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CUMULATIVE DIGEST

CH. 7
BATTERY, ASSAULT & STALKING OFFENSES

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§7-1(a)
Battery & Assault

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Generally

In re Gregory G., ___ Ill.App.3d ___, 920 N.E.2d 1096 (2d Dist. 2009) (No. 2-08-0120, 12/9/09)

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.

(Defendant was represented by Assistant Defender Mark Levine, Elgin.)

In re Jerome S., 2012 IL App (4th) 100862 (No. 4-10-0862, 4/23/12)

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.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

People v. Gabriel, 2014 IL App (2d) 130507 (No. 2-13-0507, 12/22/14)

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.

In convicting defendant of violating the order of protection, the trial court concluded that the order was unambiguous and required defendant to stay off the campus at all times, without regard to whether the petitioner was present. The Appellate Court reversed, finding

that the evidence was insufficient to establish that defendant knowingly violated the order of protection.

1. 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.

The court concluded that the order should be construed as requiring defendant to stay away from the College of DuPage only when the petitioner was present. 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.

2. Although defendant did not argue that the trial court's interpretation of the order exceeded the scope of the statute, the court elected to reach the issue. The court noted that defendant challenged the trial court's interpretation of the order, the issue concerned the legal authority of the trial court to issue an order of protection, and the State was given an opportunity to respond.

3. 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.

(Defendant was represented by Assistant Deputy Defender Paul Glaser, Elgin.)

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

1. Two police officers in a squad car approached a group of 10 men standing in the middle of the street. One of the officers testified that all of the men were throwing bricks and bottles into the street at passing cars while shouting gang slogans. The other officer saw the men in the middle of the street, but did not see any of them throw bricks.

Both officers testified that a group of pedestrians approached the 10 men and then turned and walked the other direction. When the officers exited their car, six of the 10 men ran away while the other four, including defendant, 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.

2. 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). The first officer testified inconsistently, at one point saying he saw the defendants throwing bricks and at another point saying he did not see them throwing bricks. Even his testimony about seeing "the defendants" throwing bricks concerned the actions of the 10 men as a group and did not distinguish between defendant and any of the other men. And the second officer testified that he didn't see anyone throwing bricks. Under these circumstances, the State failed to prove defendant guilty of reckless

endangerment.

3. Even assuming defendant threw bricks at passing cars, the State also 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.

Defendant's conviction was reversed.

(Defendant was represented by Assistant Defender Linda Olthoff, Chicago.)

People v. Green, 2011 IL App (2d) 091123 (No. 2-09-1123, 9/22/11)

1. 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.

2. 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.

3. The court concluded that 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 while the son was lying face up halfway in and halfway out of a car. The court noted that the son had his arms up and was crying and trying to defend himself, and that 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. The court affirmed defendant's conviction for domestic battery by making physical conduct of an insulting or provoking nature.

(Defendant was represented by Assistant Defender Kathleen Weck, Elgin.)

People v. Mandarino, 2013 IL App (1st) 111772 (No. 1-11-1772, 6/28/13)

1. Defendant, a former police officer, was convicted of aggravated battery after he beat

a motorist with a collapsible baton during a traffic stop. The Appellate Court rejected the argument that the trial court applied an incorrect standard in evaluating defendant's conduct.

An arresting officer need not retreat or desist from efforts to make a lawful arrest merely because the arrestee resists. The officer is justified in using any force which he reasonably believes to be necessary to effect the arrest or defend himself from bodily harm. Among the circumstances which may be relevant to the reasonableness of the officer's actions are whether the attempted arrest is for a serious crime, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to flee.

The court found that in convicting defendant of aggravated battery, the trial judge properly applied a reasonableness standard. The court also held that the evidence was sufficient to support the judge's finding that defendant failed to act reasonably.

2. The court also concluded that 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. Martino, 2012 IL App (2d) 101244 (No. 2-10-1244, 6/7/12)

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.

(Defendant was represented by Assistant Defender Mark Levine, Elgin.)

People v. Schmidt, 392 Ill.App.3d 689, ___ N.E.2d ___ (1st Dist. 2009)

The court concluded that 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).

(Defendant was represented by Assistant Defender Christopher Buckley, Chicago.)

(This summary was written by Deputy State Appellate Defender Daniel Yuhas.)

People v. Taylor, 2015 IL App (1st) 131290 (No. 1-13-1290, 6/19/15)

1. 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.

Where defendant challenges the sufficiency of the evidence to sustain a conviction, the reviewing court must consider whether, viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found that the essential elements of the crime had been proven beyond a reasonable doubt. A reviewing court must accept any reasonable inferences from the record in favor of the prosecution and may overturn the trier of fact's decision only if the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt.

2. Under Illinois law, 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.

The court acknowledged that defendant said "I'm going to get you" and "I am going to kick your ass," but noted that when those statements were made defendant had complied with the deputy's order to leave the courthouse and was outside two automatic airlock doors. Furthermore, defendant was unarmed, made no threatening gestures, and was seven to ten feet away from the officer.

Defendant's conviction for aggravated assault was reversed.

(Defendant was represented by Assistant Defender Philip Payne, Chicago.)

People v. Wrencher, 2015 IL App (4th) 130522 (No. 4-13-0522, 4/30/15)

1. A defendant is entitled to a jury instruction on a lesser-included offense where there is some slight evidence to support the lesser offense and a jury could rationally find the defendant guilty of the lesser offense but acquit him of the greater offense. 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. Utilizing the charging instrument approach, the Court found that resisting was a lesser-included offense of the first count of aggravated battery, but that the jury could not have rationally convicted defendant of resisting, but acquitted him of aggravated battery. As to the second count, the Court held that resisting was not a lesser-included offense.

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. Under this test, the charging instrument need not expressly allege all the elements of the lesser offense. Instead, the elements need only be reasonably inferred from the language of the charging instrument.

2. 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 resistence, defendant necessarily committed aggravated battery. Thus it would have been rationally impossible to convict defendant of resisting but acquit him of aggravated battery.

3. 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 resistence 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.

(Defendant was represented by Assistant Defender Rikin Shah, Ottawa.)

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§7-1(a)(2)
Bodily Harm

People v. Meor, 233 Ill.2d 465, 910 N.E.2d 575 (2009)

1. Generally, a defendant may not be convicted of an uncharged offense. However, a defendant is entitled to have the judge or jury consider lesser included offenses if there is a disputed factual element concerning the charged offense which is not required to convict of a lesser offense.

2. Whether an offense an "included offense" is determined on a case-by-case basis 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.

Under this definition, battery is a lesser included offense of criminal sexual abuse based on an act of sexual penetration. Battery requires an allegation that the defendant intentionally or knowingly made physical contact "of an insulting or provoking nature." An 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.

3. 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.

(Defendant was represented by Assistant Defender Kathleen Flynn, Chicago.)

In re Vuk R., 2013 IL App (1st) 132506 (No. 1-13-2506, 12/4/13)

1. 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.

2. 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. Steele, 2014 IL App (1st) 121452 (No. 1-12-1452, 9/30/14)

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. And 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. The evidence showed that 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.

Additionally, while the officer was competent to testify about his physical condition since the incident, he was not competent to testify about a medical diagnosis of torn ligaments and bone fragments. Because the officer's testimony was the only evidence of the more severe injuries, and no medical evidence supported his testimony, the State failed to prove that the officer suffered great bodily harm.

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

hearing.

(Defendant was represented by Assistant Defender Kadie Weck, Chicago.)

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§7-1(a)(3)
Status or Age of Victim

People v. Hale, 2012 IL App (4th) 100949 (No. 4-10-0949, 3/29/12)

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.

(Defendant was represented by Assistant Defender Janieen Tarrance, Springfield.)

People v. Howard, 2012 IL App (3d) 100925 (No. 3-10-0925, 5/29/12)

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.

(Defendant was represented by Assistant Defender Gabrielle Green, Ottawa.)

People v. Jasoni, 2012 IL App (2d) 110217 (No. 2-11-0217, 8/8/12)

1. 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."

The court concluded that under the plain language of the current version of §12-4(b)(10), aggravated battery occurs only if the defendant knows that the person who is battered is 60 or older. The court rejected the State's argument that the knowledge requirement applies only to the *mens rea* of the offense, noting that such an interpretation was proper under the preamended version of §12-4(b)(10), but is inconsistent with both the plain language of the amended statute and the presumption that the legislature intended to effect a change in the law by amending the statute. Thus, aggravated battery under §12-4(b)(10) requires that the defendant knew the victim to be over the age of 60.

2. The court found, however, that the circumstantial evidence was sufficient to allow 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.

Defendant's conviction of aggravated battery was affirmed.

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

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§7-1(a)(4)
Use of Weapon

People v. Mandarino, 2013 IL App (1st) 111772 (No. 1-11-1772, 6/28/13)

1. Defendant, a former police officer, was convicted of aggravated battery after he beat a motorist with a collapsible baton during a traffic stop. The Appellate Court rejected the argument that the trial court applied an incorrect standard in evaluating defendant's conduct.

An arresting officer need not retreat or desist from efforts to make a lawful arrest merely because the arrestee resists. The officer is justified in using any force which he reasonably believes to be necessary to effect the arrest or defend himself from bodily harm. Among the circumstances which may be relevant to the reasonableness of the officer's actions are whether the attempted arrest is for a serious crime, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to flee.

The court found that in convicting defendant of aggravated battery, the trial judge properly applied a reasonableness standard. The court also held that the evidence was sufficient to support the judge's finding that defendant failed to act reasonably.

2. The court also concluded that 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.

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§7-1(a)(5)
Public Way, Place of Amusement or
Place of Accommodation

In re Jerome S., 2012 IL App (4th) 100862 (No. 4-10-0862, 4/23/12)

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.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

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.

(Defendant was represented by Assistant Defender Jackie Bullard, Springfield.)

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.

(Defendant was represented by Assistant Defender Kathleen Weck, Elgin.)

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§7-1(a)(6)
Self-defense

In re Vuk R., 2013 IL App (1st) 132506 (No. 1-13-2506, 12/4/13)

1. 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.

2. 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)

1. 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 gun shot 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.

2. Deadly force in defense of a dwelling is justified when: (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.

(Defendant was represented by Assistant Defender Mike Vonnahmen, Springfield.)

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§7-1(b)
Charging the Offense

People v. Moman, 2014 IL App (1st) 130088 (No. 1-13-0088, 8/14/14)

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 premised on complainant's status as a correctional officer. The charged 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.

The conviction for obstruction of a peace officer was affirmed.

(Defendant was represented by Assistant Defender Lauren Bauser, Chicago.)

People v. Sanchez, 2014 IL App (1st) 120514 (No. 1-12-0514, 2/26/14)

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.

1. 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.

2. 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.

(Defendant was represented by Assistant Defender Kate Schwartz, Chicago.)

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§7-2
Stalking

§7-2(a)
Constitutionality

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§7-2(b)
Sufficiency of Evidence

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.

(Defendant was represented by Assistant Defender Kathleen Weck, Elgin.)

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