No. 127894

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JOSE CASTILLO, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-19-0633. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, Livingston County, Illinois, No. 17-CF-187. Honorable Jennifer H. Bauknecht, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

I.

Property that is inaccessible to the public, such as the cell block in this case, should not be considered "public property" under the aggravated battery statute based on the definition of the term and the legislative history of the statute.

In his opening brief, Jose Castillo argued that defining a cell block in a maximum security prison as "public property" within the meaning of the aggravated battery statute is antithetical to the plain meaning of the term, the legislative history of the statute, and Illinois caselaw. (Op. Br. 6-16). Castillo asked this Court to clarify that the definition of "public property" is limited to property that includes references to *both* the accessibility of the property to the general public and the ownership of the property by the government. (Op. Br. 6). In response, the State argued that the plain definition of the term refers only to government-owned property, the legislative history does not justify departing from this definition, and that Castillo's proposed definition is unworkable. (St. Br. 6-25). For the reasons that follow, this Court should reject the State's arguments and vacate Castillo's conviction for aggravated battery and remand for re-sentencing for misdemeanor battery because his charged battery did not occur on "public property" within the meaning of the statute.

Argument

Plain and ordinary meaning of "public property"

In his opening brief, Jose Castillo began by arguing that the plain meaning of the term "public property" is popularly understood to include references to *both* the accessibility of the property to the general public and the ownership of the property by the government. (Op. Br. 8). The State responded by arguing that "public property" has a plain and unambiguous definition because "virtually all" dictionary definitions define public property as property owned by the city, town, or state. (St. Br. 7). But contrary to the State's assertion, there are a myriad of dictionaries that apply a dual definition.

While some dictionaries do define the term only based on ownership, other sources support a definition which references the public's ability to access or use the government-owned property. *See* Public Property, Longman Dictionary of Contemporary English, *available at* www.ldoceonline.com/dictionary/public-property (defining the term as "something that is provided for anyone to use, and is usually owned by the government"); Public Property, The People's Law Dictionary, *available at* dictionary.law.com/Default.aspx?selected=1683 (defining the term as "property owned by the government or one of its agencies, divisions, or entities. Commonly a reference to parks, playgrounds, streets, sidewalks, schools, libraries and other property regularly used by the general public."); Public Property, Oxford Advanced Learner's Dictionary, *available at* www.oxfordlearnersdictionaries.com/us/definition/english/public-property (defining the term as "land, buildings, etc. that are owned by the government and can be used by everyone").

The reason why some dictionaries focus on ownership and others on the character of the property may be illuminated by Wikipedia, an online encyclopedia. Wikipedia explains that there is a distinction between the terms "state ownership" and "public property." State Ownership: Public Property, Wikipedia, *available at* en.wikipedia.org/wiki/State_ownership. Specifically, it notes that "[t]he former may refer to assets operated by a specific state institution or branch of government, used exclusively by that branch, such as a research laboratory. The latter refers to assets and resources that are *available to the entire public* for use, such as a public park." *Id.* (emphasis added). This close relationship highlights why accessibility and ownership are often analyzed alongside one another in defining the term "public property."

One of the sources that the State relied upon is the Black's Law Dictionary (11th ed.). (St. Br. 7-8). It should be noted that Black's Law Dictionary has defined the term "public property" differently throughout several editions. For instance, in the 11th edition, it is defined as "State-[owned] or community-owned property not restricted to any one individual's use or possession." Public property, Black's Law Dictionary (11th ed. 2019). In contrast, the 5th edition elaborated on that definition and added that it is"...a designation of those things which

are *** considered as being owned by 'the public, the entire state or community, and not restricted to the dominion of a private person," and "[i]t may also apply to any subject of property owned by a state, nation, or municipal corporation as such." Public Property, Black's Law Dictionary, 1096 (5th ed. 1979).

Due to these changes, it is most appropriate to refer to the commonly used definition at the time of the statute's enactment in 1961. Laws 1961, p. 1983, § 12-4, eff. Jan. 1, 1962. The reason for this was clearly explained by the U.S. Supreme Court in *Bostock v. Clayton County, Georgia*, 590 U.S. —, —, 140 S. Ct. 1731, 1738 (2020) (emphasis added):

> "This Court normally interprets a statute in accord with the ordinary public meaning of its terms *at the time of its enactment*. After all, only the words on the page constitute the law adopted by Congress and approved by the President. If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people's representatives. And we would deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations."

See also Perrin v. United States, 444 U.S. 37, 42 (1979) (explaining, courts must interpret the words consistent with their "ordinary meaning *** at the time Congress enacted the statute."). As such, the 4th edition of Black's Law Dictionary is the most appropriate for this analysis because it reflects the common understanding of the term in the 1960s, and it is the edition that was published closest to the date of enactment. The following definition appears in Black's Law Dictionary, (4th ed. 1968):

> "Public property. This term is commonly used as a designation of those things which are *publici juris*, (*q. v.*,) and therefore considered as being owned by 'the public,' the entire state or community, and not restricted to the dominion of a private person. It may also apply to any subject of property owned by a state, nation, or municipal corporation as such."

As can be seen from this definition, "public property" was used in two senses at the time of the enactment. In one, the term refers to the character of the property, who has access to the property, and whether or not private individuals have greater dominion over the property than the general public. In the other sense, the term reflects the ownership of the property.

In light of the dual definitions of "public property," it is appropriate for this court to consider both the ownership of the property and the public's access to the property.

Relatedly, Castillo's focus on the term "public" rather than "public property" in his opening brief does not reflect a dearth of definitions for "public property" that include accessibility or usage, as the State suggests; indeed, as demonstrated previously, there are several dictionaries that do encompass accessibility in the definition of "public property." Rather, his analysis of the word "public" was intended to shed light on the everyday meaning of the term. As Justice Kagan noted in her dissent in *Yates v. United States*, 574 U.S. 528, 553 (2015) (plurality) (Kagan, J., dissenting), when applying the plain meaning canon of statutory construction, the words should be given the meanings they have in everyday language. In that case, she concluded that "conventional tools of statutory construction all lead to" the conclusion that the compound phrase in question ("tangible object") should mean "an object that's tangible." *Id.* Applying that same logic, the plain meaning of the term "public property" should be property that is public. So, the relevant question is: what makes a property public?

The Second District in *People v. Ojeda*, 397 Ill.App.3d 285, 287 (2d Dist. 2009), answered that question when it determined that "public property" refers to both the ownership and the accessibility of the property. In reaching its conclusion, the court relied on the Third District's analysis of the term in *People v. Kamp*, 131 Ill.App.3d 989 (3d Dist. 1985), and Black's Law Dictionary's definition for a "public building," a related term that included references to both ownership and accessibility. *Ojeda*, 397 Ill.App.3d at 287. In doing so, the court ruled that "property is not public solely because it is funded by local taxpayers. Rather, 'public' also refers to that which is for the public's use." *Id.*

Likewise, the Superior Court of Pennsylvania also applied the dual definitions of the term "public property" where the legislature did not specified the term's definition, and where the location of the offense is significant. *Commonwealth v. Goosby*, 380 A.2d 802, 806 (Pa. Super. 1977). In that case, the defendant was charged with carrying a firearm on public streets or public property. *Id.* at 805. The court applied the dual definitions of the term "public

property," and referred to that approach as the "common and approved usage" of the term. *Id.* The court ultimately held that, "[s]ince the property in question was owned by a public entity, since the sidewalk in question was used by members of the public as well as the project residents, and since no private individual or group exercised dominion over the sidewalk, we believe that it was and is 'public property.'"[1]

By applying these dual definitions, Castillo is not "read[ing] the phrase 'publicly accessible' into the statute and impermissibly adding a qualification to the statute that the General Assembly did not include." (St. Br. 9). Instead, Castillo is applying the same reasoning as the *Ojeda* court used. *Ojeda* itself followed a long line of Illinois cases that held that the ownership of property was not the only thing that transforms property into "public property;" several courts have ruled that it is necessary to analyze whether the area is accessible to the public. (Op. Br. 10-13); *People v. Ward*, 95 Ill.App.3d 283 (2d Dist. 1981); *Kamp*, 131 Ill.App.3d at 993; *Blackburn v. Johnson*, 187 Ill.App.3d 557 (4th Dist. 1989). But the State did not address those cases or the reasoning behind them in its response. The State's failure to address this line of cases is detrimental to its argument because it essentially disregards long-standing precedent established by Illinois courts.

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[1] The State referenced courts in Virginia and Colorado to support its argument that government-owned property is public property. (St. Br. 8, n. 3). Both cases are largely irrelevant to the instant case. In the Virginia case, *Cuffee v. Commonwealth*, 735 S.E.2d 693, 701 (Va. App. 2013), the court was only referencing the ownership aspect because of the trial court's statement, "you think there may be private streets?" Based on that statement, ownership was the only portion of the term "public property" being disputed. *Id.* The court did not need to address accessibility because there was no dispute about whether the public was able to access the street. *Cuffee*, 735 S.E.2d at 701.

As for the Colorado case, the court ruled that it was the type of property interest that was relevant for the purposes of the embezzlement statute. *People v. Berry*, 457 P.3d 597, 601 (Colo. 2020). In that case, the type of ownership was the key aspect of that definition because the property in question (firearms) was owned by a private party, and the issue revolved around whether current possession was encompassed by the term "public property." *Id.* In that case, the court did not need to address accessibility because, again, the character of the property was not at issue. *Id.* The only dispute was whether "public property" requires an ownership interest, or whether a possessory interest would suffice. *Id.*

Next, the State addresses the holdings of *People v. Hill*, 409 Ill.App.3d 451, 455 (4th Dist. 2011) and *People v. Messenger*, 2015 IL App (3d) 130581, which both held that the definition of "public property" is "government owned property." (St. Br. 9). Castillo does not dispute that ownership is *part* of the relevant definition; rather, Castillo's argument is that ownership is only one aspect that the court must consider. The other aspect that courts must consider is the accessibility of the area in accordance with the legislature's intent. *See People v. Ward*, 95 Ill.App.3d 283, 287-88 (2d Dist 1981) (explaining the legislature's intent). This distinction is key in the instant case, too, because the community did not face the serious threat that is contemplated by the statute as this was not an open and accessible area. Because the *Hill* and *Messenger* courts did not consider the accessibility of the area, the definition employed by those courts is incomplete.

The State went on to argue that the dual definitions approach would not adequately protect government officials in need of protection. (St. Br. 10). Among the examples listed by the State were places or people who are already protected by other provisions of the aggravated battery statute. *See* 720 ILCS 12/3.05(d)(6) (2022) (elevating to aggravated battery where the victim is an employee of the State of Illinois or a unit of local government); 720 ILCS 5/12-3.05(a)(3) (elevating to aggravated battery if the person injured is a peace officer, community policing volunteer, fireman, private security officer, or correctional institution employee); 720 ILCS 5/12-3.05(d)(5), (11) (elevating to aggravated battery where the victim is an emergency medical services personnel or nurse); *Compare* 720 ILCS 5/12-3.05(c) (elevating to aggravated battery when the offense occurs in a public place of accommodation), *with* 775 ILCS 5/5-101(A)(6) (2022) (listing a professional office of a healthcare provider and a hospital as a pubic place of accommodation for the purposes of the Illinois Human Rights Act). As for schools and courtrooms, the Second District adequately described how those locations are protected under the dual definitions standard when it reasoned that the public does have use of those locations in some way, even if their use may be restricted or limited. *Ojeda*, 397 Il.App.3d at 288. It went on to explain, "[c]ourthouses and public schools implement rules

that may deny admittance to some, but those rules are in place not to restrict the public's access but to ensure that order is kept." *Id.* As such, it found that those places are "public property" as intended by the aggravated battery statute. *Id.* Thus, the State's concerns are already adequately addressed by the existing provisions in the aggravated battery statute.

The State was also concerned that an aggravated battery which occurs in a prison could escalate into wider disputes and harm other bystanders or employees. (St. Br. 11). The Committee Comments to the statute state that a public battery "constitutes a more serious threat to the community than a simple battery." 720 ILCS 5/12-3.05, Committee Comments. However, this "community" has been interpreted to mean the public at large, not any group of people with "their own sets of rules." *Ward*, 95 Ill. App. 3d at 287.The State's argument is, essentially, that anyone on publically owned property is a member of the general public, and therefore any battery against a person on publically owned property is an aggravated battery. The State's argument that guards and prisoners are members of the general public thus is merely a restatement of its underlying position that government ownership alone is sufficient to render a location public property and is therefore unavailing.

And it is important to remember exactly what occurred in this case: at the time of the battery, Castillo was located in his cell and inmate John Eilers was handcuffed and being escorted through the hallway, through an area where no inmates were allowed without being handcuffed and led by a guard. (R. 63-64). There was no danger to any other bystanders or citizens. Additionally, even though Officer Thorpe was injured, he was protected by a different portion of the aggravated battery statute. (C. 17); 720 ILCS 5/12-3.05(d)(4)(i).

Thus, the State's arguments are fruitess and this Court should find that the plain and ordinary meaning of "public property" at the time the statute was enacted clearly references both the character of the property and the ownership.

Legislative intent regarding public property

In his opening brief, Castillo argued that the legislative history demonstrates that the legislature intended to define the term "public property" with both the ownership and accessibility

definitions. (Op. Br. 8-9). Then, applying the principle of *noscitur a sociis*, Castillo demonstrated that the other terms within the statute encompass spaces that are publicly accessible and, therefore, the statute—including the term "public property"—provides "a general description of areas frequented by the public." (Op. Br. 9-10); *People v. Handley*, 117 Ill. App. 3d 949, 952 (4th Dist. 1983).

The State began its second argument by stating that Castillo's application of *noscitur a sociis* and use of legislative history was "misplaced." (St. Br. 11-12). This is because the State believes that the plain language of the statute is clear, rending other tools of interpretation unnecessary. (St. Br. 11-12). But sometimes applying the plain meaning of a term fails to yield a *clear* meaning. When that happens, other forms of statutory interpretation can shed light on the legislature's intended definition. *See, e.g., Neal v. Clark*, 95 U.S. 704, 709 (1877) (describing *noscitur a sociis* as a "very frequently applied" maxim that courts use as a tool to decipher the intended meaning of a term). In a case such as this, where courts have applied differing definitions to the term "public property," those other forms of statutory interpretation are useful and appropriate. As such, the State's initial proposition should be rejected.

The State also argued that the structure of the list does not suggest that the legislature intended to define the terms by reference to each other, based on the use of the disjunctive "or" within the statute. (St. Br. 12). Relatedly, the State claimed that a list of three "public" locations is too short and diverse to suggest that the legislature was attempting to describe a general category. (St. Br. 13). But the United States Supreme Court recently applied the *noscitur a sociis* cannon to the disjunctive, three-term list in 18 U.S.C. § 1519 (2015), which stated, in relevant part, the terms "record, document, or tangible object." *Yates*, 574 U.S. at 539-48. Similarly, in *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961), the Court invoked *noscitur a sociis* in limiting the scope of the term "discovery" to the common characteristic it shared with the other terms in the list—"exploration" and "prospecting." Again, those were the only three terms in that list and they were also separated by the disjunctive "or." *Jarecki*, 367 U.S. at 307. Thus, the State's argument holds no water.

In support of its argument, the State relied on *Graham Cty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280 (2010), for the proposition that *noscitur a sociis* does not apply to a list of three items that are so disparate to suggest that they are meant to be read together. (St. Br. 13). In that case, the issue was whether the word "administrative" in a statute[2] was limited to federal sources or whether it encompassed disclosures made in state and local sources, too. *Graham Cty.*, 559 U.S. at 283. But in that case, the three terms at issue—congressional, administrative, and Government Accounting Office—did not share a common quality and core of meaning. *Id.* at 288-89. Further, the statute's entire text referred to both federal and non-federal subjects, which further supported the notion that the word "administrative" was not limited to only federal subjects. *Id.* at 290-93. It is important to note that since *Graham County* was decided, the Court has used the doctrine of *noscitur a sociis* to interpret three-item, disjunctive lists. *See Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 634–35 (2012); *Yates*, 574 U.S. at 539-48. Thus, it is clear that the limitation discussed in *Graham County* applies only where there is no common quality and core of meaning between the terms in the list—irrespective of the size of that list.

In contrast to the list at issue in *Graham County*, the list contained within the aggravated battery statute in this case does share a common quality and core of meaning: they are all public locations that pose a more serious threat to the community than a battery committed elsewhere. 720 ILCS 5/12-3.05(c); *People v. Ward*, 95 Ill.App.3d 283, 287 (2d Dist. 1981) (citing Ill.Ann.Stat., ch, 38, par. 12-4(b)(8), Committee Comments, at 465 (Smith-Hurd 1979) . The State itself also described these terms as having a "relevant" and "shared" trait in that they are "all places that serve public functions sensitive to acts of nearby violence." (St. Br. 15).

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[2] The statute read: "No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions [1] in a criminal, civil, or administrative hearing, [2] in a congressional, administrative, or Government Accounting Office [(GAO)] report, hearing, audit, or investigation, or [3] from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source [4]of the information." *Graham Cty.*, 559 at 286 (alterations in original).

Thus, there is a common quality and core of meaning between the terms. Unlike the statute at issue in *Graham*, that provision of the aggravated battery statute, when read as a whole, does not undermine the common quality shared between the terms. Instead the statute refers to other places where members of the general public tend to gather—like sports venues and places of religious worship. *Id.* Therefore, the limitation described in *Graham County* does not apply to the statute in this case.

Next, the State argued that the legislature could have added explicit limiting language to the statute by listing multiple examples of government property open to the public. (St. Br. 13). This argument ignores the existing structure of the statute. The term "public property" is "sandwiched" between two terms that have been held to encompass spaces that are publicly accessible. *See People v. Lowe*, 202 Ill. App. 3d 648, 655 (4th Dist. 1990) (explaining that public ways include public streets and areas surrounding them); *People v. Murphy*, 145 Ill. App. 3d 813, 815 (3d Dist. 1986) (Public places of accommodation or amusement are "places where the public is invited to come into and partake of whatever is being offered therein."). The placement of the terms within the list is significant. By being sandwiched between two terms that clearly reference accessibility, it can be deduced that the legislature intended for "public property" to be read in a way that limits its scope such that it is similar to the terms that surround it. *See, e.g., Graham Cty.*, 559 U.S. at 288 (explaining the "Sandwich Theory" of the *noscitur a sociis* maxim, but declining to apply it in light of the list's lack of common quality and core of meaning).

The mere fact that the legislature chose a general description of areas frequented by the public rather than spelling out examples of government property open to the public does not mean that the rule of *noscitur a sociis* should not apply. The words within the list have a common quality and core of meaning, and therefore the legislature likely structured the list intentionally to suggest that the words must be read together, in accordance with *noscitur a sociis*. Additionally, the State's interpretation would assign a definition to "public property" that is over-broad. The doctrine of *noscitur a sociis* is relied upon by courts precisely "to avoid

ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving 'unintended breadth to the Acts of Congress.'" *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 575 (1995), *quoting Jarecki*, 367 U.S. at 307. Where a term, such as "public property," is capable of several meanings, it is wise to apply *nosciur a sociis* as a way to avoid giving unintended breadth to the acts of the legislature. *See Jarecki*, 367 U.S. at 307. Failure to limit the term "public property" to a definition in accordance with its surrounding words would have that consequence.

Because the State has not provided a persuasive reason to disregard the Supreme Court's "commonsense" directive, the canon of *noscitur a sociis* should be applied to the aggravated battery statute in order to understand its meaning. And because the other terms in the statute refer to places that are open and accessible to members of the public, the term "public property" should also be read to refer to government-owned property that is accessible to members of the public or community.

In an alternative argument, the State suggests that the "openness" of the location is irrelevant to the term "public place of accommodation." (St. Br. 14-15). In support, the State points to common limitations on public places of accommodation or amusement (like age limitations at bars and admission fees at clubs) as evidence that openness is irrelevant. (St. Br. 14-15). But as the Second District observed in *Ojeda*, limits on the use of a public place do not make it any less "public." 397 Ill.App.3d at 288. Limiting the use of a public facility does not mean that it is not considered "public," rather those rules are in place, for instance, protect other members of the public from those who are disruptive or who present a threat to the safety of others. *See Id.* Additionally, this argument does not take into account the meaning of the word "public." (Op. Br. 8).

This argument by the State is a red herring and completely ignores the well-recognized legislative purpose of the aggravated battery statute. The elevation of batteries occurring on public property from simple to aggravated batteries was predicated on the legislative determination "that a battery committed *in an area open to the public*, whether it be a public way, public

property or public place of accommodation or amusement, constitutes a more serious threat to the community than a battery committed elsewhere." *People v. Ward*, 95 Ill.App.3d 283, 287 (2d Dist. 1981) (citing Ill.Ann.Stat., ch, 38, par. 12-4(b)(8), Committee Comments, at 465 (Smith-Hurd 1979) (emphasis added). The court continued: "[w]hether the property was actually publicly owned and, therefore, 'public property' rather than a privately owned 'public place of accommodation' is irrelevant; what is significant is that the alleged offense occurred in an area accessible to the public." *Id.* at 288. The State takes issue with the *Ward* court's holding because the State believes that the court leapt to its own conclusion about the purpose of the statute rather than analyze the ordinary definition of the terms in the statute. (St. Br. 16). But the court in that case was not tasked with interpreting the statute's terms; rather, the question before the court was whether the State's amendment to an information—namely, changing the term "public property" to "public place of accommodation—was because of a "formal defect," and therefore amendable. *Ward*, 95 Ill.App.3d at 286-87. As such, the court needed to analyze whether the change in terms was considered a substantive amendment. *Id.* at 287. The court found the Committee Comments within the statute to be persuasive for this purpose. *Id.* Because the legislature's goal was to prevent batteries that occur in a public area, the court reasoned that the ownership was irrelevant and the change was formal. *Id.* at 288.

While *Ward* did not have the task of interpreting the plain meaning of the statute, *Ojeda* is an example of a case that relied on the holding in *Ward* and used its reasoning as an aid to interpreting the meaning of the term "public property." 397 Ill.App.3d at 287. In that case, the court *did* acknowledge that the first step to interpreting the meaning of a term is to use the plain and ordinary meaning of the term. *Id.* But even though it acknowledged that starting point, it found that the term was ambiguous because the term "public property" has multiple meanings. *Id.* When a court determines that the language is ambiguous or susceptible to more than one reasonable interpretation, Committee Comments are a persuasive aid in ascertaining the legislative intent of an ambiguous statute. *People v. Hunter*, 2013 IL 114100, ¶ 17.

As the Fourth District recognized in *People v. Lee*, 158 Ill.App.3d 1032, 1036 (4th Dist. 1987), the the interpretation of the *Ward* court "is supported by the Committee Comments to [the aggravated battery statute]; and by a commonsense approach to interpreting the statutory language in light of the harm it was directed at preventing." In this instance, the Committee Comments fully support a construction requiring the consideration of the public's accessibility when determining if a battery occurred on "public property." 720 ILCS 5/12-3.05, Committee Comments. Specifically, the Comments note that "[t]he second category of aggravated batteries *** 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. *Id.* (emphasis added). When the public is not able to access a location, there is not a more serious threat to the community than a simple battery. As such, the State's attempt to discredit the holding in *Ward* is unpersuasive.

Moreover, the Committee Comments also undermine the State's baseless assertion that "the location-based aggravated battery and assault provisions are intended to deter violent crimes against people on government owned, public property because it is frequently the site of characteristically governmental activities prone to disruption by nearby violence, and to protect government employees from that violence." (St. Br. 18). The State points to no authority to support that contention. Instead, the Committee Comments clearly demonstrate that the legislature was concerned with the "more serious threat to the community" when drafting this statute.

Indeed, the evolution of Section 12-3.05 over the years bolsters the notion that appellate courts have accurately interpreted the legislative intent behind the statute as protecting members of the general public and the spaces they frequent. Specifically, in the 40 years since the appellate court first announced "that a battery committed in an area open to the public, whether it be a public way, public property or public place of accommodation or amusement, constitutes a more serious threat to the community than a battery committed elsewhere" (*Ward,* 95 Ill.App.3d at 287), the legislature has amended Section 12-3.05 over 40 times. In doing so, however,

not once has it created a definition of public property which conflicts with the legislative purpose announced by the Second District in *Ward* and subsequently echoed by the Third and Fourth Districts in *Kamp*, 131 Ill.App.3d at 993, and *Lee*, 158 Ill.App.3d at 1036. Under such circumstances, "where the legislature chooses not to amend a statute after a judicial construction, it is presumed that the legislature has acquiesced in the court's statement of the legislative intent." *Ready v. United/Goedecke Services, Inc.*, 232 Ill.2d 369, 380 (2008).

To be sure, Castillo does acknowledge the limitation in relying on post-enactment amendments to the statute. Thirty years after *Ward* was decided, a circuit split developed due to the Fourth District's decision in *People v. Hill*, 409 Ill.App.3d 451 (4th Dist. 2011), which interpreted "public property" to mean government-owned property. Thus, the State was able to point to eight amendments to the statute, and heavily relied on two of those amendments in particular to support its argument that the legislature adopted the "government owned" definition of "public property." (St. Br. 21-22). Yet, the State did not acknowledge the circuit split that existed at the time, nor did it provide an explanation as to why those amendments should be interpreted as an "acquiescence" to the later-pronounced definition as the amendments did not change the "public property" language in the statute. (St. Br. 21-22).

Finally, in his opening brief, Castillo pointed out that during debates on whether to amend the aggravated battery statute to include batteries against a "correctional institution employee," it was argued that such an amendment was necessary because there had been a battery against a medical technician at Dwight Correctional Center that could not be prosecuted under the existing version of the aggravated battery statute. 81st Ill. Gen. Assem., House Proceedings, June 14, 1979 at 232–33 (statement of Representative MacDonald); (Op. Br. 8-9). The State attempts to discredit this point by noting that the amendment also applies to correctional employees who are working outside of the prison, such as while transporting inmates to and from prison. (St. Br. 20). Yet, the mere fact that debates needed to be held about whether a medical employee, who was battered *inside of a correctional facility*, was the victim of an aggravated battery—as opposed to a simple battery—indicates that the aggravated battery statute

did not already encompass correctional facilities. In other words, there would have been no need for the debates if that charge was already considered an aggravated battery. The State's point that the provision applies to activities in and out of the prison does not change the fact that the legislature itself acknowledged that the location-based provision of the aggravated battery statute did not include prisons.

Pontiac Correctional Center is not public property within the meaning of the aggravated battery statute

Lastly, the State argued that Castillo's proposed approach is unworkable because there are some areas within government-owned buildings that are restricted. (St. Br. 22). To be clear, Castillo requests that this court adopt the well-reasoned rationale of the courts in *Ward* and *Ojeda* and define "public property" as property that is government-owned and an area that is "open to the public." *Ward*, 95 Ill.App.3d at 287(citing Ill.Ann.Stat., ch, 38, par. 12-4(b)(8), Committee Comments, at 465 (Smith-Hurd 1979)). The State presents no evidence to support that the Second District had any issues applying this definition after *Ojeda* was decided in 2009. Instead, when explaining why Castillo's approach is unworkable, the State made vague references that the public can access some unidentified part of the jail. (St. Br. 24). Notably, the State does not contend that this area is reasonably nearby, in the same building, or conveniently accessible to the area where the cell in which this battery took place is located. Even Eilers, a fellow inmate, had to be handcuffed and escorted by a guard when he was walking in the area. (R. 63-64). Certainly, the visiting area would be considered "public property" under the *Ojeda* framework because the public is allowed within those areas. But when no member of the public can access the property where the offense occurs, the legislative purpose behind the enhancement has not been satisfied.

As for the State's discussion about public housing complexes, the suggestion that this Court should adopt a different definition of "ownership" underscores precisely why the State's expansive view of what should be considered "public property" is unworkable. Throughout its entire brief, the State used the definition of public property that only focused on ownership,

but then declared that the definition should not be applied in the "strictest, legal sense." (St. Br. 24). The need for the State's proposed solution reinforces the fact that the term "public property" was not meant to encompass *all* government-owned property.

Thus, in accordance with the plain meaning of "public property," the legislative history, and Illinois case law this Court should find that a restricted area, which community members cannot access, should not be considered public property–irrespective of ownership. Thus, the definition of "public property" should be government-owned property that is accessible to all members of the community. Therefore, this Court should reject the State's arguments and vacate Castillo's conviction for aggravated battery on public property and remand for resentencing for misdemeanor battery.

II.

Where the State did not present any evidence of the ownership of the maximum security prison, the State failed to meet its burden of proof and the appellate court should not have taken judicial notice of that fact.

In his opening brief, Jose Castillo argued that the appellate court erred when it took judicial notice of the ownership of Pontiac Correctional Center on appeal, despite acknowledging that this fact constitutes an element of the offense. *People v. Castillo*, 2021 IL App (4th) 190633-U, ¶ 17. It was improper for the appellate court to take judicial notice of that fact because it effectively absolved the State of its burden to prove each element beyond a reasonable doubt. In response, the State argued that: (1) it was entirely rational for the fact finder to infer that Pontiac was government-owned; (2) the argument that the appellate court improperly took judicial notice was irrelevant; and (3) the appellate court did not act improperly when it took judicial notice of that fact. (St. Br. 26-35). For the reasons that follow, the State's arguments should be rejected and this Court should reverse the appellate court's decision on this issue, and reverse Castillo's conviction for aggravated battery.

To begin, the State focused its first arguments on why it was entirely reasonable for the court to "infer" that Pontiac was a government-owned property. (St. Br. 26-30). But that is not the issue. The issue here is that the State did not present *any* evidence of that fact at

trial, even though the State always has the burden of proving all of the elements of the offense. *People v. Murray*, 2019 IL 123289, ¶ 39. And when an appellate court takes judicial notice of an essential element of the offense, the court effectively relieves the State of its burden. Thus, the issue is not whether it is rational for the fact finder to infer that Pontiac was government-owned, but whether it is proper for the appellate court to do so where there was no evidence presented by the State to that point.

As to the State's second argument, the State begins by arguing that the ownership of Pontiac is not an essential element, and that so long as the location was proven, the State met its burden. (St. Br. 31). But here, the ownership was an essential element because the definition of "public property" does include some reference to government ownership. As such, the owner of the property is an essential element that must be proven. Because the ownership is an essential element of the offense, the State was required to prove that fact beyond a reasonable doubt. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

United States v. Golden, 843 F.3d 1162, 1165 (7th Cir. 2016), a case upon which the State relied, is inapposite. In that case, the State had a burden of proving by a preponderance of evidence that Golden violated the terms of his supervised release. *Golden*, 843 F.3d at 1165. The Seventh Circuit found that the State did not need to present evidence of ownership because a detailed discussion of that fact would be a waste of time. But in the instant case, the State had the higher burden of proving each fact beyond a reasonable doubt. *See People v. Watts*, 181 Ill.2d 133, 143 (1998). While the use of presumptions and inferences may be acceptable at the lower standard, using them to prove someone guilty beyond a reasonable doubt raises due process concerns. *Id.*

Next, the State argued that the appellate court did nothing improper in recognizing the ownership of Pontiac because it was common knowledge. But "[a]n essential element of proof to sustain a conviction cannot be inferred but must be established." *People v. Mosby*, 25 Ill.2d 400, 403 (1964). Here, the State is asking this Court to permit the appellate court to rely on inferences instead of holding the State to its burden of proof. This is inappropriate and unjust.

In support of its argument, the State relied on this Court's decision in *People v. Newton*, 2018 IL 122958. (St. Br. 32). In *Newton*, this Court held that the State need not adduce additional evidence that a church was used primarily for religious worship for purposes of proving the offense of delivery of a controlled substance within 1000 feet of a church, where the building at issue was proven beyond a reasonable doubt to be a church. *Newton*, 2018 IL 122958, at ¶¶17-22, 25-26, 29. This Court found that the State introduced extensive evidence establishing that the church was, in fact, a church, including the officer's familiarity with the building, up-to-date signage with religious imagery, lighting, upkeep, and people entering and leaving the building. *Id.* at ¶25. This Court contrasted the evidence in *Newton* with the evidence in *People v. Cadena*, 2013 IL App (2d) 120285, because the latter did not include any temporal context or testimony about the officer's personal knowledge. *Id.* at ¶ 29.

Here, unlike the State in *Newton*, the State presented no evidence about the ownership of Pontiac. Instead, the State is asking for inferences to be made about the ownership. (St. Br. 37). The State had a minimal burden to prove the ownership of Pontiac, and yet it did not do so. Thus, the State's reliance on *Newton* is misplaced.

Finally, the State attempted to undermine Castillo's reliance on this Court's decision in *People v. Murray*, 2019 IL 123289, by arguing that the statutory definition of "street gang" required more proof from the State. (St. Br. 34-35). In contrast, the State argued, the definition of "public property" is not subject to a particular statutory definition, so the ownership can be inferred. (St. Br. 35). But the crux of this Court's holding in *Murray* was that "an essential element of proof to sustain a conviction cannot be inferred but must be established." *Id.* at ¶ 36, *citing People v. Mosby*, 25 Ill.2d 400, 403 (1964). This Court itself did not limit its holding to elements that involve specific statutory definitions—rather it repeatedly used the language of "essential element," which applies to all cases. Further, this Court's reliance on its decision in *Mosby* is revealing. In that case, the Court found that the ownership of a possession or dwelling is an essential element of the burglary statute and that the State could not rely on inferences in order to establish that element. *Mosby*, 25 Ill.2d at 403 ("The fact that this proof might have

been elicited by a single question of Willa Crawford and Mary Holman is beside the point since it was not done."). Unlike *Murray*, *Mosby* did not involve a statutory definition of the relevant term Therefore, the State's argument is inapposite.

Thus, this Court should reject the State's arguments and find that the appellate court cannot take judicial notice of a fact that was not proven at trial. As such, this Court should reverse the appellate court's decision on this issue, and reverse Castillo's conviction for aggravated battery.

CONCLUSION

For the foregoing reasons, Jose Castillo, defendant-appellant, respectfully requests that this Court reverse the decision of the appellate court and remand to the trial court for resentencing on misdemeanor battery.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is twenty pages.

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IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JOSE CASTILLO, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 4-19-0633. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, Livingston County, Illinois, No. 17-CF-187. Honorable Jennifer H. Bauknecht, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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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 August 10, 2022, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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