

CH. 7
BATTERY, ASSAULT & STALKING OFFENSES

§7-1 Battery & Assault

- (a)(1) Generally (CumDigest)
- (a)(2) Bodily Harm (CumDigest)
- (a)(3) Status or Age of Victim (CumDigest)
- (a)(4) Use of Weapon (CumDigest)
- (a)(5) Public Way, Place of Amusement or Place of Accommodation

(CumDigest)

- (a)(6) Self-defense (CumDigest)
- (b) Charging the Offense (CumDigest)

§7-2 Stalking

- (a) Constitutionality (CumDigest)
- (b) Sufficiency of Evidence (CumDigest)

[Top](#)

§7-1(a)

Battery & Assault

§7-1(a)(1)

Generally

[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. However, the presumption could be severed from the rest of the statute.

[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. 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.

[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. 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. 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. Gnatz, 8 Ill.App.3d 396, 290 N.E.2d 392 \(1st Dist. 1972\)](#) Battery is a lesser included

offense of aggravated battery.

[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. 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. 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.

Cumulative Digest Case Summaries §7-1(a)(1)

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. Ford, 2015 IL App \(3d\) 130810 \(No. 3-13-0810, 10/28/15\)](#)

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. 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.

Defendant's conviction was affirmed.

(Defendant was represented by Supervisor Tom Karalis, Ottawa.)

[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 be 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 knowingly 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 resistance 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.

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 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.

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

[Top](#)

§7-1(a)(2)

Bodily Harm

[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.

[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. 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. 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. Benhoff, 51 Ill.App.3d 651, 366 N.E.2d 359 \(5th Dist. 1977\)](#) In order to support a conviction for aggravated battery under Ch. 38, ¶12-4(b)(6), the State must prove that the victim was "physically harmed."

[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.

[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. 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. 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. 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. Peters, 180 Ill.App.3d 850, 536 N.E.2d 465 \(2d Dist. 1989\)](#) A defendant can not be charged with reckless conduct where he only causes bodily harm to himself (i.e., shot himself while handling a gun in a reckless manner).

Cumulative Digest Case Summaries §7-1(a)(2)

[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.)

[Top](#)

§7-1(a)(3)

Status or Age of Victim

[People v. Infelise, 32 Ill.App.3d 224, 336 N.E.2d 559 \(1st Dist. 1975\)](#) Defendant's conviction of aggravated assault on a police officer was reversed. 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.

[In re Joel L., 345 Ill.App.3d 830, 803 N.E.2d 592 \(4th Dist. 2004\)](#) Although it found no Illinois cases on point, the Appellate Court noted an unpublished Ohio Appellate Court case holding that 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. 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. Berg, 171 Ill.App.3d 316, 525 N.E.2d 573 \(3d Dist. 1988\)](#) Defendant was living with a woman and her minor child. Defendant assisted in the care of the child by clothing and feeding her, playing with her, giving her presents, and disciplining her. An acquaintance reported to the child's grandmother that the child had bruises on her face, and the police were notified.

The minor was taken to a hospital and examined by a doctor, who noticed 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 evidence failed to show that defendant endangered the child's health by not obtaining medical attention. "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. Carrie, 358 Ill.App.3d 805, 832 N.E.2d 863 \(5th Dist. 2005\)](#) Threatening a public official did not include threats against a police officer or police dispatcher. Note: Statute amended, eff. June 1, 2008, to include "sworn law enforcement or peace officer" in definition of "public official."

[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. Irvine, 379 Ill.App.3d 116, 882 N.E.2d 1124 \(1st Dist. 2008\)](#) For purposes of domestic battery statute, "family or household member" is defined as including "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." To constitute a "dating relationship," the evidence must show that the parties have a "serious courtship." A "serious courtship" must be, at a minimum, 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.

[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. Gray, 2016 IL App \(1st\) 134012 \(No. 1-13-4012, 5/18/16\)](#)

1. Defendant was convicted of aggravated domestic battery, which requires the State to prove among other things that the victim was “any family or household member.” [720 ILCS 5/12-3.3\(a\), \(a-5\)](#). A family or household member includes “persons who have or have had a dating relationship.” [725 ILCS 5/112A-3\(3\)](#). Here defendant and the victim had a dating relationship that had ended 15 years before the offense occurred. The court held that under these facts the aggravated domestic battery statute was unconstitutional as applied.

2. The court first held that it could address this issue even though it was being raised for the first time on appeal. In [Thompson, 2015 IL 118151](#), the Illinois Supreme Court held that unlike a facial constitutional challenge to a statute, which may be raised at any time, the defendant could not raise an as-applied constitutional challenge to his sentence for the first time on appeal from the dismissal of his 2-1401 petition. While a facial challenge argues that the statute is unconstitutional under any set of facts, an as-applied challenge argues that the statute is unconstitutional only under the specific facts of the case. Because as-applied challenges are dependent on specific facts, the record must be sufficiently developed to allow appellate review.

Despite defendant’s failure to raise this issue below, the court held that the record here was sufficiently developed to review the claim. At trial, the parties thoroughly explored defendant’s relationship with the victim and it was clear that they had not dated for 15 years.

3. Due process prohibits the unreasonable or arbitrary use of police power. If, as in this case, no substantial rights are at issue, courts apply the rational basis test. Under this test, a law will be upheld so long as it bears a reasonable relationship to a public interest and the means adopted are a reasonable way of accomplishing the State’s objectives. The legislature’s judgment may be based on rational speculation rather than empirical data.

The court held that the State has an interest in preventing abuse between people who share an intimate relationship. And a couple’s romantic intimacy may outlive the duration of the dating relationship. But here the record does not suggest that defendant and the victim was still under the effect of romantic intimacy from their relationship 15 years earlier. The State failed to identify any objective that would be furthered by treating the victim here as a family member. Accordingly, the statute was unconstitutional as applied to defendant. His conviction for aggravated domestic battery was reversed.

(Defendant was represented by Assistant Defender Chris Bendik, Chicago.)

[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.)

[People v. Smith, 2015 IL App \(4th\) 131020 \(No. 4-13-1020, 12/4/15\)](#)

1. 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.

Because [IPI Criminal 4th Nos. 11.15](#) and 11.16 do not accurately convey the current state of the law, the court asked the Illinois Supreme Court Committee on Pattern Jury Instructions to consider updating the instructions.

2. 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.

(Defendant was represented by Assistant Defender Karl Mundt, Chicago.)

[People v. Willett, 2015 IL App \(4th\) 130702 \(No. 4-13-0702, 8/4/15\)](#)

1. The offense of 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.”

2. 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.’”

3. 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.
(Defendant was represented by Assistant Defender Chan Woo Yoon, Chicago.)

[Top](#)

§7-1(a)(4) Use of Weapon

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

[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.

Cumulative Digest Case Summaries §7-1(a)(4)

[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.

[Top](#)

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

[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."

[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. 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.

Cumulative Digest Case Summaries §7-1(a)(5)

[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. Messenger, 2015 IL App \(3d\) 130581 \(No. 3-13-0581, 9/1/15\)](#)

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.

(Defendant was represented by Assistant Defender Gavin Dow, Chicago.)

[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.)

[Top](#)

§7-1(a)(6)

Self-defense

[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.

[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. 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.

Cumulative Digest Case Summaries §7-1(a)(6)

[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.)

[Top](#)

§7-1(b)

Charging the Offense

[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."

[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. 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. 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." In view of the increasing popularity of laser-aimed weapons, 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. 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. 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. 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. 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. 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."

Cumulative Digest Case Summaries §7-1(b)

[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.)

[Top](#)

§7-2

Stalking

§7-2(a)

Constitutionality

[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.

The stalking statute was unconstitutionally overbroad because it failed to provide that

defendant's actions must be "without lawful authority." 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.

[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.

[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."

Cumulative Digest Case Summaries §7-2(a)

[People v. Relerford, 2016 IL App \(1st\) 132531 \(No. 1-13-2531, 6/24/16\)](#)

720 ILCS 5/12-7.3(a)(1) and (a)(2) provide that a person commits stalking when he or she "knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person" to "fear for his or her safety or the safety of a third person" (§12-7.3(a)(1)) or suffer emotional distress (§12-7.3(a)(2)). Defendant was convicted of stalking under §12-7.3(a)(2) after he made statements and stood outside a business where he had worked as an intern.

In **Elonis v. United States**, 575 U.S. ___, 135 S. Ct. 2001, 192 L.Ed.2d 1 (2015), the U.S. Supreme Court held that due process precludes a federal stalking conviction premised solely on how the defendant's actions would be understood by a reasonable person. The Supreme Court noted that although an objective standard is widely used in civil law, due process permits a conviction only if the prosecution shows, at a minimum, that defendant acted with an awareness that he was doing something wrong.

Because the stalking statute defines liability in terms of the effect of the defendant's action on a reasonable person, the statute lacks a *mens rea* requirement and is therefore

facially unconstitutional under the due process clause. Although defendant was convicted only of violating subsection (a)(2), the court concluded that the same defect applies to subsection (a)(1) and to subsections (a)(1) and (a)(2) of the cyberstalking statute (720 ILCS 5/12-7.5(a)(1), (2)). The latter statute defines the offense of cyberstalking as the use of electronic means to transmit communications which the defendant knows or should know would cause a reasonable person to fear for his or her safety or suffer emotional distress.

(Defendant was represented by Assistant Defender Jonathan Yeasting, Chicago.)

[Top](#)

§7-2(b)

Sufficiency of Evidence

[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.

[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.

Cumulative Digest Case Summaries §7-2(b)

[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.)

[Top](#)