No. 128051

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>VONZELL WHITEHEAD,<br><br>Defendant-Appellant. | ) On Appeal from the Appellate Court<br>) of Illinois, Second Judicial District,<br>) No. 2-21-0104<br>)<br>) There on Appeal from the Circuit<br>) Court of the Nineteenth Judicial<br>) Circuit, Lake County, Illinois,<br>) No. 19 CF 2483<br>)<br>) The Honorable<br>) Mark L. Levitt,<br>) Judge Presiding. |

**BRIEF OF PLAINTIFF-APPELLEE**
**PEOPLE OF THE STATE OF ILLINOIS**

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## TABLE OF CONTENTS



## POINT AND AUTHORITIES

## NATURE OF THE CASE

Following a Lake County jury trial, defendant was convicted of aggravated battery in a public place of accommodation, C155-56; *see* 720 ILCS 5/12-3.05(c), and sentenced to 42 months in prison, C191; R405-06.[1] Defendant appeals from the Illinois Appellate Court's judgment affirming his conviction. No issue is raised regarding the charging instrument.

## ISSUE PRESENTED FOR REVIEW

Whether an aggravated battery committed on a "stoop," *i.e.*, an elevated, exterior porch, located at the end of a sidewalk immediately before the entrances to two adjoining units in the common area of an apartment complex, occurs "on or about . . . a public place of accommodation" under 720 ILCS 5/12-3.05(c).

## JURISDICTION

This Court allowed leave to appeal on March 30, 2022. Accordingly, this Court has jurisdiction under Supreme Court Rules 315 and 612(b).

## STATEMENT OF FACTS

The evidence at defendant's jury trial for aggravated battery on or about a public place of accommodation, 720 ILCS 5/12-3.05(c), showed that on November 5, 2019, defendant beat Steven Box while standing on the stoop outside the door to Box's apartment, R215.

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[1] The common law record is cited as "C__," the report of proceedings as "R__," the exhibits as "E__," and defendant's opening brief as "Def. Br.__."

Box and defendant's mother, Edna Parks, lived next door to each other in a privately-owned apartment complex on 23rd Street in Zion, Illinois. R210, 216-18, 237, 249, 255-56. The single-story, horseshoe-shaped apartment complex enclosed a large grassy courtyard on three sides, with the fourth side opening onto a parking lot on 23rd Street. R202, 214; E3-4 (photographs of apartment complex). The apartments all opened onto the courtyard, and to reach the apartment doors, one could take either the private sidewalk that ran from the parking lot, around the perimeter of the courtyard past each apartment door, and back to the parking lot, or a second private sidewalk that cut through the courtyard, connecting the parking lot to the middle of the perimeter sidewalk. E3-4; *see* R215-16. Nothing obstructed access to either the property's sidewalks or the apartment doors to which they led; anyone could use the sidewalks to reach any apartment in the complex. *See* R215-16, 236, 290; E3-4. To reach the doors of Box's and Parks's apartments from the sidewalk, one would step up onto the apartments' shared stoop (also described as a "double wide sidewalk step" or "common step"). R215-17, 236; E3-5.

On the evening of November 5, 2019, Box was watching TV in his apartment when he heard a man screaming in Parks's apartment. R217-18. He could not tell what the commotion was about but heard Parks asking the man to leave. R219. Although Box was in poor health — he walked with a cane due to injuries from a motorcycle accident in 2006, suffered from partial

paralysis due to complications from open heart surgery in 2008, and had parts of both kidneys removed after a cancer diagnosis, R211-12 — he went to his front door when he heard "banging" coming from the front of Parks's apartment because he was concerned; he was a friend of Parks's, and the situation in her apartment sounded "heated," R219-21.

Other residents of the apartment complex were already outside, with one resident standing on the grass and Parks's neighbor on the other side having come out his front door. R220-21. Box had just opened his door and was standing in the doorway listening to Parks plead with the man to leave, when defendant suddenly stepped out of Parks's apartment and "onto the stoop," looked at Box, asked what he was looking at, and punched Box in the face. R220-22. Box confirmed that when defendant punched him, defendant "was standing on the stoop" or "top step" immediately in front of Box's front door. R223-24, 237.

Box fell backwards into his apartment. R223. He feared that defendant would follow him inside — he saw that defendant already had "a foot standing on [the] door" — and grabbed the cane that he kept by the door. *Id*. Defendant now "had both feet" in the apartment, so Box swung his cane at defendant. *Id.* Defendant caught the cane, "step[ped] back out onto the stoop," and struck Box with his own cane. R223-24. Box fell to the ground as defendant continued beating him with the cane. *Id*. Box "somehow" managed to close the door just as defendant was swinging the cane to hit him

again; the blow landed on the door with such force that it dented the door. R224-25, 232-33. Box called 911 as defendant continued to try and force his way into Box's apartment. R223.

Parks had a partial view of the attack from the doorway of her apartment next door and saw defendant swing his fist and the cane at Box from the stoop. R261-62. Defendant had come over to her apartment uninvited that evening. R248-49. He was upset and started yelling, but he had been drinking and Parks had difficulty understanding him. R250-53. She told defendant to leave, and he punched the wall her apartment shared with Box's. R252-55. Defendant walked outside, and Parks had just closed the door when she heard defendant confronting Box. R256-57, 265. She opened her door again and saw defendant standing on the sidewalk in front of her apartment and yelling in the direction of Box's apartment. R257. Defendant then stepped from the sidewalk onto the stoop and swung his fist toward Box's direction; Parks could not see whether the blow landed because, from her doorway, she could not see Box standing inside his doorway. R260-62. Parks saw Box swing his cane at defendant once or twice, then defendant grabbed the cane and swung it at Box. R262-64, 267, 271.

Officer Robert Ogden was dispatched to the complex, where he parked on 23rd Street and saw defendant approach on the sidewalk leading away from the apartments. R290-91. Defendant was holding a bent cane, appeared agitated, and smelled strongly of alcohol. R291-94, 296. After

talking to defendant, Ogden spoke with Box and photographed his injuries and the damage to his front door. R295-97; E8-18, 22-25.

The jury found defendant guilty of two counts of aggravated battery occurring "on or about a public place of accommodation," in violation of 720 ILCS 5/12-3.05(c). R371-72; C155-56. The trial court sentenced him to 42 months' imprisonment and a one-year term of mandatory supervised release. C191.

On appeal, defendant argued, in relevant part, that his convictions for aggravated battery should be reduced to simple battery because the offenses were not committed "on or about a public place of accommodation." *People v. Whitehead*, 2021 IL App (2d) 210104-U, ¶ 27. The appellate court rejected defendant's argument and affirmed one of the convictions. *Id.* ¶ 36.[2] The court held that the stoop from which defendant battered Box was a public place of accommodation under section 12-3.05(c) because it was accessible to the public as "the point of ingress into the home." *Id.* ¶¶ 28-31, 33. The court rejected defendant's argument that the stoop could not be a public place of accommodation under section 12-3.05(c) because it was "curtilage" under a Fourth Amendment analysis, because the Fourth Amendment "ha[d] no bearing on this case." *Id.* ¶ 33. The court explained that "regardless of

[2] The court vacated defendant's second aggravated battery conviction under "one-act, one-crime" principles. *People v. Whitehead*, 2021 IL App (2d) 210104-U, ¶ 3.

whether Box's stoop was curtilage, society recognizes an implicit license allowing the general public to approach Box's door." *Id.* ¶ 33.

## STANDARD OF REVIEW

The interpretation of a statute presents a question of law subject to de novo review. *People v. Ward*, 215 Ill. 2d 317, 324 (2005).

## ARGUMENT

### The Stoop Where Defendant Committed Battery Was a Public Place of Accommodation Under 720 ILCS 5/12-3.05(c) Because It Was a Place Made Available to the Public for the Purpose of Providing Convenient Access to the Apartments in the Apartment Complex.

Section 12-3.05(c) enhances simple battery to aggravated battery if the assailant "or the person battered is on or about a public way, public property, a public place of accommodation or amusement, a sports venue, or a domestic violence shelter" or a "place used for religious worship." 720 ILCS 5/12-3.05(c). The evidence at trial showed that defendant battered Box while standing on the stoop leading to Parks's and Box's adjoining apartments. *See Whitehead*, 2021 IL App (2d) 210104-U, ¶ 31. Because the stoop was a location made available to the public to provide its members with convenient access to the apartment units, it occurred "on or about . . . a public place of accommodation." Accordingly, this Court should affirm the appellate court's judgment.

When determining the intended scope of the term "public place of accommodation" in section 12-3.05(c), the Court must construe the statutory language. The Court's "primary objective in construing a statute is to

ascertain and give effect to the intent of the legislature." *People v. Boyce*, 2015 IL 117108, ¶ 15. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning," which the Court construes in light of "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Id.* When the statutory language is unambiguous, the statute should be applied as written, without resort to aids of statutory construction. *People v. Lewis*, 223 Ill. 2d 393, 402 (2006). And "[i]t is never proper for a court to depart from plain language by reading into the statute exceptions, limitations, or conditions which conflict with the clearly expressed legislative intent." *People v. Hari*, 218 Ill. 2d 275, 295 (2006).

Because the phrase "a public place of accommodation" is not statutorily defined, its terms are given their common meaning, which can be derived from dictionary definitions and prior cases construing the terms. *See Carmichael v. Laborers' & Ret. Bd. Emp. Annuity & Benefit Fund of Chicago*, 2018 IL 122793, ¶ 56 ("When a statute fails to define a term, it is entirely appropriate to look to the dictionary to ascertain the meaning of the term."); *Atlantic Mut. Ins. Co. v. Am. Acad. of Orthopaedic Surgeons & Scoliosis Rsch. Soc'y*, 315 Ill. App. 3d 552, 561 (1st Dist. 2000) (courts may "look to Illinois case law for guidance as to the interpretation" of undefined statutory terms). A place is "public" under the common meaning if it is open to the public. *See,*

*e.g., Webster's Third New International Dictionary* 1836 (1993) (defining "public" as "accessible to or shared by all members of the community"); *Black's Law Dictionary* 1264 (8th ed. 2004) (defining "public" as "[o]pen and available for all to use, share, or enjoy"). And the common meaning of "accommodation" is "something that is supplied for convenience or to satisfy a need." *Webster's Third New International Dictionary* 12. Thus, "a public place of accommodation" is any place that is made available to the public to provide its members with convenience or otherwise satisfy their needs.

The General Assembly provided a greater deterrent against violence committed in public places of accommodation because it "was '[o]bviously . . . of the belief that a battery committed in an area open to the public . . . constitutes a more serious threat to the community than a battery committed elsewhere.'" *People v. Foster*, 2022 IL App (2d) 200098, ¶ 44 (quoting and altering *People v. Ward*, 95 Ill. App. 3d 283, 288 (2d Dist. 1981)); *see People v. Brown*, 2019 IL App (1st) 161204, ¶ 48 (battery "presents a greater threat to society when done in a public place"). Violence committed in a place held open to the public poses a greater threat to the community than violence committed in private: when private conflicts spill out into public places, they pose a danger to members of the public who otherwise would not have been involved. *People v. Lee*, 158 Ill. App. 3d 1032, 1036 (4th Dist. 1987) ("[O]ur legislature was of the belief that a battery committed in an area open to the public constitutes a more serious threat *to the community* than a battery

committed elsewhere." (emphasis in original)); *see also People v. Handley*, 117 Ill. App. 3d 949, 952 (4th Dist. 1983) (finding it "manifest that [the prohibition against battery in places specified in section 12-3.05(c)] [wa]s designed to deter the possibility of harm to the public" based on Committee Comments that this provision "'involves a battery committed under aggravated circumstances from which great harm might and usually does result . . . , and therefore it constitutes a more serious threat to the community than a simple battery'" (quoting Ill. Ann. Stat., ch. 38, par. 12-4, Committee Comments, at 465 (Smith-Hurd 1979)).

Accordingly, Illinois courts have consistently given the term "a public place of accommodation" the breadth it has under its commonly understood meaning and consistent with the legislative intent to protect the public in any and all locations made available for the convenience of its members or to otherwise satisfy their needs. *See Foster*, 2022 IL App (2d) 200098, ¶ 44; (court's "broad interpretation [of 'public place of accommodation'] was informed by the legislative purpose behind the situs enhancement language"). In *People v. Ward*, for example, the appellate court interpreted the term "public place of accommodation" as applying to a battery committed in a car parked in the privately owned parking lot of a Holiday Inn because "the battery occurred in a public area." 95 Ill. App. 3d at 285, 287-88. And, in the decades since *Ward*, the appellate court has repeatedly interpreted "a public place of accommodation" to include any place made available to the

public for the convenience of its members or to otherwise satisfy their needs. *See*, *e.g.*, *Lee*, 158 Ill. App. 3d at 1036 (parking lot outside convenience store was public place of accommodation); *People v. Logston*, 196 Ill. App. 3d 96, 100 (4th Dist. 1990) (tavern was a public place of accommodation because it was open to portion of the public (namely, adults)); *People v. Pergeson*, 347 Ill. App. 3d 991, 994 (2d Dist. 2004) (area 50 feet in front of shopping mall entrance was public place of accommodation). Most recently, in *People v. Foster*, the appellate court determined that a business office inside a gas station and convenience store was a public place of accommodation. 2022 IL App (2d) 200098, ¶ 48. There, the office door was propped open during business hours, and the office was regularly accessed by customers seeking assistance. *Id.* Accordingly, *Foster* found the office to be a public place of accommodation, even though the defendant argued that the office was not "meant for" the public. *Id.* ¶¶ 46, 48.

That the appellate court's construction of "a public place of accommodation" in section 12-3.05(c) to include any locations made available to the public for the convenience of its members or to otherwise satisfy their needs is the General Assembly's intended construction is confirmed by the fact that the legislature did not limit or otherwise change the statute's breadth in any of the numerous amendments to the aggravated battery statute in the decades since *Ward*. *See* Def. Br. 13-14 (listing several

substantive amendments to section 12-3.05(c));[3] *see also Bd. of Educ. v. Moore*, 2021 IL 125785, ¶ 30 ("[W]here the legislature chooses not to amend terms of a statute after judicial construction, it will be presumed that it has acquiesced in the court's statement of legislative intent."); *Pam v. Holocker,* 2018 IL 123152, ¶ 31 (legislative acquiescence to interpretation adopted in two appellate court decisions demonstrated by inaction through subsequent amendments); *Moon v. Rhode*, 2016 IL 119572, ¶¶ 31-33 (legislative acquiescence to interpretation adopted in appellate court decisions demonstrated by inaction through subsequent amendments, despite one appellate court decision adopting contrary interpretation). Had the General Assembly disagreed with the interpretation of "a public place of accommodation" reached by the appellate court decades ago in *Ward* and followed in decisions since then, the legislature presumably would have amended section 12-3.05(c) to correct the appellate court's misunderstanding. But the legislature left the term, and the appellate court's interpretation of it, undisturbed.

Accordingly, the stoop from which defendant attacked Box was "a public place of accommodation" under section 12-3.05(c) because the stoop was made available to the public to provide the public access to the front doors of the apartments for all the various purposes that members of the

[3] Public Act 92-516, § 5 (eff. Jan. 1, 2002); Public Act 94-482, § 5 (eff. Jan. 1, 2006); Public Act 96-1551, § 5 (eff. July 1, 2011); Public Act 101-223, § 5 (eff. Jan. 1, 2020).

public might want or need to access them, whether visiting friends or family, trick-or-treating, delivering goods or mail, providing emergency services, selling girl scout cookies, or anything else. *See* R215-16, 236, 290; E3-4 (showing unobstructed access to the apartments' stoop). For example, defendant used the access provided by the stoop to visit his mother shortly before he battered Box. R222-23, 249-50, 260-62. Similarly, Officer Ogden used the stoop to provide police services to Box. *See* R295-96; E6-7, 16-18. As the very facts of this case demonstrate, the stoop falls squarely within the definition of "a public place of accommodation."

Nor would defendant's battery fall outside the scope of section 12-3.05(c) if he had attacked Box while standing at or on the threshold of Box's apartment door. *See* Def. Br. 1, 8, 10, 13, 15-16, 18, 20. As an initial matter, defendant's argument that he was standing at or on the threshold is belied by the record. Box and Parks's uncontroverted testimony was that defendant battered Box while standing on the stoop, not in Box's doorway. R222-24, 261-62. Box testified that defendant stepped "onto the stoop" and punched him in the face. R222; *see* R223-24 (reiterating that defendant "was standing on the stoop" when he punched Box). Although defendant started to enter Box's apartment after Box fell, he retreated back to the stoop when Box tried to defend himself with his cane, then grabbed the cane and struck Box with it while standing on the stoop. R223. Parks similarly testified that defendant "g[ot] on the stoop" and swung his fist in Box's direction. R260-61. She also

saw defendant thrust the cane toward Box while standing on the stoop. R260-62, 263-65, 267, 272-73. That defendant briefly "had both feet in the apartment" between blows is irrelevant. *See* R223.

More importantly, a battery on the threshold would still fall comfortably under section 12-3.05(c) because it would occur "on or about" the stoop. 720 ILCS 5/12-3.05(c) (prohibiting battery "on or about . . . a public place of accommodation"). Indeed, the facts of defendant's own offense illustrate why violence "on or about" a public place of accommodation like the stoop and other public areas of the apartment complex warrants a greater deterrent. Defendant's private conflict in Parks's apartment attracted the attention and concern of her neighbors, who were drawn out onto their stoops and into other common areas of the courtyard. *See* R220-21. Defendant then confronted one of those concerned members of the public — Box — and attacked him. Thus, defendant's battery on the stoop involved a member of the public who was otherwise uninvolved in whatever private grievance defendant was airing inside Parks's apartment. And defendant's violence easily could have involved more members of the public had any of Parks's other neighbors come to her or Box's aid.

This risk of violence spreading beyond the initial aggressor and victim is precisely the risk that the General Assembly sought to prevent by extending section 12-3.05(c)'s enhanced penalty to batteries committed "on or about a public place of accommodation." The phrase "'on or about' is used in

reciting the location of an occurrence to escape the necessity of being bound by the statement of an exact place." *People v. Clark*, 70 Ill. App. 3d 698, 700 (5th Dist. 1979) (cleaned up); *see Webster's Third New International Dictionary* 5 (1993) (defining "about" as "in the vicinity of" a location). By providing that a battery is aggravated if committed "on or about" a public place of accommodation, the General Assembly sought to avoid the need to consider technicalities like whether a battery occurred on one side or the other of a property line or other boundary because such considerations are not only irrelevant to the harm the General Assembly sought to prevent but "would lessen the protection sought to be given to the public and would not allow such batteries to be dealt with as intended." *People v. Lowe*, 202 Ill. App. 3d 648, 658 (4th Dist. 1990). In other words, whether a battery occurs within a public place of accommodation, such as a parking lot, or a few feet beyond the lot's edge is irrelevant under section 12-3.05(c), for the distinction is irrelevant to the risk of violence spreading to other members of the public. *See id.* at 654-55; *see also Foster*, 2022 IL App (2d) 20098, ¶ 49 (rejecting argument that battery committed in portion of gas station allegedly "meant for employees" was not on or about a public place of accommodation under section 12-3.05(c) because battery posed a "similar threat to the community" regardless of whether it occurred on the customer or employee side of the counter).

Defendant also argues that the stoop was not "a public place of accommodation" because the term is defined by its commercial character and excludes "non-business locales," such that the stoop was not a public place of accommodation because no one had "invite[d]" the public "to partake in some good, service or accommodation" offered there. Def. Br. 8, 10, 11, 14, 17. But this argument asks this Court to read a limitation into the statutory language that the legislature did not include.

Indeed, defendant's construction would impermissibly rewrite section 12-3.05(c) to change "a public place of accommodation" to "a public place of commercial accommodation." *See, e.g.*, *People v. Grant*, 2022 IL 126824, ¶ 25 (courts may not "under the guise of construction . . . add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of the language employed in the statute") (internal quotation marks omitted)); *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶ 23 ("A court may not read into a statute any limitations or conditions which are not expressed in the plain language of the statute.").

Reading defendant's proposed limitation into the statute would not only add a limitation that the General Assembly did not intend, but it would also lead to absurd results. The General Assembly's intent was to protect the public from violence in places made open to the public for its use, regardless of the nature of that use. *See supra* at 8-9. But under defendant's reading, whether a battery committed against a picnicker in a privately-owned park

was committed in a public place of accommodation would turn on whether the park charged an entrance fee, even though the harm to the public is identical regardless of whether the public's use of the location involves a commercial transaction. Indeed, under defendant's construction, a private park that generally charges entrance fees but waives the fees on certain holidays might be a public place of accommodation only on those days where admission is charged. Rendering section 12-3.05(c)'s protection of the public contingent on whether the public's use of a public place of accommodation has a commercial character thus would be absurd; the harm (and risk of further harm) posed by violence in such places is the same whether the location has a commercial or noncommercial purpose. *See Foster*, 2022 IL App (2d) 200098, ¶ 49. Accordingly, defendant's proposed reading of the statute should be rejected. *Dawkins v. Fitness Int'l, LLC*, 2022 IL 127561, ¶ 27 ("When a proffered reading of a statute leads to absurd results or results that the legislature could not have intended, courts are not bound to that construction, and the reading leading to absurdity should be rejected.").

Defendant's proposed construction limiting section 12-3.05(c) to public places of accommodation with a commercial character relies primarily on the second half of the definition of "accommodation" provided by the Merriam-Webster free abridged online dictionary: "'something supplied for convenience or to satisfy a need: such as lodging, food, and services or traveling space and related services.'" Def. Br. 9 (quoting *Merriam Webster's*

*Dictionary*, *available at* https://www.merriam-webster.com/dictionary/accommodation). But this online definition combines two definitions of the term, as *Webster's Third International Dictionary* shows. *Webster's* first defines "accommodation" as "something that is supplied for convenience or to satisfy a need," and, second, as "lodging, food, and services (as a hotel) or seat, berth, or other space occupied together with services available (as on a train)." *Webster's Third New International Dictionary* 12.

Defendant also relies on *People v. Murphy*, which, when determining whether a tavern was "a public place of amusement" under section 12-3.05(c), "suggest[ed] that the terms public place of 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." 145 Ill. App. 3d 813, 815 (3d Dist. 1986). But defendant's reliance on *Murphy* is misplaced because that case addressed the proper interpretation of a public place of *amusement*, and its passing reference to a public place of *accommodation* is both dicta, being unnecessary to the resolution of the issues presented, and unaccompanied by any analysis explaining why the court might have concluded that the General Assembly would have intended to limit section 12-3.05(c) in general, and its reference to "a public place of accommodation" in particular, to places where the public is invited to come and "partake of whatever is being offered therein." *See id.* at 814-15. Moreover, to the extent that *Murphy* can be read to suggest that the court understood "a public place

of accommodation" to be limited to places open to the public where goods or services are sold, it would be inconsistent with other appellate court decisions to have addressed the issue. *See Ward*, 95 Ill. App. 3d at 285 (parking lot was a public place of accommodation); *Pergeson*, 347 Ill. App. 3d at 994 (area in front of shopping mall entrance was a public place of accommodation).

In further support of his argument that the General Assembly intended to limit "public place of accommodation" in section 12-3.05(c) to commercial settings, defendant also relies on other statutes that use different terms in different contexts. But because section 12-3.05(c) is clear and unambiguous, this Court need not look elsewhere for interpretive aids. Def. Br. 8, 10-12; *see Roberts v. Alexandria Transp., Inc.*, 2021 IL 126249, ¶ 44 ("Unless the language of a statute is ambiguous, a court should not resort to further aids of construction and must apply the statute as written."); *Lewis*, 223 Ill. 2d at 402. In any event, none of the statutes that defendant cites supports his argument.

At the outset, defendant would have this court apply a canon of construction, *noscitur a sociis*, to other statutes – a 142-year-old "predecessor statute to the Illinois Civil Rights Act" among them – to determine the meaning of "public place of accommodation" in section 12-3.05(c). Def. Br. 10-12. But he cites no support for the proposition that one may interpret the meaning of one statute by applying canons of construction to an entirely different statute.

In any event, defendant's reliance on the nineteenth-century predecessor to the Illinois Civil Rights Act is misplaced because although that statute refers to "places of public accommodation" (a similar but not identical term to "a public place of accommodation"), it does so in a different context and for a different purpose. That statute was intended to ensure that all people have "'the full and equal enjoyment of the accommodation, advantages, facilities, and privileges'" provided by businesses serving the public, as illustrated by the list of covered commercial entities. *See* Ill. Rev. Stat. 1885, ch. 38, ¶ 42a, *available at* https://books.google.com/books?id=EIU0AQAAMAAJ (last visited Sept. 13, 2022) (providing equal access to "inns, restaurants, eating houses, hotels, soda fountains, saloons, barber shops, bath rooms, theaters, skating rinks, concerts, cafes, bicycle rinks, elevators, ice cream parlors or rooms, railroads omnibuses, stages, street cars, boats, funeral hearses and public conveyances on land and water, and all other places of public accommodation and amusement"). In contrast, section 12-3.05(c) does not use "a public place of accommodation" as a catchall, nor are the other locations listed before and after it of a uniformly commercial nature. *See* 720 ILCS 5/12-3.05(c) (prohibiting battery "on or about a public way, public property, a public place of accommodation or amusement, a sports venue, or a domestic violence shelter, or in a church, synagogue, mosque, or other building, structure, or place used for religious worship").

Defendant's related reliance on statutes that define terms other than "a public place of accommodation" — *e.g.*, "place of public amusement," 720 ILCS 5/21-9(a), "public accommodation," 55 ILCS 5/5-1125[4] and "place of public accommodation," 775 ILCS 5/5-101, *see* Def. Br. 11-12 — fails for the same reason. Examination of those other statutes shows that the General Assembly expressly limited the definition of these terms to their specific statutory context. *See* 775 ILCS 5/5-101 (definition of "place of public accommodation" is "applicable strictly in the context" of the Illinois Human Rights Act); 55 ILCS 5/5-1126 (definition of "public accommodation" provided only "[f]or purposes of this Section," which authorized county regulation of "business[es] operating as public accommodation[s]" and "permit[ted] consumption of alcoholic liquor on the business premises"); 65 ILCS 5/11-42-10.1 (same, but for statute authorizing municipal regulation). Moreover, those statutes demonstrate that the General Assembly knew how to cabin the meaning of "accommodation" to commercial settings if it wished, and therefore that it purposefully declined to do so in section 12-3.05(c).

Next, contrary to defendant's suggestion, *see* Def. Br. 10, granting the term "a public place of accommodation" its common meaning (and the meaning intended by the General Assembly) does not bring within its scope every place that the public is physically capable of accessing. A place is not "a public place of accommodation" simply because it is insufficiently secured

[4] This is a typo; the provision containing the definition of "public accommodation" that defendant cites is section 5-1126.

against trespass. Rather, a public place of accommodation is a place that is accessible to the public because it has been *made available* to the public. *See supra* at 7-10.

Accordingly, Illinois courts have held that physical accessibility alone does not render a location a public place of accommodation under section 12-3.05(c). In *People v. Snelling*, for example, the appellate court found that the defendant did not commit battery "on or about . . . a public place of accommodation" for purposes of section 12-3.05(c) when he attacked the victim in "a closed ward situated beyond the emergency room" of a hospital, which was open neither to the general public nor to hospital patients. 2021 IL App (1st) 200293-U, ¶¶ 27, 30-32.[5] The ward, while technically accessible (inasmuch as a person, like the defendant, could enter into it without authorization), was not a space made available to the public. *See id.* Similarly, in *People v. Olivarri*, the appellate court held that a hospital's emergency room was "not open to the general public in the sense that anyone may wander through" because "access to an [emergency room] by anyone other than those seeking treatment may be controlled by medical personnel." 2021 IL App (3d) 180601-U, ¶¶ 12, 14 (internal quotation marks omitted).

As these cases show, the touchstone of the inquiry into whether a location is a public place of accommodation is whether it is made available to the public for the convenience of its members or to otherwise satisfy their

[5] Copies of all nonprecedential orders cited in this brief are available at https://www.illinoiscourts.gov/top-level-opinions/. *See* Ill. S. Ct. R. 23(e)(1).

needs, not merely whether a member of the public could physically access it despite attempts to restrict access. For this reason, defendant's concern that affording the term "public place of accommodation" its proper breadth would render a homeowner's unfenced backyard or open garage "a public place of accommodation" is unwarranted. Def. Br. 10. The fact that a member of the public could physically trespass into a homeowner's unfenced backyard or open garage does not mean that the homeowner made those places available to the public.

Nor does granting the term "a public place of accommodation" its common meaning "render[ ] every other clause of the location-based aggravated battery statute superfluous." Def. Br. 13. Defendant contends that "[t]here would be no need to include" the various other locations in section 12-3.05(c) "if the legislature intended the public place of accommodation or amusement to mean any location that is merely accessible to the public." *Id*. But the statute's other terms — "public property," "public way," "domestic violence shelter," "sports venue," and so on — have distinct meanings that encompass locations "a public place of accommodation" does not.

"Public property," for example, means "State- or community owned property not restricted to any one individual's use or possession," *Black's Law Dictionary* 1472 (11th ed. 2019), and can include places like a judge's chambers, a fire station, or a national guard military base, locations which

can (and often do) broadly restrict access to members of the public and are not necessarily made available to the public. "Public ways" are "any passageway (as an alley, road, highway, boulevard, turnpike) or part thereof (as a bridge) open as of right to the public and designed for travel." *See People v. Dexter*, 328 Ill. App. 3d 583, 587 (2d Dist. 2002). But "public ways" do not include sidewalks on private property, even if made available to the public. *Id*. Similarly, access to a "domestic violence shelter" is made available only to those members of the public affected by domestic violence and in need of temporary housing. *See, e.g., Crocker v. Finley*, 99 Ill. 2d 444, 449-50 (1984). And a "sports venue" generally may be accessed only by ticketholders during certain times, and even then, often does not allow members of the public unrestricted entry to all parts of the facility, such as locker rooms, the playing field, coaches' offices, or press boxes. *See* 720 ILCS 5/12-0.1.

In any event, that there might be overlap between "a public place of accommodation" and the other terms in section 12-3.05(c) does not render those other terms superfluous. Section 12-3.05(c)'s description of the various public areas in which the legislature has determined violence is particularly harmful, like many statutory definitions, is "stated in [a] string[ ] of closely related and overlapping terms, to plug loopholes." *United States v. Costello*, 666 F.3d 1040, 1046 (7th Cir. 2012). Thus, the fact that there may be

locations that qualify as both "a public place of accommodation" and a "sports venue," by way of example, would not render either term superfluous.

Defendant also contends, in the alternative, that because his assault on Box occurred near private residences where "access is extremely limited," it cannot fall within section 12-3.05(c)'s reach. Def. Br. 12, 15-16. But defendant identifies no limits on the availability of the stoop to the public, which the evidence showed was unobstructed and used by visitors (like defendant) and public servants (like police) to approach the residents' front doors. *See Florida v. Jardines*, 569 U.S. 1, 8 (2013) (recognizing "implicit license" for public "to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave").

Defendant's remaining arguments are unpersuasive. He argues that the stoop qualifies as "curtilage" under the Fourth Amendment, and so cannot be "a public place of accommodation" for the purposes of aggravated battery under section 12-3.05(c). Def. Br. 14-15. However, as the appellate court recognized whether a location is curtilage for the purposes of Fourth Amendment analysis is irrelevant to the question of statutory interpretation at issue here. *Whitehead*, 2021 IL App (2d) 210104-U, ¶ 32. The Fourth Amendment "protects a person's right to a reasonable expectation of privacy, not just the right to be free from unreasonable physical intrusion." *People v. Lindsey*, 2020 IL 124289, ¶ 54. But, as the court noted, an apartment dweller

has no reasonable expectation of privacy on a shared stoop that members of the public, including neighbors and guests, may easily access. *Whitehead*, 2021 IL App (2d) 210104-U, ¶ 34 (citing *People v. Jones*, 119 Ill. App. 3d 615, 619 (1st Dist. 1983) (finding no expectation of privacy in the enclosed porch of a home) and *People v. Arias*, 179 Ill. App. 3d 890, 895 (3d Dist. 1989) (same)). Moreover, the General Assembly's intent when enacting section 12-3.05(c) was not to deter against, by increasing the penalty for, batteries that occur in locations protected by the Fourth Amendment; it was to protect the public from violence by deterring batteries in locations made available to the public for the convenience of its members or to otherwise satisfy their needs. *See supra* at 8-9. The scope of Fourth Amendment protections thus does not inform the proper interpretation of section 12-3.05(c).

Finally, defendant asserts in passing that enhancing an offense from misdemeanor simple battery to felony aggravated battery if committed on a publicly accessible stoop violates due process principles[6] and the proportionate penalties clause of the Illinois Constitution because nearly "every misdemeanor battery can be enhanced to a Class 3 felony." Def. Br. 19. But this argument — that a greater proportion of batteries should be punished as misdemeanors rather than felonies — is a policy argument, not a

[6] To the extent defendant raises a due process violation independent of his proportionate penalties argument, the argument is forfeited. *See Sexton v. City of Chicago*, 2012 IL App (1st) 100010, ¶ 79 (reviewing court is entitled to have issues clearly defined and supported by pertinent authority and cohesive arguments, and the failure to develop an argument results in its forfeiture).

legal one. There is no question that the General Assembly has the constitutional authority to criminalize battery, regardless of where it is committed. *See People v. Bradley*, 79 Ill. 2d 410, 421-22 (1980) ("The legislature has the inherent power, within constitutional limits, to define conduct which shall constitute a criminal offense and to fix the punishment for that conduct."). Nor is there any question that the General Assembly may punish *all* batteries as Class 3 felonies if it determines that penalty is appropriate. *See People v. Sharpe*, 216 Ill. 2d 481, 521 (2005) (proportionate penalties clause violated if (1) two statutes define offenses with identical elements but provide different penalties for those offenses or (2) penalty provided for an offense is "cruel and degrading"). Because neither due process nor the proportionate penalties clause confers on perpetrators of batteries a right to be punished as misdemeanants rather than as felons, defendant's invocation of due process and proportionate penalties principles do not support his interpretation of section 12-3.05(c).

In sum, when defendant attacked Box from the stoop in front of Box's and Parks's apartments, defendant committed a battery on or about a public place of accommodation under section 12-3.05(c) because the stoop was a location made available to the public for the convenience of its members or to otherwise satisfy their needs. Defendant's more limited reading of section 12-3.05(c) must be rejected because it "would be in direct conflict with the legislature's intent" to protect the public in any location made available for

the use of its members by providing greater deterrence against batteries committed in such locations. *Lowe*, 202 Ill. App. 3d at 658.

## CONCLUSION

This Court should affirm the appellate court's judgment

September 13, 2022

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## RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of point and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 27 pages.

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## CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 13, 2022, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which automatically served notice on counsel at the following e-mail address:

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