CH. 7
BATTERY, ASSAULT & STALKING OFFENSES

§7-1
Battery & Assault

§7-1(a)
Generally

Illinois Supreme Court

People v. Jordan, 218 Ill.2d 255, 843 N.E.2d 870 (2006) 720 ILCS 5/12-21.6(b), which defines the offense of endangering the life and health of a child, contains an unconstitutional mandatory presumption where a child under six is left unattended in a car longer than 10 minutes. However, the presumption could be severed from the rest of the statute.

Illinois Appellate Court

People v. Fontanez-Marrero, 2023 IL App (2d) 220128 Defendant was proved guilty beyond a reasonable doubt of aggravated battery by strangulation under 720 ILCS 5/12-3.05(a)(5), (i). The evidence tended to establish that the victim told the responding officer that she was still able to breathe when defendant had his hands round her neck, but she also made statements that she felt "pressure" and that defendant "choked" her. The jury reasonably could infer that the victim's use of the word "choke" was equivalent to "strangle." Viewing the evidence in the light most favorable to the prosecution, it was sufficient to prove that defendant had intentionally impeded the victim's normal breathing, and thus he was proved guilty beyond a reasonable doubt.

People v. Grabow, 2022 IL App (2d) 210151 Defendant was charged with domestic battery for striking his girlfriend in the face when she continued talking on defendant's cell phone after he asked her to give it back to him. On appeal, defendant argued that his trial counsel should have tendered a defense of property instruction. The Appellate Court disagreed and affirmed defendant's conviction.

A defendant is entitled to an instruction on an affirmative defense where it is supported by slight evidence at trial. The decision about which jury instructions to request is generally a matter of trial strategy, but the failure to request an instruction may be grounds for finding ineffective assistance where the instruction was so critical to the defense that its omission denied defendant a fair trial.

To justify the use of force in the defense of property, a defendant must reasonably believe that his personal property is in immediate danger of unlawful trespass or carrying away, and that use of force is necessary to avoid that danger. A defendant may use only the amount of force reasonable under the circumstances. Here, defendant's phone was not in immediate danger of unlawful trespass or carrying away when defendant struck his girlfriend while she was sitting on the couch talking on his phone. And, even if defendant was attempting to retrieve the phone, the use of force was unnecessary and excessive.

As a final matter, the court noted that, as a matter of public policy, the defense-of-property affirmative defense was not intended to be applied to permit a defendant to use force to effectuate the return of property from a domestic partner. Otherwise, the court "would be condoning the use of violent actions in situations that are already quite volatile."

People v. Golden, 2021 IL App (2d) 200207 At defendant's trial on domestic battery charges, the trial court did not err in allowing the State to admit out-of-court statements of the complaining witness under the doctrine of forfeiture-by-wrongdoing where she had refused to cooperate with the State prior to trial and did not appear for trial. Those statements included a 911 call and oral and written statements to police officers in which she described physical acts of abuse committed against her by defendant.

Illinois Rule of Evidence 804(b)(5) codifies the common law forfeiture-by-wrongdoing doctrine and allows the admission of out-of-court statements where the court finds by a preponderance of the evidence that defendant engaged in wrongdoing and the wrongdoing was intended to, and did, procure the unavailability of the witness. Here, the trial court did not err in finding these requirements had been satisfied. The record showed that defendant called the witness from jail, in violation of a no-contact order, and urged her to change her account of the incident and to avoid coming to court. Ultimately, the witness did recant, and the State's attempts to serve her with a subpoena for trial were unsuccessful. These facts were sufficient to establish forfeiture-by-wrongdoing.

People v. VanHoose, 2020 IL App (5th) 170247 Assault requires more than mere words. Evan accepting the State's version of events that defendant voiced a threat against the town mayor and a radio host who baselessly called him a pedophile, there was insufficient evidence to show the threat was accompanied with a gesture that would place the complainants in reasonable apprehension of imminent harm. While the mayor testified that defendant drove his motorcycle aggressively as he made the threats, this account was disputed by the radio host. Regardless, without an allegation that the defendant drove the motorcycle towards or near the complainants, driving alone is a not a gesture for purposes of the assault statute.

The court also rejected the State's argument that the complainants' subjective fear was reasonable given defendant's history of "explosive anger" against them. While acknowledging the heated disagreements between the parties, the court found no evidence of the type of violent propensities that would have made the complainants' fear reasonable. Defendant had no history of violence and in fact had a history of civil disagreement with the mayor at city council meetings.

People v. Gonzalez, 2015 IL App (1st) 132452 (No. 1-13-2452, 6/30/15)

The Appellate Court held that the State failed to prove defendant guilty of reckless conduct, which requires proof that defendant recklessly performed an act that endangered the safety of another person. 720 ILCS 5/12-5(a)(1). Police witnesses testified that a group of men had thrown bricks at passing cars. A group of four dropped their bricks and approached the officers. On cross, the officer testified that he did not actually see any of the four men who approached the officers throw a brick at a car. The officers' testimony was both inconsistent and unspecific. Even assuming defendant threw bricks at passing cars, the State failed to prove that these actions endangered the safety of other people. There was no evidence of any complaints about personal or property damage, and no testimony that the bricks struck any cars or pedestrians. None of the pedestrian who turned around and walked the other way testified that they believed their safety was endangered. Under these facts, it would have been mere speculation that anyone felt endangered by defendant's alleged actions.

People v. Taylor, 2015 IL App (1st) 131290 The Appellate Court reversed defendant's conviction for aggravated assault. Defendant yelled "I'm going to get you," and "I'm going to kick your ass," to a Sheriff's deputy standing on the other side of two airlocked doors after

defendant complied with the deputy's request to leave the courthouse. To sustain a conviction for aggravated assault, the State must prove beyond a reasonable doubt that the defendant, with knowledge that a peace officer was performing official duties, knowingly and without authority engaged in conduct which placed the officer in reasonable apprehension of receiving a battery. 720 ILCS 5/12–2(b)(4)(i). Whether the officer is placed in reasonable apprehension of receiving a battery is judged on an objective standard. In other words, an officer is placed in reasonable apprehension of receiving a battery where, under the circumstances, a reasonable person would have been placed in such apprehension.

Words alone are usually insufficient to constitute an assault. Instead, some action or condition must accompany the words. Where defendant engaged in no actions toward a deputy, but instead was leaving the courthouse as she had been ordered, there was no basis on which a reasonable trier of fact could have found that a reasonable officer would fear receiving a battery.

In re Gregory G., 309 Ill.App.3d 923, 920 N.E.2d 1096 (2d Dist. 2009) The court found that there is an irreconcilable split of Illinois Supreme Court authority concerning whether the three-part test of **People v. Housby,** 84 Ill.2d 415, 420 N.E.2d 151 (1981) applies to all inferences from circumstantial evidence, or only to the inference from possession of recently stolen property. The court declined to resolve the split of authority here, finding that under both **Housby** and the "rational trier of fact" standard, the evidence was insufficient to convict defendant of battery for striking a security guard over the head with a bottle.

The evidence consisted of the following: (1) the guard was struck by a bottle that was held, not thrown; (2) the bottle broke; (3) a group of 100 people were in the vicinity; (4) several other members of the crowd carried beer bottles; and (5) two minutes after the incident, the guard saw defendant holding a broken bottle. The court concluded that it was unreasonable to infer from such evidence that defendant was the person who struck the guard.

Defendant's delinquency of adjudication was reversed.

People v. Schmidt, 392 Ill.App.3d 689, ___ N.E.2d ___ (1st Dist. 2009) Aggravated battery of a police officer is not a "forcible felony," for purposes of the felony murder statute, unless the aggravated battery is predicated on great bodily harm or permanent disability or disfigurement. (See **HOMICIDE**, §26-2).

People v. Floyd, 278 Ill.App.3d 568, 663 N.E.2d 74 (1st Dist. 1996) As complainant was standing on a main thoroughfare and listening to music on a Walkman, she noticed defendant staring at her from across the street. After staring for two or three minutes, defendant crossed the street on his bicycle, stopped next to complainant, and said, "You come here, you." Defendant did not dismount the bicycle or make any other physical or verbal threats. Complainant testified that she was "petrified" and believed that defendant intended to harm her. She ran into the street, yelled for help, and was taken by a motorist to a nearby hospital.

The evidence was insufficient to convict defendant of assault. An assault occurs when a person "engages in conduct which places another in reasonable apprehension of receiving a battery." The complainant's emotional response, though relevant to whether an assault has occurred, must be "reasonable." Thus, "[i]t is not enough that the victim feels 'petrified' that the defendant is going to harm her"; that feeling must also "have a measure of objective reasonableness."

Furthermore, mere words are usually not enough to constitute assault. Instead, defendant must also engage in some action or condition. Here, defendant's words, "even coupled with the fact that he rode his bicycle toward" complainant, did not rise to the level of

an assault.

People v. Conley, 187 Ill.App.3d 234, 543 N.E.2d 138 (1st Dist. 1989) The offense of aggravated battery by causing great bodily harm or permanent disability or disfigurement is a specific intent crime. Thus, the State must prove that defendant either had a conscious objective to achieve the harm or was consciously aware that the harm was practically certain to be caused by his conduct.

People v. Berg, 171 Ill.App.3d 316, 525 N.E.2d 573 (3d Dist. 1988) The evidence failed to show that defendant endangered the child's health by not obtaining medical attention. A minor in defendant's care was seen by a doctor who found multiple bruises on the child's back and face, disruption of her primary teeth, broken nails on her big toes, multiple breaks in her hair shafts and a fractured rib. The doctor stated that the bruises were sustained several days earlier, but probably not at the same time. The rib fracture was probably caused by some external force, such as falling down stairs. The doctor rendered no medical treatment.

The Appellate Court reversed. "According to the medical evidence no treatment was required or appropriate and there was no showing that the child's health was endangered or adversely affected by the failure to seek medical attention earlier."

People v. Kettler, 121 Ill.App.3d 1, 459 N.E.2d 7 (4th Dist. 1984) Defendant was taken to a hospital due to an acute overdose of drugs and alcohol. He was strapped to a bed, and his stomach was pumped. While defendant was restrained, he regained partial consciousness. He looked up at one police officer and said, "I'm going to kill you, you dirty son of a bitch." The officer testified that he was sure that defendant meant what he said. Defendant was convicted of aggravated assault.

The evidence was insufficient to sustain the conviction. Assault requires "conduct which places another in reasonable apprehension of receiving a battery." Although the officers testified that they were apprehensive, "the evidence of defendant's physical restraint belies any conclusion that their apprehension was reasonable."

The assault statute does not include a threat of a future battery. Even if the officers believed that defendant would carry out his threat after he was released from the hospital, the lack of a threat of an immediate battery precluded an assault conviction.

People v. Gnatz, 8 Ill.App.3d 396, 290 N.E.2d 392 (1st Dist. 1972) Battery is a lesser included offense of aggravated battery.

§7-1(b)
Bodily Harm

Illinois Supreme Court

People v. Meor, 233 Ill.2d 465, 910 N.E.2d 575 (2009) Battery is a lesser included offense of criminal sexual abuse based on an act of sexual penetration. Whether an offense is an "included offense" is determined under the "charging instrument" approach. A lesser offense is "included" if the factual description of the charged offense broadly describes conduct necessary to commit the lesser offense, and any elements not explicitly set forth in the indictment can reasonably be inferred. Battery requires an allegation that the defendant intentionally or knowingly made physical contact "of an insulting or provoking nature." A non-consensual act of sexual penetration is, as a matter of law, inherently insulting. Thus,

the complaint on its face broadly alleges intentional contact of an insulting nature, the conduct necessary to constitute battery.

Here, the trial court did not err by refusing to convict defendant of battery, however, because there was no disputed issue of fact concerning criminal sexual abuse that was not required to convict of battery. Because the act of sexual penetration was required for both criminal sexual abuse and battery, defendant could have been convicted of criminal sexual abuse based on the same facts required for battery.

People v. Mays, 91 Ill.2d 251, 437 N.E.2d 633 (1982) For purposes of the battery statute, "bodily harm" requires "some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent." See also **People v. Boyer**, 138 Ill.App.3d 16, 485 N.E.2d 460 (3d Dist. 1985).

People v. Ball, 58 Ill.2d 36, 317 N.E.2d 54 (1974) Battery conviction against teacher who paddled student upheld. Teachers are subject to the same standard of reasonableness that applies to parents in disciplining their children. Here, there was no legal justification for the corporal punishment administered to the victim.

Illinois Appellate Court

In re Vuk R., 2013 IL App (1st) 132506 Where great bodily harm is an element of an aggravated battery charge, the State must prove this element beyond a reasonable doubt. While the element of great bodily harm does not lend itself to a precise legal definition, it requires proof of an injury of a greater and more serious nature than a simple battery.

The State failed in its burden. The complainant and his father testified in summary fashion about his injuries (a broken nose, cheek bone and eye socket injury) and the State introduced photos showing swelling and discoloration. There was no evidence regarding any pain suffered by the complainant other than that he was given pain medication, the details of his injuries, or how long after the incident he suffered the effects of those injuries.

People v. Steele, 2014 IL App (1st) 121452 To prove a defendant guilty of aggravated battery based on great bodily harm under 720 ILCS 5/12-4(a), the State must prove the existence of a greater and more serious injury than the bodily harm required for simple battery. Bodily harm for simple battery requires some sort of physical pain or damage to the body, such as lacerations, bruises or abrasions. While there is no precise legal definition of great bodily harm, it must be more serious or grave than the lacerations, bruises, or abrasions that constitute bodily harm.

The State failed to prove great bodily harm beyond a reasonable doubt. Defendant, while trying to evade a traffic stop, struck a police officer with his car. The medical reports from the hospital showed that the officer was treated for abrasions on his knees and discharged after a few hours. A photograph also showed that the officer had abrasions on his right elbow. These injuries did not constitute great bodily harm.

The officer testified about injuries more severe than abrasions, stating that he had torn ligaments in both knees and his right shoulder, and bone fragments in his right shoulder. These injuries would likely constitute great bodily harm, but since his testimony was not supported by the record, it could not form the basis for finding great bodily harm. The medical reports did not reflect any of these injuries, and the officer testified on cross that he was not diagnosed with these more serious injuries.

If the officer received a medical diagnosis showing more serious injuries than were initially identified, then the State needed to offer scans, X-rays, medical reports, or medical testimony to show that diagnosis. Where the question of causation is beyond the general understanding of the public, the State must present expert evidence to support its theory of causation.

Because the officer was treated and released from the hospital with only abrasions and bruising, the cause of the more serious injuries he testified about would not be readily apparent based on common knowledge and experience. Expert testimony was thus required to show that the more serious injuries were caused by the blow from defendant's car.

The conviction was reduced to simple battery and remanded for a new sentencing hearing.

In re J.A., 336 Ill.App.3d 814, 784 N.E.2d 373 (1st Dist. 2003) "Bodily harm" requires infliction of some sort of physical pain or damage to the body such as lacerations, bruises, or abrasions, whether temporary or permanent. To establish "great bodily harm," the evidence must show an injury of a greater and more serious nature than mere bodily harm. Where a victim suffers only "bodily harm," a conviction for aggravated battery predicated on great bodily harm must be vacated.

Here, the evidence was insufficient to establish "great bodily harm." The victim was stabbed once in his left shoulder and testified that it felt as if someone had pinched him and that "it didn't really bother him." In addition, it was unclear what weapon had been used and there was no evidence of the extent of the wound.

People v. Watkins, 243 Ill.App.3d 271, 611 N.E.2d 1121 (1st Dist. 1993) Defendant's conviction for aggravated battery based on great bodily harm was reversed. The victim suffered a "graze wound" to his chest, but did not bleed or need medical attention. Although the victim clearly suffered "bodily harm," there was no indication that the injury was serious enough to constitute "great bodily harm."

People v. O'Neal, 257 Ill.App.3d 490, 628 N.E.2d 1077 (1st Dist. 1993) Defendant placed his two-year-old son in a bathtub with the hot water running. Expert testimony showed that the victim had second degree burns from his knees to his feet, but that it was likely the skin's sensitivity would subside within a year. Some eighteen months after the offense, the boy's legs retained some mild discoloration and "darker fleshtone" in the burned areas. In addition, he tired easily, was sensitive to hot and cold, and had to wear long socks.

The State failed to establish that the injuries constituted "severe and permanent disability or disfigurement," as is required for a conviction for heinous battery. The outer wounds had healed within ten days, the increased skin sensitivity would likely subside within a year, and it was unclear how long the scar tissue would remain. Although there was expert testimony that the "mechanical integrity" of the skin below the surface had been permanently altered, damage occurring below the skin's surface does not qualify as "disfigurement."

People v. Conley, 187 Ill.App.3d 234, 543 N.E.2d 138 (1st Dist. 1989) The term "disability," in the context of "permanent disability," means that "the victim is no longer whole such that the injured bodily portion or part no longer serves the body in the manner as it did before the injury."

People v. McBrien, 144 Ill.App.3d 489, 494 N.E.2d 732 (4th Dist. 1986) The evidence was insufficient to prove aggravated battery where defendant sprayed Mace on a police officer.

The “tingling sensation” reported by the officer, without more, “is not the sort of physical pain contemplated under the ‘bodily harm' prong of aggravated battery.”

People v. Johnson, 133 Ill.App.3d 881, 479 N.E.2d 481 (2d Dist. 1985) Defendant was properly convicted of cruelty to children (now, aggravated battery of a child) for whipping his nine-year-old son with an extension cord. The victim had two red marks on his back, felt "bad afterwards," and felt worse the next day. The fact that there was no permanent scarring did not negate the fact that personal injury was inflicted.

People v. Veile, 109 Ill.App.3d 847, 441 N.E.2d 149 (4th Dist. 1982) Defendant was convicted of aggravated battery for causing bodily harm by striking a police officer with her fist. Since the blow struck the officer in his bulletproof vest, which was designed to stop the penetration of bullets, it was "inconceivable" that the officer suffered bodily harm.

People v. Caliendo, 84 Ill.App.3d 987, 405 N.E.2d 1133 (1st Dist. 1980) The term “great bodily harm,” as used in the aggravated battery statute, is not unconstitutionally vague.

People v. Smith, 6 Ill.App.3d 259, 285 N.E.2d 460 (1st Dist. 1972) The term “great bodily harm” is not susceptible to precise definition, but it is not synonymous with permanent injury. Whether aggravated battery occurred is a question of fact where the injury does not break the skin, injure bones, leave disfigurement or cause permanent injury.

People v. Henry, 3 Ill.App.3d 235, 278 N.E.2d 547 (1st Dist. 1971) Conviction for aggravated battery reversed in light of lack of bodily harm or physical contact with alleged victim.

§7-1(c)
Insulting or Provoking Contact

Illinois Supreme Court

People v. Davidson, 2023 IL 127538 Defendant was charged with aggravated battery to a correctional institution employee, alleging that he made insulting or provoking contact by pushing a correctional officer during an altercation at the jail. At trial, the officer testified that defendant pushed him, but did not testify that he felt insulted or provoked by the contact. On appeal, defendant argued that the State failed to prove that he made physical contact of an insulting or provoking nature with the officer where the evidence failed to show that the officer was insulted or provoked. The appellate court affirmed, concluding that insulting or provoking contact can be inferred from the circumstances and that the alleged victim need not testify that he was insulted or provoked.

The Supreme Court affirmed. Under 720 ILCS 5/12-3(a), a person commits battery if he knowingly without legal justification “makes physical contact of an insulting or provoking nature” with another. The question of whether contact is insulting or provoking is an objective inquiry. The statute uses the noun “nature,” which suggests a focus on the type of contact involved rather than the victim’s subjective impressions of that contact. Thus, the State need not prove that the victim was insulted or provoked by the contact to sustain a battery conviction.

Illinois Appellate Court

People v. Klimek, 2023 IL App (2d) 220372 Defendant was proved guilty by accountability of battery (and related offenses) predicated on contact of an insulting or provoking nature. Defendant was a juvenile justice specialist at the Illinois Youth Center (IYC) at St. Charles. In that role, he was responsible for overseeing a group of youth housed in one of the cottages at the IYC. The charges were based on defendant's involvement in a "fight club" of sorts, where he unlocked secured areas, allowed youth access into those areas for the purpose of striking other youths housed there, and stood by while the physical assaults occurred. Defendant asserted that the incidents were mere "horseplay" and that the contact was not insulting or provoking because the individuals who were hit and punched during the incidents appeared to be laughing and joking with the aggressors. The appellate court disagreed.

Whether contact is insulting or provoking is judged by a reasonable person standard. It is the nature of the contact, not the victim's subjective feeling about it, which controls. Here, the incidents occurred in a cottage which housed the most aggressive youths at IYC. The victims were punched multiple times by aggressors who were larger than them, and at least some of the victims sustained bruising as a result of the incidents. Taken in the light most favorable to the prosecution, a rational trier of fact could reasonably conclude that this constituted contact of an insulting or provoking nature. And, it would have been reasonable for the jury to believe that the victims' smiling or joking with the aggressors was to avoid showing weakness and to avoid provoking further attacks.

People v. Taylor, 2022 IL App (4th) 210507 Defendant was convicted of two counts of aggravated battery for coughing on arresting officers while claiming to be infected with COVID-19. The defendant asked for reversal, arguing that coughing on another is not battery or knowingly insulting or provoking contact. The appellate court affirmed as to the first officer, who testified that he felt defendant's spittle on his skin, and where the act of spitting on somebody has long been held to be an insulting and provocative act of physical contact. See **People v. Peck**, 260 Ill. App. 3d 812 (1994). The act here was clearly done knowingly, as shown by defendant's hostility toward the officers, her threats to kill the officers, and her claim that she was infected with COVID-19.

An appellate court majority reversed the second conviction, however, because the State failed to prove defendant made physical contact with the second officer. The second officer testified only that, when defendant coughed at him, he "could feel the heat of her breath on my face." He did not testify that he felt spittle, and the State offered no authority suggesting that breath is physical contact under section 12-3(a)(2). Nor would the appellate court infer that the heat of her breath contained moisture. "A reasonable inference under the law requires a chain of factual evidentiary antecedents, and absent such a chain, the alleged inference is not a reasonable one but is, instead, mere speculation."

A dissenting justice would have affirmed both convictions because a jury could reasonably conclude based on their own experiences that defendant's breath contained moisture that, when felt by the officer, constituted an act of physical contact.

People v. Ward, 2021 IL App (2d) 190243 Defendant, who was well-known as a vocal critic of local law enforcement, was involved in a verbal altercation with police officers at the scene of a traffic accident involving defendant's teenage son. Defendant's wife stepped between defendant and an officer in an effort to diffuse the situation. Defendant pushed her to the side and continued to argue, at which point he was arrested and charged with domestic battery based on the push to his wife. Defendant's wife insisted he did nothing wrong, so the officer signed the complaint against defendant.

At trial, defendant's wife described the physical contact in question as similar to passing someone in a hallway; defendant moved her out of the way, but held on to her so she would not fall. She stated that she thought the arrest was a "complete farce" and that she was not insulted or provoked by the contact.

Whether contact is insulting or provoking is dependent on its effect on the victim. A defendant cannot be found guilty of battery based on insulting or provoking contact without some proof that the victim was insulted or provoked. While the victim need not testify directly to being insulted or provoked by the physical contact, there must be some evidence from which the trier of fact can logically infer as much. Here, the officers testified (improperly) to their opinions that defendant's conduct constituted domestic battery, but there was no evidence - such as a description of the wife's subjective reaction to the incident - from which it could be inferred that the contact was insulting or provoking.

In concluding that the trial court erred in denying defendant's motion for a directed verdict, the Appellate Court looked to another domestic battery case prosecuted by the Kane County State's Attorney's office, **People v. McDowell**, 2015 IL App (2d) 140301-U, with similar facts. While **McDowell** was an unpublished decision, the court noted "no language in Rule 23 expressly forbids the Appellate Court from adopting the reasoning of an unpublished order." Here, as in **McDowell**, the wife intervened while her husband was involved in a heated argument, and the ensuing contact between the two was not insulting or provoking.

People v. Mangana-Ortiz, 2019 IL App (3d) 170123 Defendant's conviction of aggravated battery based on physical contact of an insulting or provoking nature was upheld. The evidence established that defendant drove her vehicle away with the victim hanging off of it and, when the victim fell off, ran over the victim's leg. This evidence was sufficient to establish physical contact with the victim, by means of the vehicle's striking her.

People v. Peck, 260 Ill.App.3d 812, 633 N.E.2d 222 (4th Dist. 1994) Defendant committed "insulting and provoking" aggravated battery of a police officer where he intentionally spit in the officer's face.

§7-1(d)
Mens Rea

Illinois Appellate Court

People v. Sperry, 2020 IL App (2d) 180296 Defense counsel was ineffective for agreeing to the trial court's decision not to further instruct jurors with the definition of "knowingly" when the jury specifically asked a question with regard to the meaning of that term in the instructions on aggravated battery. IPI Criminal 4th No. 5.01B need not be given initially but should be given where the jury asks for clarification as to the mental state. Defense counsel should have insisted that the instruction be given here where the jury's question indicated it was confused over whether the State was required to prove that defendant discharged the gun on purpose or whether it was enough for the State to prove that defendant knew a gun was discharged, which was especially problematic where defendant testified that the gun went off on accident.

People v. Jackson, 2017 IL App (1st) 142879 A defendant commits battery when he knowingly makes physical contact of an insulting or provoking nature with another person.

720 ILCS 5/12-3(a)(2). A defendant acts knowingly when he is consciously aware that a result is practically certain to be caused be his conduct. 720 ILCS 5/4-5(b). A defendant's knowing state of mind may be proved through circumstantial evidence and may be inferred from a defendant's actions and the conduct surrounding it.

Defendant was convicted of battery and resisting a police officer. He had called 911 from his apartment, requesting an ambulance. Two paramedics soon arrived, but defendant refused to believe they were really paramedics. The paramedics could smell marijuana on defendant, and they called the police. Defendant screamed and swore at the paramedics and responding officers. An officer tried to calm defendant, but when he reached for defendant's shoulder, defendant pulled away, fell to the floor, and punched and kicked. As two officers tried to handcuff defendant, he kicked one of them several times in the leg.

Defendant's girlfriend testified that she had seen him have 10-20 seizures over the previous seven years. She saw defendant as he was being placed in the ambulance and believed he was having a seizure. The two paramedics testified that they did not believe defendant was having a seizure.

The Appellate Court, with one justice dissenting, held that the evidence was insufficient to prove that defendant acted knowingly when he kicked the officer. Both paramedics observed that defendant was nervous and agitated and believed that defendant had an altered mental state. The second officer thought that defendant's behavior was irrational. Since all the witnesses thought that defendant was not behaving normally, the court stated it could not infer from defendant's actions that he was consciously aware of what he was doing. Instead, the evidence showed that defendant was not consciously aware of the results of his actions.

People v. Lee, 2017 IL App (1st) 151652 To prove the offense of battery, the State must show that a defendant knowingly caused bodily harm to another. 720 ILCS 5/12-3(a). A defendant acts knowingly when he is consciously aware that a result is practically certain to happen. 720 ILCS 5/4-5(b).

Defendant arrived at the hospital in an agitated state after a failed suicide attempt. A nurse tried to remove defendant's necklace with an attached metal cross since she feared it could be used as a potential weapon. Defendant refused, cursed at her, and threatened to kill her. The nurse told defendant the necklace had to be removed for safety reasons and reached toward defendant to remove it. As she attempted to unclasp the necklace, defendant pulled away and clutched the cross in his hand. The chain broke and defendant struck the nurse in the forehead with the cross, causing her bodily harm.

The Appellate Court held that the State failed to prove that defendant intended to hit the nurse and thus he did not commit battery. Instead, defendant inadvertently hit the nurse with the cross when he tried to prevent her from removing the necklace.

Defendant's conviction was reversed.

People v. Willett, 2015 IL App (4th) 130702 Aggravated battery of a child occurs where, while committing a battery, a person who is at least 18 years of age "knowingly and without legal justification . . . causes great bodily harm or permanent disability or disfigurement to a child under the age of 13." When a crime is defined in terms of a particular result, a person acts "knowingly" if he is consciously aware that his conduct is practically certain to cause the result. Applying this rule to the aggravated battery statute, defendant acted "knowingly" if he was "consciously aware that his conduct [was] practically certain to cause great bodily harm."

The trial judge erred by allowing the prosecutor to assert in closing argument that to

prove its case, the State needed to establish only that defendant performed the relevant acts knowingly, and not that he knew the extent of the injuries his conduct would cause. Furthermore, the trial judge erred by prohibiting defense counsel from presenting an accurate interpretation of the mental state requirement in her closing argument. The court held that the lower court's actions were the "functional equivalent of instructing the jury on an erroneous definition of 'knowingly.'"

The error was not harmless where defendant's mental state was the critical factual issue in the case. Defendant told detectives that he meant to shake the child but did not think that doing so would cause the injuries that resulted. The bulk of the State's case, especially the medical evidence, was intended to discredit defendant's assertion that he did not knowingly cause the injuries. The State's closing argument asserted that it needed to show only that defendant knowingly shook the child, and defense counsel was prohibited by the trial court from responding with an accurate assertion of the law. Because defense counsel had been a vigorous advocate throughout the trial, the jury likely interpreted her silence on this point as a concession that the prosecutor's explanation of the law was accurate. Under these circumstances, the State's improper argument constituted a material factor in defendant's conviction.

Defendant's conviction was reversed and the cause remanded for a new trial.

People v. Jasoni, 2012 IL App (2d) 110217 Defendant was convicted of aggravated battery under 720 ILCS 5/12-4(b)(10), which defines the offense as the commission of a battery where the perpetrator knows the "individual harmed to be an individual of 60 years of age or older." The current version of §12-4(b)(10) was adopted in 2006, and replaced language which provided that aggravated battery occurred when the perpetrator "[k]nowingly and without legal justification and by any means cause[d] bodily harm to an individual of 60 years of age or older."

Under the plain language, aggravated battery occurs only if the defendant knows that the person who is battered is 60 or older. Here, the circumstantial evidence allowed the trier of fact to infer that defendant knew that the victim was older than 60. Defendant had known the victim, his former mother-in-law, for 20 years, and had been married to her daughter for 14 years. Defendant's son was the victim's grandson, and the victim was often at the defendant's home to see the grandson. In addition, the defendant shared an apartment with his former brother-in-law, the victim's son, and paid rent to the victim for the apartment. Under these circumstances,"defendant had a close relationship with [the victim] and . . . likely knew she was at least 60."

Finally, the victim was 68, well over the statutory minimum, and by testifying at trial made herself subject to observation by the trier of facts for purposes of determining whether her appearance provided an indication of her age.

People v. Martino, 2012 IL App (2d) 101244 Every offense consists of both a voluntary act and a mental state. A defendant who commits a voluntary act is accountable for his act, but a defendant is not criminally liable for an involuntary act. Acts that result from a reflex, or that are not a product of the effort or determination of the defendant, either conscious or habitual, are considered involuntary acts.

A defendant can be convicted of aggravated domestic battery if in committing a domestic battery, he knowingly and intentionally causes great bodily harm or permanent disability or disfigurement. 725 ILCS 5/12-3.3(a). Defendant's voluntary act must cause the great bodily harm or permanent disability or disfigurement.

The State did not prove beyond a reasonable doubt that defendant's voluntary act

resulted in the complainant's broken arm. Although defendant defied the police, and it was because of this defiance that the police tased him, the tasing rendered defendant incapable of controlling his muscles. Therefore, his act of falling on the complainant and breaking her arm when he was tased was not a voluntary act for which he can he held accountable.

People v. Shelton, 293 Ill.App.3d 747, 688 N.E.2d 831 (1st Dist. 1997) The "transferred intent" doctrine applies where the bystander's death is due to the "shooter's bad-aim" (where the shooter fires at the intended victim but inadvertently hits a bystander) as well as where defendant fires at a figure whom he believes to be the intended victim but who turns out to be a third party.

People v. Peterson, 273 Ill.App.3d 412, 652 N.E.2d 1252 (1st Dist. 1995) The "transferred intent" doctrine allows a person who unintentionally harmed a third party during a wrongful act to be held responsible for the unintended wrong. However, the doctrine is inapplicable where the identity of the person who committed the unintended wrong is unknown.

People v. Homes, 274 Ill.App.3d 612, 654 N.E.2d 662 (1st Dist. 1995) The "transferred intent" doctrine permits conviction for an offense against an unintended victim, provided that defendant acted with the required intent against the intended victim. However, the underlying intent can be "transferred" only where it has been proven beyond a reasonable doubt. Where defendant was acquitted of acting with intent to kill the only intended victim, there "was no intent to kill to be transferred" to an innocent bystander who was inadvertently wounded.

People v. Franklin, 225 Ill.App.3d 948, 588 N.E.2d 398 (3d Dist. 1992) Defendant may be convicted on basis of "transferred intent" doctrine even if State does not specifically allege that theory in the charging instrument.

People v. Hickman, 9 Ill.App.3d 39, 291 N.E.2d 523 (3d Dist. 1973) Defendant was guilty of aggravated battery under theory of transferred intent when he intended to shoot his brother, but wife stepped in line of fire.

§7-1(e)
Status or Age of Victim

§7-1(e)(1)
Aggravated Battery – Age or Occupation

Illinois Appellate Court

People v. Cooper, 2024 IL App (2d) 220158 Defendant was convicted of aggravated battery of an individual 60 years of age or older. Under 720 ILCS 5/12-3.05(d)(1), an element of that offense is that defendant "knows the individual battered to be...[a] person 60 years of age or older." On appeal, defendant argued that the State failed to prove beyond a reasonable doubt that he had the requisite knowledge where the State argued that the incident was a random attack and the State offered no evidence that defendant knew the victim or anything about his actual age. The appellate court disagreed and affirmed.

Knowledge is often proved by circumstantial evidence. Here, such evidence included that the victim had gray hair and eyebrows, the incident occurred in front of the victim's

assisted living facility, the victim referred to the facility as "an old-folks home" in communicating with defendant prior to the battery, and defendant stated to a police detective that "he doesn't rob old people" during the investigation into the incident. The jurors had the opportunity to observe the victim's physical appearance at trial and could consider those observations in weighing the evidence. On this record, the absence of direct evidence that defendant knew the victim's age was not fatal. Taking the evidence in the light most favorable to the prosecution, a rational trier of fact could find that the State proved beyond a reasonable doubt that defendant had the requisite knowledge at the time of the offense.

The dissenting justice would have found that the State had not met its burden on this element, noting that the brief encounter, coupled with the use of the word "old," fell short of proving that defendant knew the victim was at least 60 years old. "Estimating a stranger's age is a fraught exercise even in the best of circumstances."

People v. Smith, 2015 IL App (4th) 131020 Illinois Pattern Instructions, Criminal, Nos. 11.15 and 11.16, which define the offense of aggravated battery of a person over the age of 60, have not been updated to reflect 2006 amendments to the statute. Those amendments added, as an element of the offense, that the defendant knows the battered individual to be 60 or older. Before the 2006 amendments, knowledge of the age of the victim was not required. The court asked the Illinois Supreme Court Committee on Pattern Jury Instructions to consider updating the instructions.

The court also reversed the conviction for aggravated battery of a person over the age of 60 because the State failed to prove beyond a reasonable doubt that defendant knew the victim to be over the age of 60. The only evidence of the victim's age was his testimony that he was 63, but there was no evidence that he ever told defendant how old he was. Although defendant and the victim had a long-term friendship and were roommates for a short period of time, there was no evidence that the victim celebrated a birthday while the two were roommates. The court also noted that the State mistakenly believed that it was only required to show that the victim was over 60, and therefore failed to present evidence that defendant was aware of that fact.

Because there was nothing in the record to indicate that defendant was aware of the victim's age, the conviction for aggravated battery of a person over the age of 60 was reduced to battery.

People v. Jasoni, 2012 IL App (2d) 110217 Defendant was convicted of aggravated battery under 720 ILCS 5/12-4(b)(10), which defines the offense as the commission of a battery where the perpetrator knows the "individual harmed to be an individual of 60 years of age or older." The current version of §12-4(b)(10) was adopted in 2006, and replaced language which provided that aggravated battery occurred when the perpetrator "[k]nowingly and without legal justification and by any means cause[d] bodily harm to an individual of 60 years of age or older."

Under the plain language, aggravated battery occurs only if the defendant knows that the person who is battered is 60 or older. Here, the circumstantial evidence allowed the trier of fact to infer that defendant knew that the victim was older than 60. Defendant had known the victim, his former mother-in-law, for 20 years, and had been married to her daughter for 14 years. Defendant's son was the victim's grandson, and the victim was often at the defendant's home to see the grandson. In addition, the defendant shared an apartment with his former brother-in-law, the victim's son, and paid rent to the victim for the apartment.

Under these circumstances,"defendant had a close relationship with [the victim] and . . . likely knew she was at least 60."

Finally, the victim was 68, well over the statutory minimum, and by testifying at trial made herself subject to observation by the trier of facts for purposes of determining whether her appearance provided an indication of her age.

In re Jerome S., 2012 IL App (4th) 100862 Defendant was adjudicated delinquent based on aggravated battery under 720 ILCS 5/12-4(b)(9), which defines aggravated battery as a battery against the "driver, operator, employee or passenger of any transportation facility or system engaged in the business of transportation of the public for hire. . . ." The court concluded that a school bus monitor is not a public transportation employee within the definition of §12-4(b)(9), because a school bus is available only to a select group of individuals and not to the public as a whole. The court noted that under Illinois precedent, school buses have been deemed to be "private carriers." In addition, the legislature has distinguished, in several contexts, between the transportation of school children on school buses and transportation of the "public."

Defendant's adjudication based on aggravated battery was reversed, and the cause was remanded with directions to enter judgment on the lesser included offense of misdemeanor battery, which the minor conceded that he committed.

In re Joel L., 345 Ill.App.3d 830, 803 N.E.2d 592 (4th Dist. 2004) An off-duty officer who was moonlighting as a security guard for a school district was engaged in "official duties" where he was patrolling and monitoring a crowd at a football game. An off-duty police officer who was providing security at a school, and who was wearing a shirt with a police department logo and carrying a badge, handcuffs and a firearm, was known to defendant to be a police officer who was performing official duties

People v. Smith, 342 Ill.App.3d 289, 794 N.E.2d 408 (4th Dist. 2003) Under 720 ILCS 5/12-3(b)(6), aggravated battery occurs where a person commits a battery while "he or she . . . [k]nows the individual harmed to be . . . a correctional institution employee" who "is engaged in the execution of any official duties." Where a correctional officer was involved in an official duty (i.e., delivering meals to inmates), his provocation of defendant by insults and threats did not constitute a defense to an aggravated battery charge. The purpose of the aggravated battery statute is to provide enhanced protection to persons who are subjected to special risks while performing their official duties; although the officer "performed his duty in a flippant, insulting, and provocative manner, . . . he was nevertheless performing a duty." Note: Statute since amended; correctional officers now covered by 720 ILCS 5/12-4(b)(18).

People v. Infelise, 32 Ill.App.3d 224, 336 N.E.2d 559 (1st Dist. 1975) The Appellate Court reversed defendant's conviction for aggravated assault of a police officer. The police were not in uniform and were in a private automobile, while defendant was a seventeen-year-old immigrant who could not speak English well. In addition, the police admitted that defendant put his gun away as soon as defendant's mother told him in Italian that the men were police officers.

§7-1(e)(2)
Domestic Battery

Illinois Supreme Court

People v. Gray, 2017 IL 120958 Defendant was convicted of aggravated domestic battery, which is defined as committing a battery against "any family or household member." 720 ILCS 5/12-3.3(a) (a-5). Family or household member includes any person who has had a dating relationship, with no time limits on former relationships. 720 ILCS 5/12-0.1. Defendant argued that the statute violated due process as applied to him because he had not dated the victim for 15 years.

The Supreme Court rejected defendant's argument. The court found that the legislature's purpose in enacting the statute was to curb the "serious problem of domestic violence." The legislature could rationally believe that people are more likely to batter a former partner no matter how long ago that relationship ended. Thus, the court held that the absence of a time limit on former dating relationships was reasonable and rationally related to the goal of curbing domestic violence.

Illinois Appellate Court

People v. Pence, 2022 IL App (2d) 210309 Defendant's conviction of domestic battery was affirmed even though the trial court, acting as the trier of fact at defendant's bench trial, did not explicitly find that defendant was a "household member." The failure to state an explicit finding does not mean that the court made no such finding, and the appellate court will presume the trial court "found all issues and controverted facts in favor of the prevailing party." Here, there was adequate evidence that defendant was a household member where the complaining witness testified that defendant lived with her and set up Internet service for her house in his name. Additionally, there was testimony that defendant helped with household chores and kept personal belongings at the residence. While defendant did not have a key to the home, there was ample circumstantial evidence to support the finding that he lived there.

People v. Bryant, 2021 IL App (3d) 190530 Defendant challenged his aggravated domestic battery convictions, arguing that the State failed to prove he caused harm to "a household member." The evidence established that defendant lived at a hotel, met the complainant, Rachel, over Facebook, and began a sexual relationship with her in the days leading up to the battery. Two days before the battery, defendant brought clothes to Rachel's apartment, and spent the next two nights there. Defendant bought groceries and snacks for Rachel and her grandson. During a dispute, defendant stabbed Rachel and was found guilty of aggravated battery.

The Appellate Court affirmed. As defined by statute, a household member is one who shares a common dwelling. To share a common dwelling means "to stay in one place together on an extended, indefinite, or regular basis." While the defendant had stayed at Rachel's apartment for a only few days before the stabbing, the evidence was sufficient to show that he intended to reside there for at least an indefinite period of time. The arrangement was shortened only by the defendant's actions. The evidence showed that defendant had no other current living accommodations, and he brought his belongings with him. The defendant and Rachel had a sexual relationship, and the defendant contributed by purchasing food for the household. These facts meet the broad standard crafted by the legislature in its attempt to capture all of the various types of familial relationships where domestic abuse might arise.

People v. Foster, 2021 IL App (2d) 190116 A conviction of attempt aggravated domestic battery does not trigger the four-year MSR term for certain domestic violence

offenses under 730 ILCS 5/5-8-1(d)(6). That section specifically lists "felony domestic battery" and "aggravated domestic battery," but does not include attempt. The "felony domestic battery" provision does not include attempt, which is a separate offense. The Court declined to depart from the plain language of the statute. Defendant's MSR term was reduced to one year.

People v. Allen, 2020 IL App (2d) 180473 Defendant alleged that the State failed to prove him guilty of domestic violence against a "family or household member" because the complainant was not someone with whom he had "a dating or engagement relationship." Defendant had testified that his relationship with the complainant was purely sexual, while the complainant testified that they went on two dates, she loved defendant, and that they spent time engaging in non-sexual activities as well, such as watching movies.

The Appellate Court affirmed. Even accepting defendant's characterization of the relationship, a "dating or engagement relationship" may be primarily sexual. The Court analyzed precedent which gave rise to a statement in **People v. Howard**, 2012 IL App (3d) 100925, which drew a distinction between "physical" and "romantic" relationships, suggesting only the latter met the statutory requirement. The Court concluded that this precedent did not mean to suggest that a "dating or engagement relationship" could not be primarily physical. Rather, the question is whether the State has proven an established relationship with a primarily romantic focus, be it sexual or a more formal courtship. To the extent that **Howard** suggested otherwise, the Court declined to follow it.

People v. Wallace, 2020 IL App (1st) 172388 For purposes of domestic battery, the statutory definition of "family or household members" includes "persons who have or have had a dating or engagement relationship" but does not include casual acquaintanceships. Case law has established that a dating relationship is a serious courtship, at a minimum an established relationship with a significant romantic focus. Here, the State proved the "dating relationship" element beyond a reasonable doubt where the victim testified that she had been dating defendant for several months, they spoke daily and spent time together shopping, in addition to having a sexual relationship, despite defendant's claim that they were merely "bed buddies."

The trial court did not abuse its discretion in refusing to provide the jury with a non-IPI instruction in response to the jury's request for clarification on what constitutes a "relationship" under the law. The jury had been instructed with the appropriate pattern instructions, and "relationship" has a commonly understood meaning and does not require further explanation.

People v. Howard, 2012 IL App (3d) 100925 To obtain a conviction for domestic battery, the State must prove that the accused and the victim were family or household members. 720 ILCS 5/12-3.2(a)(1). Family or household members include persons who have or have had a dating or engagement relationship. 720 ILCS 5/12-0.1. A dating relationship must at a minimum be an established relationship with a significant romantic focus.

Both defendant and the victim testified that they were not in a dating relationship; their relationship was strictly sexual in nature. They had about 15 sexual encounters in the year and a half before the charged incident, and did not spend much time in each other's company outside the presence of their group of friends.

This evidence failed to establish that the defendant and the victim were in a dating relationship. It was not enough that they had an intimate relationship. Their relationship

was established but not exclusive, and had no romantic focus or shared expectation of growth. They engaged only in random sexual encounters that were purely physical.

The Appellate Court reduced defendant's conviction from aggravated domestic battery to aggravated battery.

Schmidt, J., dissented. A rational trier of fact could find that there was a dating relationship from the evidence that defendant and the victim "hung out" together and had 15 sexual encounters.

People v. Irvine, 379 Ill.App.3d 116, 882 N.E.2d 1124 (1st Dist. 2008) For purposes of domestic battery statute, "family or household member" includes "persons who have or have had a dating or engagement relationship." Defendant and complainant qualified as family members where they had dated for six weeks and continued to have sexual intercourse up until the date of the offense. This "was a 'dating relationship' because it was neither a casual acquaintanceship nor ordinary fraternization between two individuals in a business or social context."

People v. Young, 362 Ill.App.3d 843, 840 N.E.2d 825 (2d Dist. 2005) For purposes of domestic battery statute, family or household members include "persons who share or formerly shared a common dwelling [and] persons who have or have had a dating or engagement relationship." Neither a casual acquaintanceship nor ordinary fraternization in business or social contexts constitutes a "dating relationship."

Defendant and complainant, who had spent at least some nights in the same homeless shelter, were not members of the same household. For two people to share a common dwelling for purposes of the domestic battery statute, they must stay together in one place on an extended, indefinite, or regular basis. Although two people might form a household by consistently lodging together as a cohesive unit, the evidence did not show such a relationship where defendant and complainant met less than three months before the offense and there was no evidence that they either deliberately chose to stay in the same shelter or consistently lived in the same shelter. "A transitory sharing of accommodations (particularly mass accommodations, as in a shelter) is not, by itself, a mark of an intimate relationship."

Defendant and complainant also were not in a "dating relationship" because the evidence did not show a "serious courtship," *i.e.*, an "established relationship with a significant romantic focus." Although the record showed that defendant and complainant spent time together, there was no evidence that a "significant focus" of their relationship was romance.

§7-1(f)
Use of Weapon

Illinois Supreme Court

People v. Hicks, 101 Ill.2d 366, 462 N.E.2d 473 (1984) Boiling water is a "caustic substance" under the heinous battery statute.

Illinois Appellate Court

People v. Mandarino, 2013 IL App (1st) 111772 The evidence was sufficient to permit a rational trier of fact to conclude that the collapsible police baton used by defendant constituted a deadly weapon. A deadly weapon includes any instrument that is used to commit an offense and is capable of producing death. Some weapons are deadly *per se*, while

others are deadly if used in a deadly manner. Where the character of the weapon is doubtful, whether it is deadly depends on the manner of its use and the circumstances of the case.

The evidence showed that the police department which employed defendant classified a police baton as a non-deadly weapon, but also stated that a baton can be lethal and should not be raised above the officer's head or used as a club. Under these circumstances, the trial court had a sufficient basis to find that defendant used the baton in a deadly manner when he raised it above his head and struck the complainant 15 times in the back, arm, forearm, and head.

People v. Van, 136 Ill.App.3d 382, 483 N.E.2d 666 (4th Dist. 1985) Karate sticks or numchucks may not be deadly weapons per se, but can be used in such a manner to become a deadly weapon within the meaning of the Criminal Code.

§7-1(g)
Public Way, Place of Amusement or Place of Accommodation

Illinois Supreme Court

People v. Whitehead, 2023 IL 128051 Defendant argued his aggravated battery conviction should be reduced to simple battery because the offense was not committed "on or about a public place of accommodation." The appellate court affirmed, finding that the front stoop of the victim's apartment, upon which the battery occurred, was a public place of accommodation pursuant to 720 ILCS 5/12-3.05(c).

The supreme court reversed the appellate court and reduced defendant's conviction to simple battery. As charged here, a person commits aggravated battery when the battery occurs "on or about a public way, public property, a public place of accommodation or amusement, a sports venue, or a domestic violence shelter." 720 ILCS 5/12-3.05(c). The stoop in this case was described as the area just outside an apartment door, accessible via a paved walkway leading off the street. The State argued that a stoop can be classified as a "public place of accommodation" because it is accessible to the public, and the homeowner grants members of the public, such as mail carriers and visitors, an implied license to use the stoop.

Because the statute does not define "place of public accommodation," the court looked to various dictionary definitions and concluded that it is "a place for the use of the general public that is supplied for convenience, to satisfy a need, or to provide pleasure or entertainment." Under this definition, a front stoop does not qualify. The stoop's primary function is to give a resident access to the front door. While members of the public may also use the stoop, this function is secondary. A public place of accommodation is not just accessible to the public, it must be primarily used as "a place where the general public is invited to enjoy a good, service, or accommodation being provided." Notably, the authority relied upon by the State involved places owned by businesses.

Including stoops in the definition would not further the legislative intent of the statute, which was to protect the public from increased harm in public places. Given the primarily private nature of the area just outside a front door, to consider it a public place of accommodation would lead to an absurd result. And it would render other clauses of section 12-3.05(c), such as "public way," superfluous. Finally, the court found further support for its conclusion in the fact that the area was part of the apartment's curtilage, affording it heightened privacy protection under constitutional law and undermining the notion that it's a public place.

People v. Castillo, 2022 IL 127894 Defendant was convicted of two counts of aggravated battery arising out of an incident which occurred while he was an inmate at Pontiac Correctional Center. Specifically, it was alleged that defendant knowingly made physical contact of an insulting or provoking nature with a guard and a fellow inmate when he struck each with an unknown liquid substance. The count against the guard was aggravated by virtue of the guard's status as a correctional institution employee, and the count against the inmate was aggravated because it was committed on "public property."

Defendant challenged whether the cell block where the incident occurred was "public property" within the meaning of the aggravated battery statute. Alternatively, defendant argued that the State failed to prove ownership of Pontiac Correctional Center sufficient to satisfy the "public property" element.

While defendant framed the issue as whether the specific cellblock where the battery occurred was public property, the Court found that the actual question was whether Pontiac Correctional Center was public property. The Court concluded that the plain and ordinary meaning of "public property" is property owned by the government, with no additional requirements. In reaching this decision, the Court overruled **People v. Ojeda**, 397 Ill. App. 3d 285 (2d Dist. 2009), which had defined public property as that which is owned by the government *and* accessible to the public.

As to the ownership question, the Court agreed that the State had presented no evidence on the issue, which is an essential element of aggravated battery as charged here. But, Illinois Rule of Evidence 201 allows a court to take judicial notice at any stage of the proceedings, which includes for the first time on appeal. Even where a fact is an element of an offense, a court may take judicial notice where it is not subject to reasonable dispute. The ownership of Pontiac was capable of easy verification, and thus judicial notice was proper. Defendant's convictions were affirmed.

Illinois Appellate Court

People v. Foster, 2022 IL App (2d) 200098 Defendant was charged with armed violence predicated on aggravated battery. The aggravated battery alleged, in part, that the person battered was "on or about ...a public place of accommodation or amusement," specifically inside a Shell Gas Station. On appeal, defendant agreed that the gas station was a public place of accommodation but argued that he was not proved guilty beyond a reasonable doubt because the battery took place in the back office of that gas station. Defendant argued that the office was private, meant for employees only, and not accessible to the public.

While "public place of accommodation" is not defined in the statute, the court has given it broad interpretation in prior cases. Here, the court rejected defendant's argument that the office was not covered by the statute. The office was accessible to the public, even if it was not meant for public use. It was located in the same hallway as the restrooms available to customers, and the door to the office was propped completely open during business hours. Further, adopting defendant's position would undercut the legislature's intent to protect the community from batteries occurring in areas open to the public. Defendant's conviction was affirmed.

People v. Williams, 2020 IL App (4th) 180554 Defendant was proved guilty beyond a reasonable doubt of aggravated battery on a public way. The evidence was that most, if not all, of the altercation took place in the parking lot of a bar, near the sidewalk. The statute does not require that the offense actually occur on the public way. The legislature chose to

use the phrase "on *or about* a public way," consistent with the goal of providing broad protection to public health and safety.

People v. Wells, 2019 IL App (1st) 163247 High school that was part of the Chicago Public School (CPS) system was "public property" for purposes of establishing aggravating factor elevating battery to aggravated battery. A location does not have to be "open to the public" to be public property. It is enough that the property is owned by the government. Regardless, public schools are open to the public, even if access is limited, because they are used to host public functions, not just to educate children. The Appellate Court also noted that it could take judicial notice of CPS website information to establish that high school was public property if necessary.

People v. Ely, 2018 IL App (4th) 150906 Although the trial court erred when it shackled defendant at his bench trial without considering the **Boose** factors outlined in Rule 430, defendant forfeited the error. Defendant alleged first-prong plain error, because the State had to prove that his aggravated battery occurred on or about a public way, and the testimony established that he was about 10 to 15 feet from an alley at the time of the battery.

The Appellate Court agreed that the evidence of this element was closely balanced but refused to find plain error because the first prong requires a showing that the error affected the outcome. The first prong of plain-error review is made up of two parts, both of them essential: (a) the closeness of the evidence and (b) the resulting possibility that the error might have contributed to the unfavorable outcome. The shackling of defendant had no possible effect on the trial court's determination of whether a spot 10 to 15 feet from the alley was "on or about a public way."

The $30 assessment for the Court Appointed Special Advocates Fund is a fine against which defendant is entitled to a *per diem* credit.

People v. Messenger, 2015 IL App (3d) 130581 Under 720 ILCS 5/12-3.05(c), aggravated battery is defined as the commission of a battery other than by discharge of a firearm while the perpetrator or the person battered is on or about a public way, public property, public place of accommodation or amusement, sports venue, or domestic violence shelter. The court found that under the express language of §12-3.05(c), an aggravated battery may occur either in a "public place of accommodation" or on "public property." Where a battery occurred in the common area of the county jail, the fact that the government owned the jail made the premises "public property" within the meaning of §12-3.05(c). The court rejected the argument that property owned by the government is considered "public property" only if it is open to the general public.

Defendant's conviction was affirmed.

People v. Hill, 409 Ill.App.3d 451, 949 N.E.2d 1180 (4th Dist. 2011) Battery is elevated to aggravated battery if the defendant or the person battered is on or about a public way, public property or public place of accommodation or amusement. 720 ILCS 5/12-4(b)(8). The Appellate Court concluded that the housing area of a county jail is "public property" because it is property owned by the public.

The court rejected the reasoning of **People v. Ojeda**, 397 Ill.App.3d 285, 921 N.E.2d 490 (2d Dist. 2009), which held that property is "public" only if it is open to the general public's use. "Nothing indicates the General Assembly meant for the plain and ordinary meaning of 'public property' to be anything other than government-owned property. Moreover, the county jail is property used for the public purpose of housing inmates."

Defendant's conviction for aggravated battery was affirmed.

People v. Ojeda, 397 Ill.App.3d 285, 921 N.E.2d 490 (2d Dist. 2009) One of the circumstances which elevates a simple battery to aggravated battery is that the offense occurred "on or about a public way, public property or public place of accommodation or amusement." (720 ILCS 5/12-4(b)(8)). Whether a public school constitutes "public property" is determined not only on taxpayer funding, but also by the use made of the property. Because public schools are used not only to educate children but also to provide space for public functions, the court concluded that a public school campus constitutes "public property" although some restrictions are placed on the public's use of such facilities.

Defendant's aggravated battery conviction was affirmed.

People v. Lowe, 202 Ill.App.3d 648, 560 N.E.2d 438 (4th Dist. 1990) Defendant was convicted of aggravated battery for committing a battery "on or about a public way." The complainant, a State park official, testified that he parked his truck on a public road and walked onto defendant's farm to discuss truck weight limitations with defendant. Defendant started shoving him; the shoving occurred on both defendant's property and the public way. Defendant testified that the public right of way at the relevant location is 40 feet wide, but he was unsure of the exact demarcation between his property and the public way.

During closing argument, defense counsel argued that the entire incident occurred on defendant's property, while defendant was reasonably removing a trespasser. The prosecutor argued that although the exact boundary line could not be ascertained, such evidence was unnecessary because the State only had to prove the shoving occurred "on or about a public way."

During deliberations, the jury asked for the meaning of "about." Over defense objection, the judge responded that "about" means "in the immediate neighborhood of; near." Thereafter, a guilty verdict was returned.

The word "about" in the above statute is not unconstitutionally vague, and the definition given by the trial judge was a permissible definition. The use of the word "about" in the statute did not deprive defendant of his right to use justifiable force against trespassers to his property. The statute does not deny equal protection on the ground that there is no rational basis for distinguishing between a landowner who removes a trespasser on or about a public way and one who removes a trespasser on other privately owned property.

People v. Logston, 196 Ill.App.3d 96, 553 N.E.2d 88 (4th Dist. 1990) An instruction stating that "a tavern is a place of public amusement" is an incorrect statement of the law. A tavern is a place where alcoholic beverages are sold, and may be either a private, exclusive club or a place open to the public.

People v. Pennington, 172 Ill.App.3d 641, 527 N.E.2d 76 (2d Dist. 1988) A "public way" need not be owned by a public entity. Thus, a sidewalk on privately owned university property was a "public way" where it was accessible to the public.

People v. Murphy, 145 Ill.App.3d 813, 496 N.E.2d 12 (3d Dist. 1986) A privately owned tavern is a "public place of amusement" under the aggravated battery statute. The "terms 'place of public accommodation or amusement' seem to apply generically to places where the public is invited to come into and partake of whatever is being offered therein."

§7-1(h)
Defenses

§7-1(h)(1)
Self-defense

Illinois Supreme Court

People v. Gray, 2017 IL 120958 Self-defense is an affirmative defense, but once it is raised, the State has the burden of proving that defendant did not act in self-defense. Self-defense includes the following elements: (1) threat of unlawful force against defendant; (2) defendant was not the aggressor; (3) imminent danger of harm; (4) use of force was necessary; (5) defendant actually and subjectively believed use of force was necessary; (6) defendant's beliefs were reasonable. If the State negates any of these elements, the defendant's self-defense claim fails.

Defendant argued that he acted in self-defense because he stabbed the victim only after she bit him. The Supreme Court disagreed. Defendant was much larger than the victim and the victim was unarmed. And he admitted that the bite never broke his skin. Under these circumstances, the jury could have reasonably believed that defendant's use of force was unnecessary.

Illinois Appellate Court

People v. Degrave, 2023 IL App (1st) 192479 When a defendant claims self-defense, evidence of a victim's violent and aggressive character may be relevant to show who was the initial aggressor. Under **People v. Lynch**, 104 Ill. 2d 194 (1984), such evidence is admissible for one of two reasons: (1) to explain the defendant's perceptions of the victim's behavior and the reasonableness of his response, or (2) to support the defendant's version of the facts when there are conflicting accounts of what occurred. This second reason is an exception to the general prohibition on propensity evidence. The **Lynch** rule has been codified in Illinois Rule of Evidence 405.

Here, defendant sought to admit testimony and a video regarding a fight between himself and the complainant, his wife, which occurred approximately a month *after* the alleged incident of domestic violence charged in this case. The trial court abused its discretion when it refused to admit the evidence.

The evidence was not admissible for the first reason discussed in **Lynch**. It could not have affected defendant's state of mind at the time of the charged offense because the subsequent incident had not yet occurred. But, evidence of the subsequent incident was relevant and admissible under the second basis identified in **Lynch**. Evidence of the subsequent fight – where defendant's wife was the aggressor and behaved violently toward defendant – was relevant to a determination of what happened during the charged incident given that defendant and his wife had provided conflicting versions of events. While Rule 405(b)(2) references "specific instances of the alleged victim's prior violent conduct," the appellate court held that limiting such evidence to prior incidents would be inconsistent with the spirit of **Lynch**. Further, there is no reason to impose a timing element on character evidence. One's character is revealed by one's actions, regardless of the timing of the acts in question.

The court's error in refusing to admit evidence of the subsequent incident was first-prong plain error. At trial, both defendant and the complainant testified to plausible versions of the incident. And, each had a motive to testify falsely – defendant to avoid conviction and

the complainant to protect her immigration status. While the complainant had facial injuries consistent with her account of the incident, those injuries were also consistent with defendant's claim of self-defense. Under these circumstances, the evidence was closely balanced, and evidence of the subsequent incident could have affected the outcome. The matter was reversed and remanded for a new trial.

People v. Grabow, 2022 IL App (2d) 210151 Defendant was charged with domestic battery for striking his girlfriend in the face when she continued talking on defendant's cell phone after he asked her to give it back to him. On appeal, defendant argued that his trial counsel should have tendered a defense of property instruction. The Appellate Court disagreed and affirmed defendant's conviction.

A defendant is entitled to an instruction on an affirmative defense where it is supported by slight evidence at trial. The decision about which jury instructions to request is generally a matter of trial strategy, but the failure to request an instruction may be grounds for finding ineffective assistance where the instruction was so critical to the defense that its omission denied defendant a fair trial.

To justify the use of force in the defense of property, a defendant must reasonably believe that his personal property is in immediate danger of unlawful trespass or carrying away, and that use of force is necessary to avoid that danger. A defendant may use only the amount of force reasonable under the circumstances. Here, defendant's phone was not in immediate danger of unlawful trespass or carrying away when defendant struck his girlfriend while she was sitting on the couch talking on his phone. And, even if defendant was attempting to retrieve the phone, the use of force was unnecessary and excessive.

As a final matter, the court noted that, as a matter of public policy, the defense-of-property affirmative defense was not intended to be applied to permit a defendant to use force to effectuate the return of property from a domestic partner. Otherwise, the court "would be condoning the use of violent actions in situations that are already quite volatile."

People v. Ammons, 2021 IL App (3d) 150743 During deliberations on a charge of aggravated battery of a police officer, the jury sent out a note inquiring whether a defendant placed under arrest has the right to defend himself against unlawful force. With the parties' agreement, the judge responded that the jury should continue deliberating based on the law already provided (which included a self-defense instruction). Defendant was convicted, and on appeal argued that the court's response was error. The Appellate Court declined to review the issue as plain error since the parties had agreed to the provided response in the trial court. Regardless, there was no error because there was no evidence that the officers used excessive force prior to defendant's alleged acts of resistance. Instead, the evidence showed that defendant resisted the officers from the outset of his interaction with them, before either officer used any physical force at all to place defendant under arrest. Accordingly, defendant was not even entitled to the self-defense instruction that he received.

The trial court did not err by instructing the jury on resisting arrest, either. There was evidence that defendant resisted arrest, and even though he was charged only with aggravated battery, the resisting instruction was relevant to a determination of whether defendant acted without legal justification for purposes of aggravated battery. The court was not required to provide the corresponding issues instruction and verdict form for resisting arrest, however, where defendant did not request a lesser-included offense instruction and, regardless, no rational jury would have acquitted defendant of aggravated battery on the evidence presented at trial.

People v. Cruz, 2021 IL App (1st) 190132 The Appellate Court affirmed defendant's aggravated battery conviction, rejecting his self-defense claim by finding he was the initial aggressor. Although the complainant punched defendant in the face several times before defendant stabbed him, the blows were preceded by aggressive acts by the defendant: threatening to fight the complainant, brandishing the knife, and approaching complainant as he stood on a city bus. These acts were sufficient to prove initial aggression.

An argument may have been made that the roles had reversed at the time of the punches, such that complainant took on the role of aggressor and defendant acted reasonably by stabbing the complainant to avoid serious bodily injury. But defendant did not pursue the argument or cite the necessary authority on appeal.

Finally, while counsel acted unreasonably in failing to request a **Lynch** instruction, IPI 3.12X, so that the jury could consider the complainant's prior assault conviction as propensity evidence for purposes of evaluating defendant's claim of self-defense, the Appellate Court did not find sufficient prejudice to justify a new trial. After all, the complainant in this case did initiate the first physical contact, and the only question was whether defendant's actions leading up to this contact constituted initial aggression. The complainant's propensity for assault did not bear on this aspect of the case.

People v. Wiggen, 2021 IL App (3d) 180486 The Appellate Court criticized the trial court's finding that the responding officer was more credible than defendant, the victim, and other eyewitnesses simply because the officer had "no axe to grind" and was the only "independent" witness to testify. The Appellate Court noted that "[s]uch a cursory assessment of the evidence runs the risk of indiscriminately elevating the testimony of responding officers over that of witnesses whose perception or recollection may be more accurate even though they are interested in the outcome."

The court affirmed defendant's conviction of domestic battery, however, rejecting her claim that her actions were excused under the affirmative defense of defense of dwelling. Defense of dwelling requires a reasonable belief both that the victim's entry to the dwelling is unlawful and that use of force is necessary to prevent or terminate that entry. Here, defendant's own testimony was that she did not use force against the victim, her ex-boyfriend, and that she only made contact with him as she tripped and fell. Defendant made no claim that she was attempting to remove the victim from her home. And, the victim waited to enter the home in an effort to retrieve his dog until after the police arrived. The officer's presence made it difficult to conclude that defendant reasonably believed force was necessary.

People v. O'Neal, 2021 IL App (4th) 170682 The trial court did not err in denying defendant a self-defense instruction. While defendant testified that he shot the complainant in self-defense, the State did not charge him with any crimes predicated on the shooting itself. Rather, the State charged only weapons offenses – unlawful use of a weapon by a felon, and armed habitual criminal.

Whether self-defense is an available defense is a fact-based inquiry driven by consideration of the charges and the specific factual circumstances surrounding the offenses. Here, a self-defense instruction would have been inappropriate and confusing. Defendant's weapon possession was not intertwined with his claimed act of self-defense; he did not grab a gun in reaction to aggression on the part of the complainant. Rather, defendant already possessed the gun prior to engaging in the altercation.

People v Olaska, 2017 IL App (2d) 150567 Defendant stabbed three people in a bar; one of those people (Wild) died from his injuries and the other two (Hayes and Castaneda) survived.

Hayes was stabbed while he was in a booth with defendant. Wild was stabbed when he tried to stop defendant who had exited the booth and headed toward the door. And, Castaneda, who was a bouncer at the bar, was stabbed when he intervened and disarmed defendant. Defendant claimed self-defense, while the State's theory was that defendant had grown frustrated and belligerent after a woman at the bar had spurned his advances. The jury returned verdicts of guilty of intentional, knowing, and felony murder of Wild (predicated on aggravated battery of Hayes) and of unlawful use of a weapon (UUW) but not guilty of attempt murder of Hayes and Castaneda.

While there were varying witness accounts of the incident, the testimony and surveillance videos were sufficient to prove beyond a reasonable doubt that defendant was not acting in self-defense. Defendant's own testimony was that he told Hayes to "f— off" while seated across from him in a booth at the bar. The video showed that defendant calmly took a drink with one hand before stabbing Hayes with the other. Defendant could have left the booth or could have displayed his knife as a warning, but he did not make any effort to remove himself from the situation. Further, the court could have properly rejected defendant's claim of self-defense to the knowing murder of Wild based solely on the evidence that defendant stabbed Wild while he was escaping the aggravated battery of Hayes.

People v. Evans, 2018 IL App (4th) 160686 At defendant's battery trial, the court did not err in restricting evidence of the complainant's history of combative behavior. That evidence could not be used to support defendant's claim that he perceived a need for self defense where the incidents in question were unknown to defendant at the time of the offense because they occurred *after* the offense. While **People v. Lynch**, 104 Ill. 2d 194 (1984), allows introduction of evidence showing a victim's aggressive and violent character, regardless of whether defendant knew about it at the time of the offense, the Appellate Court declined to extend Lynch to evidence of incidents occurring after the charged offense.

In re Vuk R., 2013 IL App (1st) 132506 Where the defense introduces evidence of self-defense, the State has the burden of disproving this affirmative defense beyond a reasonable doubt.

Because the trial judge stated that he disbelieved the testimony of all of the witnesses, the State did not sustain its burden of disproving self-defense.

People v. Brown, 406 Ill.App.3d 1068, 952 N.E.2d 32 (4th Dist. 2011) A person is entitled to act in self-defense where: (1) he or she is threatened with unlawful force, (2) the danger of harm is imminent, (3) the use of force is necessary, and (4) the person threatened is not the aggressor. It is the State's burden to prove beyond a reasonable doubt that the defendant did not act in self-defense. However, the trier of fact is free to reject a self-defense claim due to the improbability of the defendant's account, the circumstances of the crime, the testimony of the witnesses, and witness credibility.

The court rejected defendant's argument that the evidence was insufficient to disprove self-defense. The State presented evidence that the two decedents fled defendant's apartment and returned only because defendant fired additional shots at the decedents' brother. In addition, defendant fired at least 14 times resulting in 11 gunshot wounds to four victims, four of the five wounds on the decedents were fired from distances of greater than two feet, and the locations of the victim's wounds were inconsistent with defendant's testimony. Because conflicting evidence was presented concerning whether the defendant was the

aggressor and there was a basis in the evidence for the jury to find that he was the aggressor and did not act in self-defense, the evidence supported the verdict.

The court also refused to find justified force in defense of a dwelling, which requires: (1) the victim's entry to a dwelling is made in a "violent, riotous, or tumultuous manner," and (2) the defendant has an objective belief that deadly force is necessary to prevent an assault on himself or another in the dwelling. The evidence showed that defendant did not act in defense of dwelling where there was evidence on which the jury could have found that none of the three victims was armed, the victims were shot outside defendant's dwelling as they were fleeing, and defendant became the aggressor when he pursued the three persons when they left his apartment and shot them in the hallway.

People v. Sims, 374 Ill.App.3d 427, 871 N.E.2d 153 (3d Dist. 2007) An arresting officer may use force that is reasonably necessary to effect an arrest, and need not retreat in the face of resistance. (720 ILCS 5/7-5(a)). An arrestee has no right to forcibly resist an arrest by a known police officer, even if the arrest is unlawful, unless the officer uses excessive force. An officer's use of excessive force to conduct an arrest authorizes self-defense on the part of the arrestee.

A self-defense instruction is required at a trial for resisting arrest or battery where defendant presents some evidence that the arresting officer used excessive force.

Here, the evidence showed that defendant struggled with the arresting officers and kicked one officer. Defendant initially submitted to being handcuffed and was placed in a squad car without incident. Defendant testified that he did not use force until one of the officers placed his hands on defendant's girlfriend, who was holding a child, and another officer began to beat defendant when defendant objected to the mistreatment of his girlfriend. Photographs taken at booking showed that defendant's face was swollen and covered with cuts, scrapes and bruises.

Because defendant admitted to using force by stating that he was "pretty feisty" and "struggled" with the officers, the officers testified that defendant resisted them, and defendant specifically testified that he was afraid during the encounter, there was a basis in the evidence for a claim that the officers used excessive. A self-defense instruction should have been given.

People v. Francis, 307 Ill.App.3d 1013, 719 N.E.2d 335 (4th Dist. 1999) Self-defense is available in aggravated assault cases where defendant "displays," but does not "use," a dangerous weapon.

People v. McGrath, 193 Ill.App.3d 12, 549 N.E.2d 843 (1st Dist. 1989) Convictions for aggravated battery and armed violence reversed where the evidence showed an earlier altercation between the two defendants and six other men, those men went to defendants' apartment complex "to retaliate," and defendant wounded two of the six men only after shouting that he had a weapon and firing two warning shots into the air. Defendants acted reasonably under the circumstances, because they were outnumbered by the attackers, used only such force necessary to repel the attackers and protect themselves, and stopped fighting when the six men broke off the attack.

People v. Christiansen, 96 Ill.App.3d 540, 421 N.E.2d 570 (2d Dist. 1981) Defendant will not be allowed to claim self-defense when the perilous situation with which he was confronted arose from his own aggression.

People v. Gates, 14 Ill.App.3d 367, 302 N.E.2d 470 (1st Dist. 1973) At aggravated battery trial, it was error to prohibit defendant, who raised self-defense, from testifying that victim was about to attack him with a razor blade.

§7-1(h)(2)
Parental Discipline

Illinois Appellate Court

People v. Royster, 2018 IL App (3d) 160306 In giving non-IPI instructions on the parental-discipline affirmative defense to aggravated battery and domestic battery, the court did not err in requiring the jury to find the corporal punishment both reasonable and necessary. Much of the authority explicitly requires a necessity showing, and while some authority mentioned only reasonableness, this authority implicitly acknowledged a necessity requirement. Nor did instructions requiring the State to prove the conduct was not either reasonable or necessary conflict with the instruction requiring the defendant to prove his conduct was both reasonable and necessary; the former is the proper inverse of the latter.

People v. Green, 2011 IL App (2d) 091123 The right to privacy implicit in the United States Constitution gives a parent the right to care for, control, and discipline her children. However, the right to privacy in disciplining one's children must be balanced against the State's legitimate interest in preventing and deterring the mistreatment of children. Thus, although the right to discipline one's children encompasses the right to impose reasonable corporal punishment, a parent who inflicts unreasonable corporal punishment may be prosecuted for cruelty to children.

A parent charged with a criminal offense, and who claims that her actions were within her right to discipline her child, has raised a nonstatutory affirmative defense. The State has the burden to disprove an affirmative defense as well as prove all of the elements of the charged offense. Thus, to prove defendant guilty of domestic battery of her child, the State was required to prove beyond a reasonable doubt that she intentionally or knowingly without legal justification made physical contact of an insulting or provoking nature with her son, and that her actions were unreasonable.

The court rejected defendant's argument that a parent can be convicted of domestic battery for imposing unreasonable corporal punishment only if the child suffered bodily harm resulting from the parent's conduct. The degree of injury inflicted upon a child is but one factor to be used in evaluating whether discipline was reasonable. The court should also consider factors such as the likelihood that future punishment might be more injurious, the likelihood that the child will suffer psychological harm from the discipline, and whether the parent was calmly attempting to discipline the child or was lashing out in anger. Both the reasonableness of and the necessity for the punishment is determined under the circumstances of each case.

Here, the State proved the defendant guilty of domestic battery beyond a reasonable doubt where she struck her 10-year-old son with several hard blows on his torso and legs with a snow brush. The child had his arms up and was crying and trying to defend himself, and a witness went to the parking lot and pleaded with the defendant to stop striking the boy. Despite the pleas, the defendant continued striking her son until bystanders called police, at which point the defendant drove away. As she left, the son stuck his hands out of the vehicle, looked at the witnesses, and flexed his fingers as if asking for help.

Under these circumstances, the evidence was sufficient for a reasonable trier of fact to find that defendant's conduct exceeded the bounds of reasonableness..

§7-1(h)(3)
Consent

Illinois Appellate Court

People v. Lamonica, 2021 IL App (2d) 200136 Defendant was found guilty of aggravated criminal sexual assault under section 11-1.30(a)(2). To prove defendant guilty under this subsection, the State was required to prove that defendant committed an act of sexual penetration against the victim by the use of force and caused bodily harm. The Appellate Court found the evidence of "force" insufficient and reversed the conviction.

The complainant L.L. testified that defendant took her to a restaurant where she drank several glasses of wine, to the point of severe intoxication. She admitted that she invited defendant back to her apartment, with the assumption that they would engage in sexual intercourse. When they arrived at the apartment, L.L. took her dogs outside and fell down. The next thing she remembered was laying in her bed naked with defendant on top of her, digitally penetrating her. She told defendant to stop because it hurt, and after she agreed to oral copulation, they engaged in vaginal sex. The sex was so painful that L.L. began bawling, and told him it was painful, although she did not tell him to stop because she thought it would be futile. L.L. moved away, and told defendant to stop because he was hurting her. They argued, and she saw a vein pop in his neck, suggesting he was very angry and making her believe he would force himself on her or worse. At that point L.L. laid down and he again penetrated her vaginally. L.L. told him it hurt and told him to stop, eventually shoving him off and ending the encounter.

The Appellate Court rejected the argument that defendant used force during the digital penetration, or during either act of vaginal intercourse. First, defendant's act of forcing his fingers into L.L.'s vagina did not amount to the force necessary to prove criminal sexual assault. Force does not include the force inherent to the act of physical penetration; instead, there must be some kind of physical compulsion, or threat thereof, that causes the victim to submit to the penetration against their will. Regarding the first act of vaginal penetration, L.L. never testified that this act began due to force or the threat of force, only that it was painful and that she eventually moved away rather than telling him to stop. With regard to the second act of vaginal penetration, defendant did not threaten L.L., and her subjective interpretation of defendant's neck vein as a threat was insufficient to qualify as an actual threat. Under the definition provided in section 11-0.1, an actual threat must be followed by a reasonable belief that the accused will act upon the threat. Here, there was no evidence that defendant threatened L.L. or that any perceived threat was reasonable.

The State argued that L.L. withdrew her consent when she told defendant, "stop, it hurts," near the end of the encounter. But the Appellate Court found that defendant did not prevent her from disengaging. When a defendant raises the affirmative defense of consent in an aggravated criminal sexual assault trial, the State has a burden of proof beyond a reasonable doubt on the issue of consent as well as on the issue of force. A person can passively force someone to continue with an act of sexual penetration by using one's bodily inertia to prevent the victim from disengaging, but here, defendant's bodily inertia did not prevent L.L. from disengaging. Rather, L.L. was able to push defendant off her, ending the penetration.

Despite reversing defendant's conviction for insufficient evidence, the court went on to hold that the trial court erred in admitting other-crimes evidence. At trial, three witnesses testified about a prior sexual assault. The State used this testimony to prove propensity under section 115-7.3 and as evidence of intent and lack of mistake. In that assault, E.S. alleged that defendant took her to a restaurant where she drank too much wine and ended up with defendant in her apartment. She further alleged that defendant forced himself on her in the morning. The court found E.S.'s unproven allegation was factually dissimilar to the charged conduct; other than defendant inviting E.S. and L.L. to wine bars, the two incidents bear little resemblance to one another in any significant way. Thus, the probative value was low and no reasonable person could conclude that the probative value outweighed the prejudicial effect.

People v. Ford, 2015 IL App (3d) 130810 The victim's consent is generally not a defense to a criminal prosecution. Criminal offenses affect the general public, at least indirectly, and consequently cannot be licensed by the individual directly harmed. For the offense of battery, consent is a defense to "a minor sort of offensive touching," medical procedures, and contact incident to sports. It is generally not a defense to "hard blows and more serious injuries."

Here the victim gave defendant permission to place him in a choke hold until he passed out. Defendant choked the victim until he lost consciousness, had a seizure, and awoke with a nosebleed. Defendant was convicted of aggravated battery. On appeal, defendant argued that his conviction should be reversed because the victim consented to the choke hold. Defendant argued that the general prohibition against consent as a defense should not apply in this case since the degree of harm was not so significant that society's interest in protecting the public outweighed an individual's right to engage in physical activity "during which some pain is anticipated."

The court rejected defendant's argument and affirmed. Although the court agreed that the harm in this case was not as great as many other aggravated battery cases, the societal interest in deterring people from participating in "these types of activities" justified overriding an individual's right to consent. In particular, the court referenced a Centers for Disease Control report describing numerous deaths among youth linked to choking games. Accordingly, the court concluded that consent was not a defense to the activity involved in this case.

§7-1(i)
Charging the Offense

Illinois Appellate Court

People v. Moman, 2014 IL App (1st) 130088 A defendant has a due process right to notice of the State's charges, and may not be convicted of an offense the State has not charged. But, a defendant may be convicted of an uncharged offense if it is a lesser-included offense of the charged offense. To determine whether an uncharged offense is a lesser-included offense, Illinois courts employ the charging instrument test. Under this test, the court must determine whether: (1) the description in the charging instrument contains a "broad foundation or main outline" of the lesser offense; and (2) the trial evidence rationally supports a conviction of the lesser offense.

Here, the State charged defendant with aggravated battery. The charge alleged that defendant caused bodily harm to complainant knowing that he was a peace officer performing his official duties. The trial court found defendant guilty of obstructing a peace officer, which

is defined as knowingly obstructing the performance of a known peace officer of any authorized act within his official capacity. 720 ILCS 5/31-1(a).

The charging instrument plainly stated the "broad foundation or main outline" of obstructing a peace officer. It alleged that defendant battered the officer while he was performing his official duties, claims which sufficiently mirror the elements of obstructing a peace officer. Although the indictment did not use the identical language of the statute defining the lesser offense, it stated facts from which the elements could be reasonably inferred. In particular, the allegation that the officer was performing his official duties was sufficient to notify defendant of the element that the officer was engaged in an authorized act within his official capacity.

The trial evidence also rationally supported a conviction on the lesser offense. It showed that defendant repeatedly kicked the officer while he was placing defendant in restraints. This evidence supports a finding that defendant obstructed a peace officer while he performed an authorized act.

People v. Sanchez, 2014 IL App (1st) 120514 Although a defendant generally may not be convicted of an uncharged offense, a reviewing court may enter judgment on a lesser-included offense even where the lesser offense was not charged at trial. Courts use the charging instrument approach to determine whether to enter judgment on the lesser offense. Under this test, the court first examines the indictment and determines whether the factual allegations provide a broad foundation or main outline of the lesser offense. The court then considers whether the trial evidence was sufficient to uphold conviction on the lesser offense.

Here, defendant was charged with aggravated battery of a peace officer but convicted by a jury of resisting a peace officer. Aggravated battery of a peace officer is defined as striking a person known to be an officer engaged in the performance of his duties. 720 ILCS 5/12-4(b)(1). Resisting a peace officer is defined as knowingly resisting or obstructing the performance of any authorized act of a known officer. 720 ILCS 5/31-1(a). The information charged that defendant intentionally and knowingly caused bodily harm to a police officer while the officer was performing his official duties.

Since both offenses require that a defendant act with knowledge that he is striking or resisting an officer acting in his official capacity, the information charging aggravated battery broadly defined the offense of resisting a peace officer.

The evidence also supported the conviction for resisting a peace officer. Although the officer was not attempting to arrest defendant when he was struck, he was still engaged in the authorized act of trying to interview a potential witness. The State's witnesses testified that the police legally entered the home to interview defendant. The officers woke defendant up and identified themselves before defendant jumped up and punched one of the officers. Based on this evidence, a reasonable jury could have concluded that the defendant resisted an authorized act of the officer when he punched him in the chest.

Illinois Supreme Court

People v. Meor, 233 Ill.2d 465, 910 N.E.2d 575 (2009) Battery is a lesser included offense of criminal sexual abuse based on an act of sexual penetration. Whether an offense is an "included offense" is determined under the "charging instrument" approach. A lesser offense is "included" if the factual description of the charged offense broadly describes conduct necessary to commit the lesser offense, and any elements not explicitly set forth in the indictment can reasonably be inferred. Battery requires an allegation that the defendant intentionally or knowingly made physical contact "of an insulting or provoking nature." A

non-consensual act of sexual penetration is, as a matter of law, inherently insulting. Thus, the complaint on its face broadly alleges intentional contact of an insulting nature, the conduct necessary to constitute battery.

Here, the trial court did not err by refusing to convict defendant of battery, however, because there was no disputed issue of fact concerning criminal sexual abuse that was not required to convict of battery. Because the act of sexual penetration was required for both criminal sexual abuse and battery, defendant could have been convicted of criminal sexual abuse based on the same facts required for battery.

People v. Hale, 77 Ill.2d 114, 395 N.E.2d 929 (1979) An information alleging that defendant knowingly "made physical contact of an insulting or provoking nature" with a peace officer is sufficient to charge aggravated battery. When charging "contact of an insulting or provoking nature" against a peace officer, it is not necessary to allege or prove that the battery resulted in bodily harm. See also, People v. Jones, 79 Ill.2d 269, 403 N.E.2d 224 (1980).

People v. Lutz, 73 Ill.2d 204, 383 N.E.2d 171 (1978) A two-count aggravated battery indictment was fatally defective because count I, under 720 ILCS 5/12-4(b)(1), failed to allege either that the physical contact was of an insulting or provoking nature or caused bodily harm, and count II, under 720 ILCS 5/12-4(b)(6), failed to allege that the battery caused "bodily harm" to the police officer.

People v. Harvey, 53 Ill.2d 585, 294 N.E.2d 269 (1973) Aggravated battery indictment was not defective for failing to allege "without legal justification."

Illinois Appellate Court

People v. Wrencher, 2015 IL App (4th) 130522 The Appellate Court held that defendant, who was charged with two counts of aggravated battery of a police officer, was not entitled to a lesser-included jury instruction on the offense of resisting a peace officer. The offense of resisting a peace officer has two elements: (1) the defendant knowingly resisted or obstructed a peace officer in the performance of any authorized act; and (2) the defendant knew the person he resisted or obstructed was a peace officer. 720 ILCS 5/31-1(a). To determine whether resisting was a lesser-included offense of aggravated battery, the Court employed the charging instrument approach.

The first count of aggravated battery alleged that defendant knowing caused bodily harm to the officer by digging his fingernails into the officer's hand, knowing he was a peace officer engaged in the execution of his official duties. 720 ILCS 5/12-4(b)(18). The Court held that the elements of resisting arrest could be reasonably inferred from the language of this count. Although the count did not expressly allege that defendant resisted or obstructed the officer, causing bodily harm increased the difficulty of the officer's actions, and thereby caused resistence or obstruction.

But the Court found that a rational jury could not have found that defendant's act of causing bodily harm could have constituted resisting but not aggravated battery. By knowingly digging his fingernails into the officer's hand, the only charged act of resistance, defendant necessarily committed aggravated battery. Thus it would have been rationally impossible to convict defendant of resisting but acquit him of aggravated battery.

The second count of aggravated battery alleged that defendant knowingly made contact of an insulting or provoking nature by spitting blood on the officer's hand, knowing that he was a peace officer engaged in the execution of his official duties. 720 ILCS 5/12-

4(b)(18). The Court held that the elements of resisting arrest could not be reasonably inferred from the language of this count. Spitting is an act of contempt, not an act of resistance or obstruction. It thus did not show that defendant knew he would obstruct the officer by spitting blood. Instead, it only showed that he knew the officer would be disgusted and provoked.

People v. Smit, 312 Ill.App.3d 150, 726 N.E.2d 62 (1st Dist. 2000) An assault charge alleging that defendant directed a laser pointer into a house and onto the person of the complainant, thereby placing him "in reasonable apprehension of receiving a battery" was sufficient to allege an offense.

The court rejected the notion that an assault occurs only where defendant has the "present ability" to commit a battery. "Present ability" was removed as an element of assault in 1961, when the present Criminal Code was codified.

An assault occurs where, without lawful authority, defendant "engages in conduct which places another in reasonable apprehension of receiving a battery." A reasonable person might believe that a laser pointed at his body indicates that he is in "someone's gunsight." Furthermore, the Illinois legislature has enacted statutes concerning the acts of flashing a laser gunsight on or near a person (720 ILCS 5/12-2(a-5) (P.A. 91-672, eff. January 1, 2000)) and aiming a laser pointer at a police officer (720 ILCS 5/24.6-20 (P.A. 91-252)).

In addition, because laser pointers can damage vision, a person at whom a laser pointer is flashed may suffer an assault because he is placed in reasonable apprehension that his eyesight is about to be damaged.

People v. Franklin, 225 Ill.App.3d 948, 588 N.E.2d 398 (3d Dist. 1992) Defendant may be convicted on basis of "transferred intent" doctrine even if State does not specifically allege that theory in the charging instrument.

People v. Luttrell, 134 Ill.App.3d 328, 480 N.E.2d 194 (4th Dist. 1985) Where an indictment charges an offense against persons or property, the name of the person or property injured must be stated if it is known. In the instant case, the indictment purported to charge an offense against "a City of El Paso Police Officer," but failed to state the name of the officer. Thus, the trial court erred by denying defendant's motion in arrest of judgment.

People v. Graves, 107 Ill.App.3d 449, 437 N.E.2d 866 (1st Dist. 1982) Defendant was charged with aggravated battery "in that he, in committing a battery on (the victim), by striking him on the head with a metal object, used a deadly weapon in violation of Ch. 38, ¶12-4(b)(1)."

In order to convict under ¶12-4(b)(1), it is necessary to prove one of the alternative methods of committing aggravated battery (that the physical contact was either of an insulting or provoking nature or caused bodily harm). Since the information failed to allege either type of physical contact, it was fatally defective.

People v. Haltom, 37 Ill.App.3d 1059, 347 N.E.2d 502 (1st Dist. 1976) Indictment purporting to charge aggravated battery of police officer was fatally defective for failing to allege any physical harm. The indictment also failed to charge simple battery, because it failed to allege either of the alternate elements of battery - physical contact causing bodily harm or physical contact of an insulting or provoking nature.

People v. Bailey, 10 Ill.App.3d 191, 293 N.E.2d 186 (2d Dist. 1973) Aggravated battery upon a police officer indictment was insufficient since it failed to allege that officer was engaged in the execution of his official duties.

People v. Tucker, 15 Ill.App.3d 1003, 305 N.E.2d 676 (1st Dist. 1973) Aggravated battery complaint was not fatally defective for failing to allege that defendant acted "intentionally or knowingly."

§7-2
Stalking/Orders of Protection

§7-2(a)
Generally

United States Supreme Court

Counterman v. Colorado, 600 U.S. 66, 143 S. Ct. 2106 Defendant sent thousands of Facebook messages to a local singer and musician whom he had never met. Some of the messages expressed anger and envisaged violent harm befalling the woman and others suggested defendant was surveilling her. The woman said the messages made her fearful, caused her to lose sleep, and resulted in her altering her daily routines and even canceling some of her performances. Based on those messages, defendant was charged under a Colorado statute making it unlawful "to repeatedly make any form of communication with another person" in "a manner that would cause a reasonable person to suffer serious emotional distress" and does, in fact, cause such distress. Defendant challenged the charge on First Amendment grounds, arguing that the messages were not "true threats" and therefore could not form the basis for a criminal prosecution. Specifically, defendant argued that the State had to prove that he was aware of the threatening nature of his statements to impose criminal liability and could not meet that burden here.

The Supreme Court confirmed that the First Amendment requires proof that the defendant had some subjective understanding of the threatening nature of his statements. But, the Court held that defendant's subjective understanding need not rise to the level of knowledge. Instead, it is enough that the State prove recklessness, the same standard applicable in defamation cases. In the context of true threats, that means the State must prove that the defendant "consciously disregarded a substantial risk that his communications would be viewed as threatening violence." The Court noted that this standard strikes the right balance between allowing for protected speech and enforcing laws against true threats. Because Counterman was prosecuted under an objective standard, where the State had to show only that a reasonable person would understand the statements as threats without any regard to whether defendant was aware his statements could be understood that way, his conviction violated the First Amendment. The Supreme Court therefore vacated that conviction and remanded for further proceedings.

The dissent would have affirmed. Because true threats are unprotected speech, the dissent concluded that an objective standard is adequate. By applying a subjective standard, the dissent concluded that the majority unjustifiably granted true threats preferential treatment over other forms of unprotected speech like fighting words and obscenity.

Illinois Appellate Court

People v. Mortensen, 2019 IL App (2d) 170020 Defendant was proved guilty beyond a reasonable doubt of violating a condition of an order of protection which prohibited him from coming within 1,000 feet of the protected party's residence. The evidence showed that defendant left cupcakes on the doorstep of the residence but did not establish whether the protected party was present at the time. By the condition's plain language, the State was not required to prove that the protected party was home, only that defendant came within 1,000 feet of the residence. And, although the numbering of the conditions (also called remedies) in the order of protection did not correspond with the numbering of permissible remedies set out by statute (750 ILCS 60/214(b)), the statutory provision requiring consistent numbering (750 ILCS 60/221) was directory, not mandatory, and therefore failure to comply did not render the condition invalid.

People v. Gabriel, 2014 IL App (2d) 130507 An order of protection required that defendant: (1) stay at least 1000 feet from the petitioner's residence and school, and (2) refrain from entering or remaining at the College of DuPage while the petitioner was present. Defendant was arrested as he was leaving the campus of the College of DuPage. No evidence was presented that the petitioner was on the campus that day. The Appellate Court reversed, finding that the evidence was insufficient to establish that defendant knowingly violated the order of protection.

The Illinois Domestic Violence Act provides that an order of protection may require the respondent to "stay away from petitioner . . . or prohibit [the] respondent from entering or remaining present at petitioner's school, place of employment, or other specified places at times when petitioner is present." 750 ILCS 60/214(b)(3). Although the order of protection in this case was ambiguous, the court assumed that the trial judge intended to enter an order that complied with the statute. Because the statute would not authorize an order that precluded defendant from entering the campus when the petitioner was not there, the trial court's interpretation would result in an order of protection that was beyond the scope of the statute. In the absence of any evidence that the petitioner was on campus at the time in question, the evidence was insufficient to show that the order of protection was violated.

In the course of its opinion, the court noted that the order of protection utilized a standard form order that is used throughout the State. "To avoid further confusion on the part of courts, law enforcement officials, and especially the members of the public who may in the future obtain or be subjected to orders under the Act, we advise that the form order be amended as needed."

The court also noted a conflict in authority concerning whether ambiguous orders of protection should be construed in the defendant's favor. The court declined to decide this issue, finding that the trial court's interpretation was improper no matter what standard was used.

People v. Hale, 2012 IL App (4th) 100949 A person commits the offense of threatening a public official when that person knowingly and willfully delivers or conveys, directly or indirectly, to a public official by any means a communication containing a threat that would place the public official or a member of his or her immediate family in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint. 720 ILCS 5/12-9(a)(1)(i). A "public official" includes a law enforcement officer. 720 ILCS 5/12-9(b)(1). When the threat is made to a law enforcement officer, it "must contain specific facts indicative of a unique threat to the person, family or property of the officer and not a generalized threat of harm." 720 ILCS 5/12-9(a-5).

Defendant was charged with threatening a public official, a correctional officer, or his family by stating that "she knew where we lived and slept and she would kill us when she got out and that she would have our blood on her hands." The officer was an employee of the sheriff's department and thus was a law enforcement officer. At trial, the jury was not instructed in accord with the statute that because the threat was to a law enforcement officer, the jury had to additionally find that the threat contained specific facts of a unique threat and not a generalized threat of harm.

The omission of this element from the instruction was a clear and obvious error that undermined the fairness of defendant's trial and challenged the integrity of the judicial process. The court reversed and remanded for a new trial.

People v. Hinton, 402 Ill.App.3d 181, 931 N.E.2d 769 (3d Dist. 2010) Under 720 ILCS 5/12-30(a)(2), a person commits the offense of violating an order of protection when he commits an act prohibited by a valid order of protection after obtaining "actual knowledge" of the contents of the order. Under 750 ILCS 60/223(d)(4), "actual knowledge" can be shown by service, notice, or any other means demonstrating actual knowledge of the contents of the order. A conviction for violating an order of protection requires actual knowledge of the contents of the order; constructive knowledge is insufficient.

Because the State failed to present evidence that defendant had actual notice, the court reversed defendant's conviction for violating an order of protection. The State presented evidence that: (1) defendant was personally served with an emergency order of protection while he was incarcerated in the Will County Jail, (2) the emergency order indicated that a hearing on a plenary order of protection would be held approximately three weeks later, (3) the order indicated that a plenary order could be entered by default if defendant failed to appear, and (4) a plenary order of protection was granted at that hearing.

However, defendant was still incarcerated on the date of the hearing, and the State failed to show that he was taken to court or informed of what had transpired. "The State had the burden to present some evidence from which the jury could find that the defendant was aware and conscious of the order of protection, i.e., that he had actual knowledge."

People v. Strawbridge, 404 Ill.App.3d 460, 935 N.E.2d 1104 (2d Dist. 2010) Defendant was convicted of aggravated stalking for committing stalking while an order of protection was in effect. To prove stalking, the State was required to prove that defendant: (1) put the complainant under surveillance on at least two occasions, and (2) placed the complainant in reasonable apprehension of future confinement or restraint. Although 720 ILCS 5/12-7.3(d) defines "surveillance" as remaining present outside a location occupied by the complainant, it is not required that the defendant remain for a specified period of time.

The court concluded that the State proved aggravating stalking beyond a reasonable doubt where it proved that: (1) an order of protection was in effect, and (2) on more than one occasion defendant came to the complainant's school and left only when the complainant went to report defendant's presence to a gym teacher. Under these circumstances, a reasonable person in the complainant's position would reasonably fear that she was at risk of future confinement or restraint.

People v. Davit, 366 Ill.App.3d 522, 851 N.E.2d 924 (2d Dist. 2006) The court reversed defendant's conviction of violating an order of protection, which provided that the defendant "shall not enter or remain in the household of premises" located at a specified address. The phrase "in the household premises" was ambiguous, and under the principle of lenity, defendant's conduct – remaining on the driveway after returning his daughter to his ex-wife's

home – was insufficient to convict because it could reasonably be interpreted as either prohibiting entry into defendant's ex-wife's house or prohibiting defendant's presence anywhere on the real property where the house stood. Also, the court rejected the State's argument that the conviction could be affirmed based on a separate section of the order of protection, which required defendant to "stay away" from his ex-wife and minor children, where defendant was not charged with violating that provision and that provision contained an exception for defendant to visit his children.

People v. Muniz, 354 Ill.App.3d 392, 820 N.E.2d 101 (1st Dist. 2004) For purposes of the offense of threatening a public official, "public official" is defined as a person:

who is elected to office in accordance with a statute or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions or in the case of an elective office any person who has filed the required documents for nominations or election to such office.

The First Deputy Commissioner of the Chicago Public Library is not a "public official" within the meaning of the statute, because the position of First Deputy Commissioner is not created or defined by statute.

People v. Nakajima, 294 Ill.App.3d 809, 691 N.E.2d 153 (4th Dist. 1998) Although the stalking statute requires two acts of following or surveilling and two incidents of reasonable apprehension, such apprehension need not stem from the accused's acts of following or surveillance. Instead, "a showing that the victim's fears arose apart and separate from the requisite acts of following and surveillance would be sufficient." The trier of fact may determine whether "a sufficient temporal proximity exists between the acts of following and surveillance and the victim's apprehension. . ."

In addition, a stalking victim need not expressly testify that she was apprehensive of the conduct specified in the statute ("immediate or future bodily harm, sexual assault, confinement or restraint"). Whether the complainant was placed in reasonable apprehension is to be judged by an objective standard, and "the trier of fact may reasonably infer such apprehension from the facts and circumstances of the case."

People v. Daniel, 283 Ill.App.3d 1003, 670 N.E.2d 861 (1st Dist. 1996) Acts of surveillance can occur inside a building if defendant remains in "a separate portion of a large structure." (See **People v. Holt**, 271 Ill.App.3d 1016, 649 N.E.2d 571 (3d Dist. 1995); **People v. Sowewimo**, 276 Ill.App.3d 330, 657 N.E.2d 1047 (1st Dist. 1995)). A teller's booth surrounded by bulletproof glass "was sufficiently distinct from the rest of the currency exchange so as to bring defendant's conduct [of threatening the complainant from outside the booth] within the . . . definition of surveillance."

The stalking statute does not require a minimum amount of time that one must remain outside a building to conduct an act of "surveillance." Thus, where defendant remained "in the vicinity of the currency exchange long enough to carry through on one of his threats by committing criminal damage to property," his conduct qualified as an act of surveillance.

People v. Soto, 277 Ill.App.3d 433, 660 N.E.2d 990 (1st Dist. 1995) The State failed to prove a prior threat beyond a reasonable doubt where it merely introduced a previously-entered order of protection. The order did not specify that it had been entered due to a threat by

defendant; furthermore, because orders of protection may be entered upon proof by a mere preponderance of the evidence, the order would not be sufficient to establish an element of the offense even if it was based on a threat.

People v. Sowewimo, 276 Ill.App.3d 330, 657 N.E.2d 1047 (1st Dist. 1995) Evidence was sufficient to establish two acts of surveillance where defendant waited outside the complainant's place of employment until police took him away, and on a second occasion confined the complainant to the lunchroom.

§7-2(b)
Constitutionality

Illinois Supreme Court

People v. DeLeon, 2020 IL 124744 725 ILCS 5/112A-11.5, which provides for issuance of a civil no-contact order based solely on an individual's having been charged with a crime involving domestic violence or sexual assault, was upheld against a due process challenge.

Pursuant to **Medina v. California**, 505 U.S. 437 (1992), it is within the power of the State to regulate procedures for carrying out the law and a due process violation will not be found unless the procedure in question "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Allowing the State to make a *prima facie* case for issuance of the protective order based solely on the indictment, without requiring the complaining witness to testify and be subject to cross examination, was not a due process violation under that standard. Probable cause determinations for indictment do not require procedural safeguards like confrontation and cross-examination [**Gerstein v. Pugh**, 420 U.S. 103 (1975)], and thus those safeguards are not required for even less-restrictive constraints on liberty like the civil no-contact order here.

The Court also looked at the procedural due process analysis set out in **Mathews v. Eldridge**, 424 U.S. 319 (1976), requiring that a court consider three factors: (1) the government's interest in the procedure, (2) the private interest affect by the governmental action, and (3) the risk of an erroneous deprivation of that private interest. Here, the government has a strong interest in protecting victims of the enumerated offenses from ongoing contact by the accused, and the issuance of a protective order helps to further that interest. The accused also has a fundamental liberty interest to move about unrestricted prior to trial, but the protective order largely paralleled defendant's bond conditions and was not overly broad. And, finally, the absence of a right of confrontation under the statute was not likely to result in an erroneous deprivation of liberty given that issuance of a no-contact order does not require proof beyond a reasonable doubt.

Finally, Section 112A-11.5's requirement that an accused present a meritorious defense to avoid issuance of a protective order does not infringe upon a defendant's privilege against self-incrimination because the statute does not compel a defendant to attempt to rebut the State's *prima facie* case. And, the statute does not conflict with the more general Civil No Contact Order Act because the statutes serve different purposes and are part of the legislature's comprehensive scheme to protect individuals affected by domestic violence, sexual assault, and stalking.

People v. Ashley, 2020 IL 123989 Stalking under 720 ILCS 5/12-7.3(a), as amended in 2010, requires proof that defendant knowingly engaged in a course of conduct, which defendant knew or should have known would cause a reasonable person (1) to fear for her safety or (2)

to suffer emotional distress. A "course of conduct" includes "threats." The Illinois Supreme Court held that, aside from the "should have known" provision, the statute does not violate the First Amendment right to free speech.

Defendant first argued that the statute is overbroad because it prohibits "threats" that cause "emotional distress," noting that some threats, including those to do lawful conduct, are not "true threats." The Supreme Court rejected the argument, holding that the legislature intended that the term "threatens" in subsection (c)(1) refers to "true threats" of unlawful violence such as bodily harm, sexual assault, confinement, and restraint, consistent with other provisions of the statute, subsections (a-3) and (a-5). As such, the term "threatens" falls outside the protection of the first amendment.

Defendant also argued that the "threatens" provision is unconstitutionally overbroad because it does not include the requisite mental state – specific intent – for a "true threat." The Supreme Court disagreed, finding that the State need only prove defendant was consciously aware of the threatening nature of his or her speech, and the awareness requirement can be satisfied by a statutory restriction that requires either an intentional or a knowing mental state. Here, section 12-7.3(a) specifically includes the knowing mental state in defining the offense of stalking.

Defendant next argued that the stalking statute is unconstitutionally overbroad where it allows conviction of a speaker who negligently conveys a message that a reasonable person would understand as threatening. According to defendant, the prohibition of speech that the defendant "should know" a reasonable person would interpret as a threat unconstitutionally chills protected speech. The Supreme Court agreed that application of the negligence standard would permit prosecution for protected speech that does not constitute a true threat. Accordingly, the court held that the "should know" portion of subsection (a) is overly broad and cannot be constitutionally applied with regard to a course of conduct that "threatens."

Defendant further claimed that subsection (a)(2) is unconstitutionally overbroad because it imposes an objective reasonable-person standard with respect to the impact of the threatening speech on the recipient. The court disagreed, finding the true threat exception is premised on the negative effects suffered by the recipient. Consequently, the assessment of whether speech constitutes a true threat mandates that the court consider the effect on the listener, and that application of the reasonable-person standard as to the harm caused by a true threat is not unconstitutionally overbroad.

Finally, defendant contended that the amended stalking statute violates substantive due process because it criminalizes a vast amount of innocent conduct that is unrelated to the statute's narrow purpose, is vague, and criminalizes speech that results in emotional distress not related to fear for personal safety. The court disagreed, noting it had already determined that the "threatens" provision relates only to intentionally or knowingly conveyed true threats of unlawful violence. Thus, the provision cannot be deemed as encompassing innocent conduct.

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People v. Relerford, 2017 IL 121094 The Illinois Supreme Court held that the stalking and cyberstalking statutes violated the First Amendment and were facially unconstitutional.

A defendant commits stalking when he "knowingly engages in a course of conduct directed at a specific person," and he knows or should know that his conduct would cause a reasonable person to fear for his or her safety or suffer emotional distress. 720 ILCS 5/12-7.3(a)(1), (a)(2). Course of conduct is defined as two or more acts where a defendant "follows, monitors, observes, surveils, threatens, or communicates to or about" a person. 720 ILCS 5/12-7.3(c)(1). Emotional distress is defined as "significant mental suffering, anxiety, or alarm." 720 ILCS 5/12-7.3(c)(3). The cyberstalking statute imposes criminal liability based on similar language. 720 ILCS 5/12-7.5(a).

Content-based laws targeting speech based on its communicative content are presumed to be invalid. Here the proscription against communications "to or about" another

person that would cause a reasonable person to suffer emotional distress criminalizes speech based on its content. Additionally, the statutes criminalize a number of commonplace situations where an individual's speech might cause another person to suffer emotional distress. The statutes are thus overbroad on their face and as such violate the First Amendment.

The Public Act that created the present version of the stalking and cyberstalking statutes specifically stated that the provisions of these statutes are severable. The Court therefore struck the phrase "communicates to or about" from each statute. Since defendant's prosecution relied on the now-stricken language, the Court reversed his convictions.

People v. Bailey, 167 Ill.2d 210, 657 N.E.2d 953 (1995) The stalking and aggravated stalking statutes (720 ILCS 5/12-7.3 & 5/12-7.4), as they existed in 1992, were upheld.

Defendant argued the stalking statute was unconstitutionally overbroad because it failed to provide that defendant's actions must be "without lawful authority." The Supreme Court held that the legislature intended that the statutes apply only to conduct performed without lawful authority. Thus, the missing phrase is implied, and innocent conduct cannot be prosecuted.

The stalking statute was not facially overbroad because it could apply to speech protected by the First Amendment. The legislature intended to prohibit only conduct that is not constitutionally protected, and the First Amendment does not protect the act of making a threat.

The stalking statute is not unconstitutionally vague because it fails to define the term "follows" or the phrase "in furtherance of." Both terms have commonly-understood meanings which provide adequate notice of the prohibited conduct and prevent arbitrary enforcement.

The exception for picketing during "bona fide labor disputes" does not violate equal protection. There is a rational basis to exempt labor picketing from the stalking statute, because the legislature could reasonably conclude that "stalking-type" conduct was unlikely to occur during labor picketing and that union activities are constitutionally protected.

Illinois Appellate Court

People v. Taylor, 2019 IL App (1st) 160173 The Appellate Court upheld provisions of the stalking statute against defendant's claim that they were unconstitutionally vague. Defendant argued that by criminalizing "conduct directed at a specific person" but performed "directly, indirectly, or through third parties," the provision contains an inherent discrepancy. The Appellate Court disagreed. The use of the words "directed" and "indirectly" involve two different contexts and can be read together logically. Defendant also argued that the statute is vague because it criminalizes the infliction of emotional distress. The Appellate Court disagreed, noting that prior decisions have found the infliction of emotional distress may be criminalized when circumscribed by the types of acts (threats, harassment, terrorizing), with a sufficient mental state. Finally, the court noted that the statute is not "vague" as applied here because defendant's conduct (threats to kill) were in fact true threats not protected by the constitution.

A dissenting justice would find section 12-7.3(a)(2), prohibiting two or more threats known to cause a reasonable person emotional distress, is unconstitutionally overbroad, as in **People v. Morocho**, 2019 IL App (1st) 153232.

People v. Crawford, 2019 IL App (1st) 160184 The cyberstalking statute [720 ILCS 5/12-7.5(a)] prohibits a course of conduct using electronic communication directed at a specific person which the defendant knows or should know would cause a reasonable person to fear

for their safety or suffer other emotional distress. Relevant to this case, course of conduct means two or more acts in which a defendant threatens a person.

The statute's failure to specify a mental state for the course-of-conduct element did not render it facially unconstitutional. Where no mental state is included, one may be imputed pursuant to 720 ILCS 5/4-3. Looking to the parallel stalking statute, the Appellate Court imputed the mental state of "knowledge" for the course-of-conduct element of cyberstalking. Because defendant's actions must be done knowingly, the statute does not punish innocent or negligent conduct. And, the statute is rationally related to legislature's goal of protecting victims from violence and therefore does not violate due process.

The cyberstalking statute also does not violate the First Amendment because it punishes true threats, which are excepted from First Amendment protections. Defendant's text messages and phone call threatening to kill the victim were serious expressions of intent to commit an act of unlawful violence and therefore constituted true threats.

People v. Morocho, 2019 IL App (1st) 153232 Aggravated stalking under section 12-7.3(a)(2) is facially unconstitutional. Under subsection (a)(2), a person commits stalking when he or she knowingly threatens another two or more times and knows or should know that the threats would cause a reasonable person to suffer emotional distress. The offense is complete without any accompanying criminal act. Defendant alleged that the statute is overbroad under the first amendment, because it allows for prosecution of language that would not fall under the "true threat" exception to the right to free speech. The Appellate Court agreed that under the plain language of (a)(2), a person who threatens to commit a *lawful* act may be prosecuted. Because a substantial number of applications of the law would be unconstitutional, including coaches threatening players with benching, parents threatening children with no desert, or lenders threatening homeowners with foreclosure, the statute was overbroad and facially unconstitutional.

People v. Gauger, 2018 IL App (2d) 150488 Defendant was convicted of aggravated stalking based upon his creating a fake Facebook account in ex-wife's friend's name and using it to send messages to ex-wife. Defendant also obtained mail addressed to ex-wife and downloaded pictures of her and her children. In finding defendant guilty, the trial court noted that defendant had monitored the victim and communicated to or about her. Although **People v. Relerford**, 2017 IL 121094, found the "to-or-about" portion of the stalking statute unconstitutional, the "monitoring" provision remained valid, and defendant's conviction was sustained on that basis.

People ex rel. Webb v. Wortham, 2018 IL App (2d) 170445 A plenary "stalking no contact order" was not properly extended where the purported extension was not entered until after the original order expired. The filing of a motion to extend the plenary order does not toll the expiration of that order. Instead, where the motion to extend was not set for a hearing until after the expiration of the plenary order, it should have been treated as a petition for a new plenary order. The trial court properly granted defendant's 2-1401 petition challenging the extension of the plenary order as void and properly dismissed a charge of violating that void order.

People v. Nakajima, 294 Ill.App.3d 809, 691 N.E.2d 153 (4th Dist. 1998) The stalking statute, as amended in 1995 (P.A. 89-377; eff. August 18, 1995), is not unconstitutionally vague or overbroad.

720 ILCS 5/12-7.3(a)(2), which provides that stalking occurs where on at least two separate occasions defendant follows or surveils another person and places that person "in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint," does not violate due process. Defendant argued that the statute does not require that the accused "knowingly" place the victim in reasonable apprehension of the specified conduct, and thus imposes criminal liability without proof of any culpable state of mind. However, the terms "knowingly" and "without lawful authority," which appear earlier in the stalking statute in connection with the acts of "following" and "surveilling," apply not only to those elements but also to the sub-element of "placing the victim in reasonable apprehension."

People v. Cortez, 286 Ill.App.3d 478, 676 N.E.2d 195 (1st Dist. 1996) 1993 amendments to the stalking statute (PA 88-402; eff. August 20, 1993) did not render it unconstitutional.

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