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§22

Illinois Supreme Court

In re Jaime P., 223 Ill.2d 526, 861 N.E.2d 966 (2006) 705 ILCS 405/5-715(1) was intended to limit the probation term for a delinquent minor to 5 years or age 21, whichever is less, but to prohibit the trial court from granting early termination of probation to a person who has been found delinquent based on first degree murder, a Class X felony, or a forcible felony. (The only exception to the rule that juvenile jurisdiction terminates at age 21 is for EJJ prosecutions.) The Court rejected the appellate court's finding that delinquents who commit first degree murder, a Class X felony, or a forcible felony are not subject to automatic termination of probation at age 21.

Respondent, who at the age of 17 had been placed on five years' probation for a Class X felony, should have had her probation terminated automatically at age 21.

People v. Belk, 203 Ill.2d 187, 784 N.E.2d 825 (2003) Under 720 ILCS 5/9-1(a)(3), felony murder occurs where a person causes death while attempting or committing a "forcible felony" other than second degree murder. A forcible felony is defined as "treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual." (720 ILCS 5/2-8) (emphasis added). A nonviolent felony may serve as a predicate offense for felony murder if, under the facts of a particular case, the perpetrator contemplated that violence might be necessary to enable him to carry out his purpose.

Where the evidence showed that defendant was intoxicated, stole a van, and in an attempt to elude capture drove at an excessive rate of speed through an area where he was likely to encounter other traffic, aggravated possession of a stolen motor vehicle was not a "forcible felony" for purposes of a felony murder doctrine. Defendant was not armed, and there was no evidence that he or his companion contemplated or were willing to use force or violence to make their escape.

People ex rel. Stamos v. Jones, 40 Ill.2d 62, 237 N.E.2d 495 (1968) The separation of powers doctrine was violated by a statute which provided that a person convicted of a forcible felony shall not be admitted to bail on appeal. The constitution "has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly."

Illinois Appellate Court

People v. Grandberry, 2024 IL App (3d) 230546 Defendant was charged with aggravated battery of a peace officer and nurse. She was detained as a danger to others under the SAFE-T Act. Defendant argued that she did not commit a detainable offense because aggravated battery based on victim status is not a forcible felony under the Act. Rather, aggravated battery is a forcible felony only when it involves great bodily harm. See 725 ILCS 5/110-6.1(a)(1.5) (defining "forcible felony" as, *inter alia*, "aggravated battery resulting in great bodily harm or permanent disability or disfigurement.") The State argued that defendant was

alleged to have bitten the officer's finger, meaning the offense fell under the residual clause of the definition: "any other felony that involved the threat of or infliction of great bodily harm or permanent disability or disfigurement."

The appellate court agreed with defendant. Section 110-6.1(a)(1.5) specifically lists 18 forcible felonies, one of which is "aggravated battery resulting in great bodily harm or permanent disability or disfigurement." It then states: "or any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement." Even if defendant's conduct threatened or inflicted great bodily harm, the "any other felony" language meant that the residual clause does not include any listed felony. Because aggravated battery was listed, it could not be an "other felony." The court remanded to the trial court with orders to determine the appropriate conditions for pretrial release.

People v. McGhee, 2020 IL App (3d) 180349 Defendant's conviction for armed habitual criminal was reversed because an Iowa conviction for burglary in the second degree was not a proper predicate offense. The legislature intended the enumerated list of offenses in the forcible felony statute to refer to Illinois offenses. For a foreign jurisdiction conviction to serve as a valid predicate, it must either satisfy the elements of one of the enumerated Illinois offenses or fall within the residual clause ("any other felony which involves the use or threat of physical force or violence against any individual").

The statutory elements of an Iowa conviction for second degree burglary are not necessarily equivalent to an Illinois burglary. Thus, the Iowa conviction did not satisfy the elements of an Illinois burglary. And, proof of an Iowa second degree burglary does not necessarily entail the use of violence or force. Further, the State failed to present any evidence of the underlying facts of defendant's Iowa conviction, or even which subsection of the Iowa statute formed the basis of defendant's conviction. Thus, the court could not find that the Iowa conviction fit within the residual clause.

Because the State failed to show that defendant's Iowa conviction qualified as a forcible felony, the court reversed defendant's conviction for armed habitual criminal and remanded the matter for sentencing on the merged offense of UUWF.

People v Schultz, 2019 IL App (1st) 163182 To determine whether a prior out-of-state conviction qualifies as a "forcible felony," courts should look to the residual clause of [720 ILCS 5/2-8](#), which includes any felony where defendant contemplated, or was willing to use, force or violence. A felony can be determined to be forcible either by looking to the elements of the offense itself or, if not inherently forcible, by looking at the particular facts of the prior offense. Here, the trial stipulation that defendant had been convicted in Michigan of assault with a dangerous weapon was adequate to prove a forcible felony. Although no statutory reference was included, the stipulation was sufficient to prove that the Michigan assault was forcible because assault necessarily involves the use or threat of force.

People v. Webb, 2018 IL App (3d) 160403 Whether defendant's prior convictions for aggravated battery constituted "forcible felonies" for purposes of armed habitual criminal is a legal question for the court, and need not be put to a jury. Here, the State properly asked the trial court to judicially notice the indictments from defendant's prior aggravated battery convictions and conclude that the convictions were based on great bodily harm, making them forcible felonies. The fact that defense counsel successfully struck the mention of "great bodily harm" from the stipulation and jury instructions did not negate the court's finding.

People v. Brown, 2017 IL App (1st) 150146 The offense of being an armed habitual criminal is defined as receiving, selling, possessing or transferring any firearm after having been convicted two or more times of several offenses, including “forcible felonies.” 720 ILCS 5/24-1.7(a)(1). Forcible felonies include any of several enumerated offenses and “any other felony which involves the use or threat of physical force or violence against any individual.” 720 ILCS 5/2-8.

Defendant was charged with being an armed habitual criminal based upon several prior convictions, including attempted armed robbery. Defendant argued that because armed robbery was not listed as a forcible felony and the State failed to present any specific details showing that his attempted armed robbery conviction involved use or threat of physical force or violence, the prior conviction cannot be categorized as a forcible felony.

The offense of armed robbery involves knowingly taking property from a person or the presence of another by the use of force or by threatening the imminent use of force while armed with certain weapons or while personally discharging a weapon. Attempted armed robbery occurs where a person takes a substantial step toward the commission of armed robbery with the intent to commit that offense.

The court concluded that under the statutory definition, attempt robbery requires evidence that: (1) the defendant acted with the specific intent to knowingly take property by threat or use of force while armed with certain weapons, and (2) took a substantial step to accomplish that objective. By virtue of his conviction for attempt armed robbery, defendant necessarily demonstrated a willingness to use force because he was armed with a firearm or other dangerous weapon and took a substantial step to deprive another person of property by threat or use of force. The offense of attempt armed robbery therefore qualifies as an inherently forcible felony for purposes of the armed habitual criminal statute.

People v. Crosby, 2017 IL App (1st) 121645 The offense of armed habitual criminal is committed where a person possesses a firearm after being previously convicted of two or more of several offenses, including forcible felonies. Defendant was charged with being an armed habitual criminal based on a 2001 conviction for aggravated unlawful use of a weapon and a 2003 conviction for aggravated battery of a police officer. Defendant was also charged with one count of unlawful use of a weapon by a felon based on the 2001 conviction and one count of UUWF based on the 2003 conviction.

Before trial, the State *nolle prossed* the UUWF count based on the 2001 conviction, and proceeded to trial on the armed habitual criminal count and the UUWF based on the 2003 aggravated battery. The parties stipulated that the two prior felonies were qualifying offenses under the armed habitual criminal statute. Defendant was convicted of armed habitual criminal but acquitted of UUWF.

Despite defense counsel’s stipulation, aggravated battery of a peace officer is neither a forcible felony nor a specified offense under the armed habitual criminal statute. Therefore, the 2003 aggravated battery of a peace officer cannot serve as a predicate felony for armed habitual criminal.

The court rejected the State’s argument that it should reduce the conviction for armed habitual criminal to the lesser included offense of UUWF. Although defendant was acquitted of UUWF based on the 2003 conviction, the State argued that a conviction could be entered for UUWF based on the 2001 conviction that had been *nolle prossed* before trial.

When the State prosecuted defendant for UUWF premised on the 2003 conviction, it had the burden to prove the same elements as UUWF based on the 2001 conviction. Because the jury elected to acquit defendant of unlawful use of a weapon by a felon as it was

prosecuted at trial, double jeopardy would be violated if the armed habitual criminal conviction was reduced to UUWF even if based on a different predicate.

People v. Smith, 2016 IL App (1st) 140496 Defendant was convicted of Unlawful Use of a Weapon by a felon, which carries a Class 2 felony sentence when committed by a person who is not confined in a penal institution but who has been convicted of a forcible felony. 720 ILCS 5/24-1.1(e). A "forcible felony" is defined as treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement, and "any other felony which involves the use or threat of physical force or violence against any individual." 720 ILCS 5/2-8. Defendant contended that his prior conviction for aggravated battery of a peace officer was not a forcible felony and therefore could not be used to enhance his conviction.

Because in 1990 the legislature amended the definition of "forcible felony" to include only aggravated batteries resulting in great bodily harm or permanent disability or disfigurement, it did not intend that all aggravated batteries were included in the definition of "forcible felonies." Thus, where defendant's prior conviction of aggravated battery to a peace officer was based on aggravated battery causing bodily harm to a police officer and not on great bodily harm or permanent disability or disfigurement, it was not a forcible felony.

Aggravated battery of a peace officer is not a forcible felony under the residual clause for felonies that are not specifically listed but which involve the use or threat of violence or force. The residual clause is limited to offenses that are not specifically listed in the statute.

Because the trial court erred by using the prior conviction to enhance the aggravated battery conviction to a Class 2 offense, the cause was remanded for re-sentencing on a Class 3 felony.

People v. Mitros, 2016 IL App (1st) 121432 In December 2011, defendant filed a 2-1401 petition asserting that his life sentence was void. When defendant committed his offense in 1988, a life sentence could be imposed if the victim was killed in the course of one of the forcible felonies listed in the statute, but residential burglary was not one of the listed felonies. Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(b)(6)(c). Defendant was thus not eligible for life imprisonment.

The court held that under **Castleberry** defendant's sentence was no longer void and thus he could not challenge his sentence in an untimely 2-1401 petition. The court rejected defendant's argument that **Castleberry** should not apply retroactively to his case. A new rule should almost never be applied retroactively to cases on collateral review. A rule is new if it was not dictated by precedent existing at the time defendant's conviction became final.

The court held that **Castleberry** did not announce a new rule. Instead, **Castleberry** merely abolished the prior void sentence rule and reinstated the rule that existed beforehand. Since **Castleberry** did not announce a new rule, it applied to defendant's collateral case, and prevented him from attacking his improper sentence in an untimely 2-1401 petition.

People v. Sanderson, 2016 IL App (1st) 141381 A defendant is guilty of armed habitual criminal if he possesses a firearm and has been previously convicted of two or more forcible felonies. As defined by the Criminal Code, a forcible felony includes several specifically enumerated offenses, including residential burglary, or any other felony involving "the use or threat of physical force or violence." 720 ILCS 5/2-8.

An unenumerated felony falls within the residual clause if the defendant contemplated and was willing to use force or violence, but he does not need to actually use violence. Crimes may fall within the residual clause in two ways: (1) one of the crime's elements is a specific intent to carry out a violent act; or (2) the particular facts of the case show that the defendant contemplated and was willing to use force.

Defendant was convicted of armed habitual criminal based on having a prior conviction for attempted residential burglary. The only evidence of the prior conviction was a certified copy of conviction which provided no details about the circumstances of the prior offense.

The court held that defendant's conviction for attempted residential burglary, which was not a specifically enumerated forcible felony, also did not fall within the residual clause since it was "neither by definition nor by circumstance a forcible felony."

First, the elements of the offense do not include a specific intent to carry out a violent act. Residential burglary is defined as entering or remaining within a dwelling place with the intent to commit a felony or theft. 720 ILCS 5/1903(a). A defendant could be guilty of attempted residential burglary by simply testing the window of a home that he knew was vacant, or by casing a home, finding it unexpectedly occupied and leaving precisely to avoid a violent confrontation. In both examples, the defendant did not contemplate using force or violence, and yet would still be guilty.

Second, since the State presented no evidence about the circumstances of defendant's prior conviction, there was no showing that defendant contemplated the use of force in this particular offense.

The court reversed defendant's conviction for armed habitual criminal.

People v. Casciaro, 2015 IL App (2d) 131291 Defendant was convicted of felony murder based on the alternative theories that he either killed Brian Carrick while committing the forcible felony of intimidation, or was accountable for the actions of Shane Lamb who killed Carrick while committing intimidation. A defendant commits intimidation when, with the intent to cause someone to perform an act, he communicates a threat to inflict physical harm to that person. 720 ILCS 5/12-6(a)(1). Intimidation is a specific-intent crime, and thus requires proof that a threat be communicated with the specific intent to coerce someone to do something against his will.

At the time of the incident, Carrick owed defendant money for the fronted marijuana. Defendant asked Lamb, who had been incarcerated as a juvenile for attempted murder and was larger than Carrick, to come talk to Carrick about the money he owed defendant.

Lamb began arguing with Carrick about the money and when defendant told them to quiet down, Lamb "muffed" Carrick by placing the heel of his hand against Carrick's face and shoving him into the produce cooler. Lamb and Carrick continued arguing while defendant stood behind Lamb "not doing or saying anything." When Carrick said that he didn't have the money, Lamb lost his temper and hit Carrick. Carrick fell straight back and Lamb believed he had knocked Carrick unconscious. Defendant told Lamb to leave the store. Carrick was never seen again.

The Appellate Court reversed defendant's conviction finding that the State failed to prove that either defendant or Lamb committed intimidation.

Defendant did not commit intimidation as a principal. Lamb specifically testified that defendant did not ask him to threaten or harm Carrick. Given Lamb's denial, the State theory was built entirely on an unsupported inference that defendant's request that Lamb speak to Carrick was a solicitation for Lamb to threaten harm to Carrick. Such a tenuous inference

could not support a conviction and hence the State failed to prove that defendant committed intimidation as a principal.

The State also failed to prove that Lamb committed intimidation himself, and thus defendant could not have been guilty under a theory of accountability. Lamb denied that he intended to threaten or harm Carrick. And there was no evidence Lamb communicated any threat of physical harm to Carrick. Instead, Lamb punched Carrick after he suddenly lost his temper during the argument.

Since the State failed to prove the predicate felony of intimidation, the court reversed defendant's conviction for felony murder.

People v. White, 2015 IL App (1st) 131111 Defendant was charged with being an armed habitual criminal for knowingly or intentionally possessing a handgun after having been convicted of domestic battery and first degree murder. [720 ILCS 5/24-1.7\(a\)](#) provides that a person is an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted two or more times of certain offenses, including “a forcible felony as defined in Section 2-8.” Section 2-8 defines forcible felonies as several specified offenses “and any other felony which involves the use or threat of physical force or violence against any individual.” [720 ILCS 5/2-8](#).

Domestic battery is not listed as one of the specified offenses, and therefore may be a forcible felony only if: (1) the specific circumstances of the prior conviction in question actually involved the use or threat of physical force or violence, or (2) the offense falls within the residual clause because it inherently involves force or violence. Because the State failed to present evidence concerning the specific circumstances of defendant's domestic battery conviction, that conviction was a forcible felony only if domestic battery inherently involves the use or threat of force or violence.

Domestic battery can be based either on bodily harm or on physical contact of an insulting or provoking nature with a family or household member. ([720 ILCS 5/12-3.2\(a\)](#)) Clearly, domestic battery based on contact of an insulting or provoking nature does not inherently involve the use or threat of violence, and therefore is not a forcible felony.

By contrast, domestic battery based on inflicting bodily harm to a family or household member, “at first blush, . . . would appear to constitute a forcible felony.” Considering the statute as a whole, however, it would be absurd to find that domestic battery based on bodily harm constitutes a forcible felony where §2-8 was amended in 1990 to provide that aggravated battery constitutes a forcible felony only if it is based on *great* bodily harm. The court concluded that in light of the 1990 amendments, the legislature could not have intended that domestic battery based on mere bodily harm qualified as a forcible felony.

Because defendant's aggravated battery conviction did not qualify as a forcible felony for purposes of the habitual criminal statute, the habitual criminal conviction was vacated.

People v. Wooden, 2014 IL App (1st) 130907 Under [725 ILCS 5/111-3\(c\)](#) when the State seeks to impose an enhanced sentence due to a prior conviction, the charge must state the intent to seek the enhanced sentence and set forth the prior conviction to give the defense notice. In **People v. Easley, 2014 IL 115581**, the Illinois Supreme Court held that notice under §111-3(c) is required only if the prior sentence that would enhance the sentence is not an element of the charged offense.

Here, the State charged defendant with unlawful use of a weapon by a felon, alleging that the prior felony was vehicular hijacking. The prior conviction for vehicular hijacking was used to elevate the offense from a Class 3 to a Class 2 felony on the basis that it was a forcible felony. [720 ILCS 5/24-1.1\(e\)](#).

Defendant argued that he was improperly convicted of a Class 2 felony because the State did not give him notice that it would seek an enhanced sentence. Defendant further argued that **Easley** did not apply to his case because vehicular hijacking is not per se a forcible felony. Vehicular hijacking is not one of the specifically enumerated offenses in the forcible felony statute and, according to defendant, does not fall within the residual clause definition of forcible felony.

The Appellate Court found that vehicular hijacking falls squarely within the definition of forcible felony. A defendant commits vehicular hijacking when he knowingly takes a motor vehicle from a person by the use or imminent threat of force. [720 ILCS 5/18-3\(a\)](#). A forcible felony includes several specifically enumerated felonies and any other felony which involves the use or threat of physical force or violence against any person. [720 ILCS 5/2-8](#).

The act of taking a motor vehicle from a person by force or threat of imminent force necessarily involves at least the contemplation that violence might be used. Defendant could not provide, and the court could not conceive of, a situation where a defendant could commit vehicular hijacking without using or threatening physical force or violence. Vehicular hijacking thus falls within the definition of forcible felony. Defendant's sentence was affirmed.

People v. Whalum, 2012 IL App (1st) 110959 “When the State seeks an enhanced sentence because of a prior conviction, the charge shall also state the intention to seek an enhanced sentence and shall state such prior conviction so as to give notice to the defendant. *** For the purposes of this Section, ‘enhanced sentence’ means a sentence which is increased by a prior conviction from one classification of an offense to another higher level of classification of offense ***; it does not include an increase in the sentence applied within the same level of classification of offense.” [725 ILCS 5/111-3\(c\)](#).

The offense of unlawful use of a weapon by a felon is a Class 3 felony, but it is enhanced to a Class 2 felony if the defendant has been convicted of a forcible felony. [720 ILCS 5/24-1.1\(e\)](#). Because the statute elevates the classification of the offense, the State must indicate in the charging instrument which class of offense it seeks to charge. Because the State failed to do so in the prosecution of defendant for UYW by a felon, the cause was remanded for defendant to be sentenced for a Class 3 felony.

People v. Powell, 2012 IL App (1st) 102363 The rule against double enhancement prohibits use of a single factor both as an element of an offense and as a basis for imposing a more harsh sentence. However, the rule does not apply where the legislature clearly expresses its intention to enhance the penalty based upon some aspect of the crime. The best indication that the legislature intended such an enhancement lies in the statutory language itself.

[720 ILCS 5/24-1.1\(e\)](#) provides that unlawful use of a weapon by a felon is a Class 3 felony with a sentence of two to 10 years if the prior conviction was for a non-forcible felony, but a Class 2 felony with a sentence of three to 14 years if the prior conviction was for a forcible felony. The court concluded that § 5/24-1.1(e) does not involve an enhancement of a Class 3 felony to a Class 2 felony based on the nature of the prior conviction. Instead, the legislature chose to define unlawful use of a weapon by a person who has been convicted of a forcible felony as a Class 2 felony. Thus, under the plain language of the statute there is no enhancement of a lesser offense due to the nature of the prior conviction.

If § 5/24-1.1(e) was found to involve an enhancement based on whether the prior conviction was for a forcible felony, the plain language of the statute demonstrates clear

legislative intent to increase the class of the offense based on the fact that the prior conviction was for a forcible felony. Therefore, the rule against double enhancement would not be violated.

In re Rodney S., 402 Ill.App.3d 272, 932 N.E.2d 588 (4th Dist. 2010) The term of probation for a delinquent minor may not exceed five years or until the minor reaches the age of 21, whichever is less. An exception to that rule is where the minor is found guilty of a forcible felony. 705 ILCS 405/5-715(1). A forcible felony is defined by the Criminal Code in pertinent part as an “aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any other individual.” 720 ILCS 5/2-8.

The minor-respondent was found guilty of aggravated battery based on contact of an insulting or provoking nature, and was sentenced to an 11-year term of probation. The aggravated battery did not qualify as a forcible felony under the residual clause because that category was intended to refer to felonies not otherwise specified in the statute. The statute had previously included all aggravated batteries without qualification within the definition of forcible felonies, but had been amended to limit the types of aggravated battery that could qualify as a forcible felony.

The Appellate Court acknowledged that there was a split among the districts on this issue, with the Third District holding that any aggravated battery qualified as a forcible felony, **People v. Jones**, 226 Ill.App.3d 1054, 590 N.E.2d 101 (3d Dist. 1992), and the First and Second Districts holding that only the limited category of aggravated battery specified by the statute qualified as a forcible felony. **In re Angelique**, 389 Ill.App.3d 430, 907 N.E.2d 59 (2d Dist. 2009); **People v. Schmidt**, 392 Ill.App.3d 689, 924 N.E.2d 998 (1st Dist. 1992). The Fourth District concluded that the decisions of the First and Second Districts were better reasoned.

The court vacated the 11-year probation term as void and remanded for resentencing.

People v. Schmidt, 392 Ill.App.3d 689, 924 N.E.2d 998 (1st Dist. 2009) A conviction for felony murder requires that the homicide occur during a “forcible felony” other than second degree murder. 720 ILCS 5/9-1(a)(3). Aggravated battery is a forcible felony if the offense “results in great bodily harm or permanent disability or disfigurement” 720 ILCS 5/2-8.

Where defendant was not charged with “great bodily harm” aggravated battery, but was charged on three alternate theories for aggravated battery against an officer (i.e., use of a deadly weapon (a vehicle which struck the officer’s arm), the battery of a police officer engaged in official duties, and battery on a public way), the State conceded that the aggravated battery involving the officer did not result in great bodily harm, disability or disfigurement.

The prosecution argued that the felony murder charge was saved by the residual clause of the “forcible felony” statute, which provides that felony murder can be predicated on any non-specified felony “which involves the use or threat of physical force or violence against any individual.” 720 ILCS 5/2-8. The Appellate Court rejected this argument, finding that the legislature’s decision to specifically include one form of aggravated battery as a forcible felony excludes those forms of aggravated battery which are not enumerated.

Before 1990, all aggravated batteries were clarified as “forcible felonies.” However, a legislative amendment passed that year added the limiting language set forth above. “[W]e agree with defendant that by enacting the 1990 amendment, the legislature expressed its intent to limit the number and types of aggravated batteries that qualify as forcible felonies.”

People v. Carmichael, 343 Ill.App.3d 855, 799 N.E.2d 401 (1st Dist. 2003) Defendant's sentence for unlawful use of a weapon by a felon could not be enhanced due to a prior armed violence conviction because armed violence is a "forcible felony" only where it is committed by the use or threat of violence and the State failed to present any evidence of the circumstances of the previous arrest. Resentencing was required because it was unclear from the record whether the sentence was influenced by the trial court's mistaken belief that a Class 2 sentencing range applied.

People v. Hobbs, 249 Ill.App.3d 679, 619 N.E.2d 258 (5th Dist. 1993) The jury was instructed that a person who was attempting or committing a forcible felony at the time of the offense could not raise self-defense. "Forcible felony" was defined as "burglary, robbery, aggravated battery, or any felony which involves the use or threat of physical force or violence against any individual." A new trial was required because the instructions may have deprived the defendant of an affirmative defense.

Where the jury is told that commission of a particular offense will bar a claim of self-defense, the elements of that offense must also be defined. In addition, the instruction did not refer to home invasion, the only charge against the defendant which could have been deemed a forcible felony. Furthermore, the jury was clearly confused by the instructions. During deliberations, the jury sent the judge two notes asking for an explanation of the law, and the verdicts eventually returned acquitted defendant of first degree murder while convicting him of armed violence based on first degree murder.

People v. Garcia, 169 Ill.App.3d 618, 523 N.E.2d 992 (1st Dist. 1988) The trial judge erred in refusing to give the jury [IPI 4.05](#) (Definition of Forcible Felony) upon the request of defense counsel. This instruction would have advised the jury that a person is entitled to use deadly force not only to prevent imminent death or great bodily harm, "but also if it is necessary to prevent the commission of a forcible felony." In the instant case, there was evidence that defendant was on a "public way" when he was battered by the deceased. Since a battery on a public way is an aggravated battery and aggravated battery is a forcible felony, the failure to give [IPI 4.05](#) deprived defendant of a defense.

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