

## Armed Home Invasion

DFT is charged with armed home invasion.<sup>1</sup> To prove DFT guilty of this crime the Commonwealth must prove the following four elements beyond a reasonable doubt:

1. DFT knowingly entered the dwelling of another;
2. DFT knew or had reason to know that someone was present in the dwelling at the time he entered, or alternatively, that DFT remained in the dwelling when he knew or had reason to know that someone was present;
3. DFT was armed with a dangerous weapon at the time of entry; and
4. DFT used force or threatened the imminent use of force on someone in the dwelling, or that he intentionally injured someone in the dwelling.

The first element the Commonwealth must prove is that DFT knowingly entered the dwelling of another. "Knowingly" as used here simply means that the defendant realized that it was another's dwelling and entered on purpose and not as the result of an accident, mistake, negligence or other innocent reason. The Commonwealth must also prove that DFT did not live there and had no permission, right, or justification for entering the dwelling.<sup>2</sup>

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<sup>1</sup> G.L. c. 265, § 18C, provides: "Whoever knowingly enters the dwelling place of another, knowing or having reason to know that one or more persons are present within or knowingly enters the dwelling place of another and remains in such dwelling place, knowing or having reason to know that one or more persons are present within, while armed with dangerous weapon, uses force or threatens the imminent use of force upon any person within such dwelling place whether or not injury occurs . . . shall be punished."

<sup>2</sup> This new language accords with the statute which references the dwelling "of another" but also reflects *Commonwealth v. Ricardo*, 26 Mass. App. Ct. 345, 357 (1988) (Commonwealth must prove defendant had no right of habitation or occupancy). The absence of permission to enter is also necessary. *Commonwealth v. Maher*, 430 Mass. 643, 646-7 (2000) (entry is

An "entry" occurs when any part of DFT's body, even a hand or foot, or any instrument or weapon controlled by DFT, physically enters the dwelling.

A "dwelling" is a place where someone lives or resides. It might be an apartment building, a condominium, a single family house, a dormitory or hotel, or any building or structure where people actually reside. It also includes attached or adjoining structures, such a garage or barn.

The second element the Commonwealth must prove is that DFT knew or had reason to know that someone was inside when he entered or, that DFT remained inside the dwelling after learning that someone was there or had reason to know that someone was there.

In deciding what DFT knew, it is obviously impossible to look into someone's mind to determine what that person knew or thought or intended. A person's knowledge may be determined by making inferences from all the facts and circumstances that were known or apparent to the defendant. You should consider all the evidence relating to DFT's actions, statements, or conduct and all of the attendant circumstances in determining whether DFT knew or should have known that someone was inside the dwelling.

The third element the Commonwealth must prove is that DFT was armed with a dangerous weapon at the time he entered the dwelling. A person is "armed" if he has physical custody or control of the dangerous weapon at the time he entered the dwelling.

A dangerous weapon is any object that by its design or how it is used is capable of causing serious bodily injury or death, or that a reasonable person would think could cause such injury. For instance, objects such as guns, daggers, swords, brass knuckles or the like, are dangerous weapons based on their designed purpose- to cause great bodily injury or death. Other objects, such as a pocket knife, baseball bat, shoe, or even a pencil

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"unlawful" when it is without permission or consent, or when permitted without knowledge that the defendant was armed with a dangerous weapon).

are not designed to cause injury or harm but could become a dangerous weapon if they were used to cut, strike, or otherwise touch someone in a way that a reasonable person would recognize could cause serious bodily injury or death.

If you find that DFT possessed an object that is a dangerous weapon based on its design or intended purpose, the Commonwealth does not have to prove that it was used or intended to be used in any way – rather, the knowing possession of it at the time of entry is sufficient.<sup>3</sup>

[ < *Insert If A Non-Inherently Dangerous Weapon* > If you find that DFT possessed an object when he entered the dwelling, intending to use it as a dangerous weapon if it became necessary, but not actually using it in that way, you may still find that he was armed with a dangerous weapon.]

The fourth element the Commonwealth must prove is that the defendant used force or threatened the imminent use of force on a person within the dwelling. The Commonwealth does not have to prove that anyone was actually injured, but proof that the defendant intentionally caused injury would be sufficient to show the use of force.

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<sup>3</sup> See *Commonwealth v. Bright*, 463 Mass. 421, 445–446 (2012) (assault by means of dangerous weapon is not a lesser included offense of armed assault with intent to murder because the former “requires proof of use of the dangerous weapon in the course of the assault, whereas armed assault with intent to murder requires only that the defendant be armed at the time of the assault; ‘the weapon need not have been used.’” (quoting *Salemme v. Commonwealth*, 370 Mass. 421, 424 (1976), quoting in turn *Commonwealth v. Williams*, 312 Mass. 553, 556 (1942)). Logically this analysis would apply to armed home invasion.