temporary taking); State v. Martin, 15 Or. App. 498, 516 P.2d 753 (1973) (debt collection). *See also* Annot., 46 A.L.R.2d 1227 (1956).

68. *See, e.g.*, People v. Baker, 365 Ill. 328, 329-32, 6 N.E.2d 665, 667-68 (1936); People v. Lardner, 300 Ill. 264, 265-66, 133 N.E. 375, 375-76 (1921).

Negation of the *mens rea* may be caused by some alteration of the defendant's mental faculties such as intoxication or insanity. A look at the cases involving other specific intent crimes will readily disclose that the intoxication defense raised in *White* is frequently asserted.[69] The courts, however, take a strict view of this defense[70] and are very reluctant to reverse convictions. In Illinois, for example, the intoxication must be severe enough to suspend totally the defendant's power of reason and to render him incapable of entertaining the requisite intent.[71] Insanity is a complete defense to any crime[72] regardless of specific intent elements. It is unlikely, however, that a defendant found sane would be allowed to present evidence of insanity on the specific intent issue alone.[73]

Cases in which intent to steal admittedly is not involved can be characterized as either "debt collection" or "temporary taking" cases.[74] An honest belief that one is legally entitled to the possession of the property taken is a defense to theft, since a defendant holding such belief cannot entertain the intent to steal.[75] Such a defense now applies to robbery cases.[76] As to cases of "temporary taking" of property by force or threat, if the defendant's intention is inconsistent

---

Prosecutions for felony-murder (ILL. REV. STAT. ch. 38, § 9-1(a)(3) (1975)) in which robbery is the underlying felony will be affected as well. If proof fails on the specific intent issue the murder charge fails as well. *See* Commonwealth v. Graves, 461 Pa. 118, 334 A.2d 661, 665-66 (1975).

69. *See, e.g.*, People v. Nugara, 39 Ill.2d 482, 488, 236 N.E.2d 693, 697 (1968), *cert. denied*, 393 U.S. 925 (1969); People v. Miner, 46 Ill. App.3d 273, 282, 360 N.E.2d 1141, 1148 (5th Dist. 1977).

70. *See* Annot., 8 A.L.R.3d 1236, 1246 n.20 (1966).

71. *See* People v. Fleming, 42 Ill. App.3d 1, 3, 355 N.E.2d 345, 347-48 (3d Dist. 1976); People v. Pace, 34 Ill. App.3d 440, 446, 339 N.E.2d 785, 790 (1st Dist. 1975); People v. Newlin, 31 Ill. App.3d 735, 739, 334 N.E.2d 349, 352 (5th Dist. 1975).

72. *See* People v. Britton, 119 Ill. App.2d 110, 113, 255 N.E.2d 211, 212 (4th Dist. 1970); ILL. REV. STAT. ch. 38, § 6-2(a) (1975).

73. The degree of impairment required for a valid insanity defense is somewhat less than that required for that of voluntary intoxication. A valid insanity defense requires only substantial incapacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of the law rather than total suspension of power of reason which must be shown to support an intoxication defense. People v. Pace, 34 Ill. App.3d 440, 446, 339 N.E.2d 785, 790 (1st Dist. 1975). *See also* People v. Walker, 33 Ill. App.3d 681, 687, 338 N.E.2d 449, 453 (2d Dist. 1975).

74. *See* note 67 *supra*.

75. *See* People v. Baddeley, 106 Ill. App.2d 154, 158-59, 245 N.E.2d 593, 595 (1st Dist. 1969). *See also* Annot., 46 A.L.R.2d 112 (1956).

76. Although prosecution for assault, battery, or intimidation may be appropriate, the sanctions normally will be reduced significantly. *See* ILL. REV. STAT. ch. 38, §§ 12-1 to 12-4, 12-6(a)(1) (1975).

with permanent deprivation, a charge less serious than robbery will be appropriate.[77]

Ambiguous fact situations in which the defendant's possession of the property is short-lived may present difficulties in proving the intent to permanently deprive. For example, if the facts show that the defendant, after appropriating property through force or threat, disposes of the property shortly thereafter, a jury may be persuaded by an argument which focuses on the permanency aspect of the specific intent instruction.

The *White* case also will have an impact on prosecutions beyond the trial stage. Following conviction, the defendant may seek to base his quest for post-conviction relief on grounds revolving around the intent element of the charge. Possible avenues for such a defendant include post-trial motions, direct appeal, and collateral attack.[78]

Arguments revolving around the intent element of robbery will add new aspects to these attacks. Among errors which may be alleged in post-trial motions or on direct appeal[79] are insufficiency of evidence on the intent issue,[80] improper exclusion of a material defense,[81] insufficiency of the indictment,[82] and improper jury instructions.[83] Any of these points may be asserted in a motion for new trial.[84] In a motion for arrest of judgment[85] available grounds of relief are more limited. Of the four errors listed above, only insufficiency of the indictment may be alleged in a motion for arrest of judgment.[86] If the

---

77. *See, e.g.*, Traxler v. State, 96 Okla. Crim. 231, 240, 251 P.2d 815, 825 (1952). *See also* Chicago Sun-Times, Nov. 2, 1977, at 48, col. 1. A prisoner in juvenile detention center who took a guard's keys by force to facilitate escape was indicted for armed robbery and aggravated battery. Clearly, the prisoner's purpose was not to permanently deprive the guard of the keys. Therefore, charges which carry less severe sanctions, such as escape (a Class 2 felony if committed by one incarcerated for a felony, ILL. REV. STAT. ch. 38 § 31-6(a) (1975)), or aggravated battery (a Class 3 felony, *id.* § 12-4(d)) rather than armed robbery (a Class 1 felony, *id.* § 18-2(b)) will be appropriate. Armed robbery is one of a small group of crimes for which a sentence of probation is not permitted. *Id.* § 1005-5-3(d)(1). The weakening of the State's position at plea negotiations without an armed robbery charge pending is obvious.

78. Leighton, *Post-Conviction Remedies in Illinois Criminal Procedure*, 1966 U. ILL. L.F. 540.

79. *Id.* at 541.

80. People v. Heiple, 29 Ill. App.3d 452, 454, 330 N.E.2d 556, 557 (5th Dist. 1975).

81. *See* People v. Klemann, 383 Ill. 236, 239, 48 N.E.2d 957, 959 (1943) (intoxication evidence admissible on specific intent issue).

82. People v. Scholl, 339 Ill. App. 7, 11, 88 N.E.2d 681, 683 (3rd Dist. 1949); ILL. REV. STAT. ch. 38, § 111-3(a)(3) (1975).

83. *See* People v. Heiple, 29 Ill. App.3d 452, 453, 330 N.E.2d 556, 557 (5th Dist. 1975) (jury properly instructed on elements of specific intent crime of burglary).

84. ILL. REV. STAT. ch. 38, § 116-1 (1975).

85. *Id.* § 116-2.

86. *Id.* § 116-2(b)(1).

specific intent element is not alleged in the indictment, such a motion is likely to succeed since, absent the requisite specific intent allegation, the indictment does not properly charge an offense.[87] If a reviewing court deems the denial of such a motion improper the conviction may be reversed without remand and the defendant discharged.[88]

In addition to post-trial motions and direct appeal, various forms of collateral attacks are available to the defendant. These may be pursued through Section 72 of the Illinois Civil Practice Act[89] (statutory writ of *Coram Nobis*),[90] the Post-Conviction Hearing Act,[91] or federal[92] or state[93] habeas corpus statutes. Since the *White* decision casts doubt upon the validity of robbery convictions, one might reasonably believe that such relief is available. An examination of these forms of attack indicates, however, that they would generally prove unsuccessful in challenging convictions for specific intent crimes allegedly obtained due to a defect in the charging or proof of the specific intent element. A brief discussion of these attacks may be worthwhile, however, since many convicted defendants may contemplate such actions once having exhausted post-trial motions and rights to appeal.

Proceedings under Section 72 of the Civil Practice Act are confined to relief sought due to matters of *fact*, such as fraud, duress, or incapacity of the defendant, which if known to the court at the time judgment was rendered would have prevented its rendition.[94] Therefore, any error of *law* with respect to specific intent could not be asserted in such an action.[95]

A second form of collateral relief may be sought pursuant to a petition filed in accordance with the Post-Conviction Hearing Act.[96] Such a petition must be based on the allegation that the proceedings which resulted in the conviction were tainted by a substantial denial of the

---

87. *See* People v. Edge, 406 Ill. 490, 493, 94 N.E.2d 359, 361 (1950); People v. Pronger, 48 Ill. App.2d 477, 480, 199 N.E.2d 239, 242 (1st Dist. 1964).

88. People v. Pronger, 48 Ill. App.2d 477, 483, 199 N.E.2d 239, 242 (1st Dist. 1964).

89. ILL. REV. STAT. ch. 110, § 72 (1975).

90. Leighton, *supra* note 78, at 563.

91. ILL. REV. STAT. ch. 38, § 122 (1975).

92. 28 U.S.C. § 2241 (1970).

93. ILL. REV. STAT. ch. 65, §§ 1-39 (1975).

94. Jacobson v. Ashkinaze, 337 Ill. 141, 146, 168 N.E. 647, 649 (1929).

95. People v. Schuedter, 336 Ill. 244, 246, 168 N.E. 323, 324 (1929); Tinkoff v. Wharton, 344 Ill. App. 40, 51, 99 N.E.2d 915, 920 (1st Dist. 1951).

96. ILL. REV. STAT. ch. 38, § 122 (1975).

defendant's federal or state constitutional rights.[97] Since only violations of a constitutional character may be asserted,[98] an action filed under this provision based on trial errors regarding the intent element to be charged in robbery would be improper and subject to dismissal without a hearing.[99]

The third type of post-conviction collateral proceeding is the petition for a writ of habeas corpus.[100] Federal as well as state relief is available to the state prisoner,[101] but generally state remedies must be exhausted before the federal action is filed.[102]

In an Illinois habeas corpus petition, pertinent allegations are those which question the jurisdiction of the sentencing court[103] or those which bring to the attention of the court any post-conviction occurrence which would render the petitioner's incarceration illegal.[104] Until recent years an indictment which failed to allege an essential element of the offense charged was ineffective to vest subject matter jurisdiction in the trial court rendering judgment,[105] thus making a conviction obtained on such an indictment susceptible to collateral attack.[106] However, the Illinois Constitution[107] has been construed to overrule that proposition.[108] It is still necessary that an indict-

---

97. People v. Thomas, 51 Ill.2d 39, 41, 280 N.E.2d 433, 434 (1972); ILL. REV. STAT. ch. 38, § 122-1 (1975). The deprivation of rights must have prejudiced the defendant to such a degree that without the violation the outcome would have been different. People v. Logue, 45 Ill.2d 170, 171, 258 N.E.2d 323, 324 (1970).

98. *See* People v. Clark, 48 Ill.2d 554, 557, 272 N.E.2d 10, 11 (1971) where it was held that a petition which alleged lack of jurisdiction in the sentencing court and which required interpretation of a statute did not raise constitutional issues. *See also* People v. Fuca, 43 Ill.2d 182, 185, 251 N.E.2d 239, 240-41 (1969) where it was held that a petition which alleged improper deprivation of the statutory right to a hearing in aggravation and mitigation did not allege a constitutional matter. Violations of statutory provisions which would render an indictment invalid are also immaterial. People v. Ballinger, 53 Ill.2d 388, 389, 292 N.E.2d 400, 401 (1973). Equally inappropriate are challenges to the sufficiency of the evidence. People v. Christeson, 10 Ill. App.3d 214, 215, 293 N.E.2d 138, 138 (4th Dist. 1973).

99. For a comprehensive discussion of the Post-Conviction Hearing Act and its relation to other collateral actions, *see* Comment, *Practice and Procedure Under the Illinois Post-Conviction Hearing Act*, 8 J. MAR. J. PRAC. & PROC. 129 (1974).

100. ILL. REV. STAT. ch. 65, §§ 1-39 (1975); 28 U.S.C. §§ 2241-2255 (1970).

101. *See Ex parte* Royall, 117 U.S. 241, 250 (1886). *See also* 28 U.S.C. § 2241(c)(3) (1970).

102. 28 U.S.C. § 2254(b) (1970).

103. People v. Morris, 27 Ill. App.3d 918, 922, 327 N.E.2d 507, 510 (3d Dist. 1975).

104. *See, e.g.*, People v. McKinley, 371 Ill. 190, 198, 20 N.E.2d 498, 502 (1939) (prisoner illegally transferred from reformatory to penitentiary); Eisen v. Zimmer, 254 Ill. 43, 47, 98 N.E. 285, 286 (1912) (payment made in satisfaction of judgment).

105. People v. Nickols, 391 Ill. 565, 570, 63 N.E.2d 759, 762 (1945).

106. People v. Buffo, 318 Ill. 380, 384, 149 N.E. 271, 272-73 (1925).

107. ILL. CONST. of 1970, art. VI, § 9 (1971) (conferring jurisdiction on circuit courts over all justiciable matters).

108. People v. Gilmore, 63 Ill.2d 23, 26-27, 344 N.E.2d 456, 458-59 (1976).

ment charge an offense to withstand pre-trial motions to dismiss the charge[109] and post-trial motions in arrest of judgment.[110] When attacked for the first time on appeal, an indictment need only be sufficient to apprise the accused of the nature of the charge and specific enough to bar future prosecution.[111] Therefore, an indictment which sets forth the offense of robbery as written in the statute, and which particularly describes the time and place of the offense,[112] should withstand collateral attack in an Illinois proceeding.

Federal habeas corpus relief is available in cases in which the judgment of conviction is void for want of jurisdiction of the trial court or where the conviction has been obtained in disregard of the defendant's constitutional rights.[113] Since no constitutional or jurisdictional question is raised by the erroneous exclusion of a specific intent element of an offense, it appears that the "Great Writ,"[114] in either its federal or state mode, will enjoy no greater utilization as a result of *White*.

CONCLUSION

People v. White has clarified Illinois law regarding the offense of robbery and has placed future legislative draftsmen on notice that changes in common law crimes may be effected only through the most carefully expressed design.[115] Although a new dimension has been added to the trial and appeal of such prosecutions,[116] post-con-

---

109. *Id.* at 29, 344 N.E.2d at 460; ILL. REV. STAT. ch. 38, § 114-1(8) (1975).

110. ILL. REV. STAT. ch. 38, § 116-2(b)(1) (1975).

111. People v. Gilmore, 63 Ill.2d 23, 29, 344 N.E.2d 456, 460 (1976).

112. ILL. REV. STAT. ch. 38, § 111-3(a)(4) (1975).

113. *See* Waley v. Johnston, 316 U.S. 101, 104-05 (1941). In a state habeas proceeding constitutional issues are not relevant if they are non-jurisdictional in nature. People v. Woods, 47 Ill.2d 261, 263, 265 N.E.2d 164, 165 (1970); People v. Morris, 27 Ill. App.3d 918, 924, 327 N.E.2d 507, 511 (3d Dist. 1975). Prior to 1949 and the enactment of the Post-Conviction Hearing Act, *see* note 98 *supra*, constitutional violations apparently could have been the basis for Illinois habeas corpus relief. *See* Young v. Ragen, 337 U.S. 235, 237 (1949). For a chronicle of the United States Supreme Court cases which precipitated the passage of the Post-Conviction Hearing Act, *see* Jenner, *The Illinois Post-Conviction Hearing Act*, 9 F.R.D. 347 (1949). Recent decisions of the United States Supreme Court have somewhat limited constitutional attack in the areas of illegal search and seizure and improper composition of the grand jury. *See* Stone v. Powell, 428 U.S. 465 (1976); Francis v. Henderson, 425 U.S. 536 (1976). For an informative sketch of the history of federal habeas corpus and an analysis of recent cases, *see* Robbins & Sanders, *Judicial Integrity, The Appearance of Justice, and the Great Writ of Habeas Corpus: How to Kill Two Thirds (or More) With One Stone*, 15 AMER. CRIM. L. REV. 63 (1977).

114. The writ of habeas corpus often is referred to as the "great writ of liberty" or simply the "great writ." *See* Fay v. Noia, 372 U.S. 391, 440 (1963); *Ex parte* Kelly, 123 N.J. Eq. 489, 497, 198 A. 203, 207 (1938).

115. *See* notes 55-57 and accompanying text *supra*.

116. *See* notes 60-88 and accompanying text *supra*.

viction collateral actions appear to be unaffected.[117] The number of post-trial motions and direct appeals should not increase, however, since trial courts presumably will be handling the cases in accord with *White*.

The echo of *White* may be heard in the General Assembly as well as in the courts. Since it is likely that the legislative purpose underlying the drafting of the statute has been frustrated, new legislation may be considered. One can see by reference to the majority opinion how the legislature acted to eliminate a specific intent element from the 1874 robbery statute.[118] That attempted clarification caused confusion in the case law,[119] as have the 1961 Criminal Code revisions. In 1961 the state legislature apparently wished to simplify the concept of mental states which are elements of crimes,[120] and it may wish to try again.

Edward J. Murphy

---

117. *See* notes 89-114 and accompanying text *supra*.
118. 67 Ill.2d at 112-13, 365 N.E.2d at 340.
119. *Id.* at 112-15, 365 N.E.2d at 340-41.
120. *See* ILL. ANN. STAT. ch. 38, § 4-3 (Smith-Hurd 1972) (Committee Comments 254-55).