No. 128051

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- VONZELL WHITEHEAD, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-21-0104. There on appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, No. 19 CF 2483. Honorable Mark L. Levitt, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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NATURE OF THE CASE

After a jury trial, Vonzell Whitehead was convicted of two counts of aggravated battery and was sentenced to two prison terms of 42 months. Whitehead then appealed his convictions, which were affirmed by the appellate court. *People v. Whitehead*, 2021 IL App (2d) 210104-U. This Court granted Whitehead's petition for leave to appeal on March 30, 2022. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether a battery committed at the threshold of one's apartment is committed on or about a public place of accommodation, so as to enhance the offense from misdemeanor battery to aggravated battery.

STATUTES AND RULES INVOLVED

720 ILCS 5/12-3.05 (2019). Aggravated battery.

(c) Offense based on location of conduct. A person commits aggravated battery when, in committing a battery, other than by the discharge of a firearm, he or she is 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.

STATEMENT OF FACTS

Vonzell Whitehead was charged with committing aggravated battery against Steven Box. Mr. Whitehead was alleged to have struck Box about the body with his fist and later with a cane. (C. 36-37, 66-69) The State alleged that Whitehead committed the offenses of aggravated battery by: causing bodily harm to Steven Box knowing him to have a physical disability, making provoking or insulting contact with Box knowing him to have a physical disability, using a deadly weapon, and committing a battery while on or about a public way. (C. 36-37, 66-69)

On February 11, 2020, the cause proceeded to a jury trial. (R. 186) Steven Box testified that on November 5, 2019, he was living in an apartment that he rented from a company called "Bottom Line Innovators," which owned the entire apartment complex. (R. 210, 237) He had been living in his apartment for around eight months and was next-door neighbors with Edna Parks. Leading to Box's apartment door was a sidewalk which originated from the side of the street in front of the building. (R. 215-216) Box explained that a public sidewalk was located between the parking lot and the apartment building. (R. 216)

In the evening of November 5, 2019, Box heard people arguing in Parks' apartment. (R. 217) He mostly heard a man yelling, whom would later be identified as Mr. Whitehead. (R. 218) Box was unable to understand much of what Mr. Whitehead was yelling about, however, Box did hear Parks ask him to leave her apartment. (R. 219) Eventually, Box heard banging on the wall in Parks' apartment. (R. 219) He also heard "rumbling" at the door area. (R. 219)

Once Box heard the banging on the wall, he went to his doorway and opened the door to see what was happening. (R. 220) He heard Parks ask Mr. Whitehead

to go home, and shortly afterward, Whitehead walked out of Parks' apartment and stood on the front "stoop," which was located directly in front of his and Parks' apartment doors. (R. 222) Once Mr. Whitehead reached the stoop, he asked Box, "What are you looking at, pussy ass?" (R. 222) After saying this, Whitehead "socked" Box in the face with a closed fist. (R. 222)

Box fell to the ground inside his apartment after being hit, and, when he got back up, he noticed that Mr. Whitehead had his foot in the doorway. (R. 223) Box put both of his hands on his door frame and started kicking Mr. Whitehead to try to keep him from further entering his apartment. (R. 223) At one point, Box grabbed his cane and began hitting Mr. Whitehead with it. (R. 223) When Box swung the cane at Mr. Whitehead, Whitehead grabbed the cane and hit him with it, causing Box to again fall to the ground. (R. 223) Eventually, Box was able to get his door shut, at which point he called 911 while Mr. Whitehead was hitting his door with the cane. (R. 223) Box never stepped outside of his apartment at any point during the altercation. (R. 224)

Edna Parks, Mr. Whitehead's mother, testified that on November 5, 2019, she was living in the apartment located next-door to Box's apartment. (R. 246) At around 7:30 pm on the night of the incident, Whitehead came over to Parks' apartment. (R. 249) When he entered the apartment, he was upset and yelling. (R. 250) Parks indicated that Mr. Whitehead smelled like he had been drinking alcohol earlier that day. (R. 252)

Because Mr. Whitehead was being loud, Parks told him that he needed to leave her apartment. (R. 253) Parks started nudging Mr. Whitehead out the door and continued to tell him to leave, at which point he hit her apartment wall.

After this, Mr. Whitehead left the apartment and Parks heard him ask Box "what he was standing in the door for." (R. 256) At this time, Parks observed Whitehead standing on the sidewalk in front of the apartment building, and Box standing in his apartment doorway. (R. 257)

Eventually, Mr. Whitehead walked onto the stoop that was immediately in front of Box's apartment door, and Parks saw him make a hand motion toward Box's direction. (R. 261) Parks explained that she was unable to see if Whitehead actually hit Box or not at this time because she was standing in her own doorway. (R. 261)

After Mr. Whitehead moved his hand toward Box's direction, Parks saw Box hit him with his cane a couple times, until Whitehead grabbed the cane from Box and hit him back. (R. 262-263) After this, Whitehead walked out to the sidewalk and yelled at Parks to "call the police." (R. 263)

Parks explained that, despite never seeing Whitehead hit Box, she said that he hit Box when she spoke to the police because she was just "going off of what Box had said." (R. 268) She indicated that she believed Box's recitation of what happened at the time. (R. 268)

Zion Police Officer Robert Ogden testified that on November 5, 2019, he was dispatched to Box's apartment in response to a call about a disturbance. (R. 289, 291) When he arrived, Ogden parked his squad car on the street. (R. 289) There was a sidewalk that led from the side of the street to the apartment building where the incident took place. After exiting his vehicle, Ogden saw Whitehead walking toward him with a cane in his hand. (R. 291) Ogden noted that Whitehead was loud and agitated at the time. (R. 292)

After Ogden's testimony, the State asked the court for leave to amend two of the aggravated battery counts from "public way" to "public place of accommodation." (R. 305) Over defense counsel's objection, the court granted the State leave to amend the counts. (R. 306) After amending the counts, the State rested.

Defense counsel made a motion for a directed finding of not guilty on all six counts. (R. 307) The court granted the motion in relation to the aggravated battery counts that were based on Steven Box's disabilities. (R. 315) However, the court denied the motion as to the public accommodation and deadly weapon counts. (R. 313, 317)

Following closing arguments and instructions by the court, the jury found Whitehead not guilty of both counts of aggravated battery with a deadly weapon and guilty of both counts of aggravated battery in a place of public accommodation. (R. 371)

On June 22, 2020, the trial court sentenced him to concurrent 42-month prison terms for both counts of aggravated battery in a public place of accommodation. (C. 191)

On appeal, Mr. Whitehead argued, *inter alia*, that his felony convictions for aggravated battery should be reduced to misdemeanor battery where the State did not prove that the stoop at the threshold of an apartment door was a "public place of accommodation or amusement" for the purposes of the aggravated battery statute.

On December 17, 2021, the appellate court affirmed Mr. Whitehead's convictions. The Second District found that the stoop immediately outside of the

complainant's apartment door was a public place of accommodation or amusement because "members of the public could approach [the complainant's] door and stand on his stoop." *People v. Whitehead*, 2021 IL App (2d) 210104-U, ¶¶ 31, 35. Specifically, the appellate court noted that Mr. Whitehead's approach to the stoop at the complainant's door was "unobstructed and unrestricted in any way." *Whitehead*, 2021 IL App (2d) 210-104-U, ¶ 33. The court further reasoned that a determination of whether or not the stoop constituted curtilage of the home as defined by Fourth Amendment jurisprudence was unnecessary because "society recognizes an implicit license allowing the general public to approach [the complainant's] door." *Whitehead*, 2021 IL App (2d) 210-104-U, ¶ 33.

This Court granted leave to appeal on March 30, 2022.

ARGUMENT

By holding that a threshold of an apartment is a public place of accommodation, the appellate court took the term far beyond both its popularly understood meaning and the legislative history of the statute.

Vonzell Whitehead was convicted of aggravated battery under Section 12-3.05(c) of the Criminal Code (720 ILCS 5/12-3.05(c) (2019)) based on the fact that the battery allegedly occurred while Mr. Whitehead stood on the front stoop immediately at the threshold of the complainant's front door, and the complainant stood inside of his apartment. (R. 222-224) Misdemeanor battery can be elevated to a Class 3 felony if it occurs in a public place of accommodation or amusement. 720 ILCS 5/12-3.05(c). However, defining the stoop at the threshold of one's apartment door, located in a privately-owned apartment complex, as a "public place of accommodation or amusement" runs afoul of a number of canons of statutory construction, fails to consider the historically understood meaning of the phrase, and threatens to undermine the constitutionality of the increased penalty associated with location-based aggravated battery. As a "public place of accommodation or amusement" must, at least, refer to a place wherein the public, in general, is invited to partake in some good, service, or accommodation being provided, Mr. Whitehead's convictions must be reduced from aggravated battery to misdemeanor battery.

The question of whether the threshold of one's apartment is "a public place of accommodation" is a question of statutory interpretation that is reviewed *de novo*. *People v. Swift*, 202 Ill.2d 378, 385 (2002).

When interpreting the terms of a statute, the primary consideration is effectuating the legislative intent behind the statute's enactment. *People v. Ojeda*, 397 Ill.App.3d 285, 287 (2d Dist. 2009). "The most reliable means of accomplishing

that goal is to apply the plain and ordinary meaning of the statutory language." *People v. Amigon*, 239 Ill.2d 71, 85 (2010). "Criminal or penal statutes are to be strictly construed in favor of the accused, and nothing should be taken by intendment or implication beyond the obvious or literal meaning of the statute." *People v. Davis*, 199 Ill.2d 130, 135 (2002). In construing a statute, courts should assume that the legislature did not intend to produce an "absurd or unjust result." *State Farm Fire & Cas. Co. v. Yapejian*, 152 Ill.2d 533, 541 (1992). When the legislature does not define a particular term within a statute, courts presume that the legislature intended that the term be read in light of its popularly understood meaning. *Ojeda*, 397 Ill.App.3d at 287.

The aggravated battery statute does not define the term "public place of accommodation or amusement." Because the term is not defined, this Court should look to the popularly understood meaning of the term. *See In re Ryan B.*, 212 Ill.2d 226, 817 (2004) ("an undefined word must be given its ordinary and popularly understood meaning.") Black's Law Dictionary defines "public place" as "A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public (*e.g.* a park or public beach)." Black's Law Dictionary (abridged 6th ed. 1991). Merriam-Webster defines "Accommodation" as "something supplied for convenience or to satisfy a need: such as lodging, food, and services or traveling space and related services[.]" Merriam-Webster, "Accommodation," *available at* http://www.merriam-webster.com/dictionary/accommodation. These definitions shed light on the legislature's intent: the plain definition of the term includes

references to *both* the nature of the accessibility of the location to the general public and to some good, service, or accommodation that is being provided therein.

In light of the plain meaning of the term "public place of accommodation or amusement," it is evident that the stoop at the threshold of one's apartment door, located within a privately-owned apartment complex, is not a "public place of accommodation" under the statute. The ordinary and popularly understood meaning of the term makes clear that mere public accessibility, alone, is not enough to transform a location into a "public place of accommodation or amusement" for purposes of the statute. Rather, a "public place of accommodation or amusement" must, at least, refer to a place that is not only accessible to the public, but wherein the public, in general, is invited to partake in some good, service, or accommodation being provided. Indeed, this definition would prevent the application of the statute from being over-broad.

For instance, if a battery occurred in an open residential garage or unfenced backyard of one's home, it should not be elevated to an aggravated battery simply because it occurred at a location that members of the public could technically access, no matter how limited such access is. That kind of elevation would not be consistent with the legislature's intent to protect members of the community that are in an area commonly frequented by all members of the community. Indeed, this would be an absurd and unjust result. *See Croissant v. Joliet Park District*, 141 Ill.2d 449, 445 (1990) ("Statutes are to be construed in a manner that avoids absurd or unjust results").

Further, the plain and unambiguous meaning of "public place of accommodation and amusement" is supported by the historically understood meaning

of the phrase. *See People v. Wicks*, 283 Ill.App.3d 337, 342 (4th Dist. 1996) (legislative intent may be discerned from the use of terms in other sections of the same or other Illinois statutes).

In *White v. Pasfield*, 212 Ill.App.73, 75-76 (3rd Dist. 1918), the appellate court discussed the predecessor statute to the Illinois Civil Rights Act, enacted in 1885. The act, entitled "An Act to protect all citizens in their civil and legal rights and fixing a penalty for violation of the same," provided that:

> "[A]ll persons [. . .] be entitled to the full and equal enjoyment of the accommodation, advantages, facilities, and privileges of inns, restaurants, eating houses, hotels, soda fountains, saloons, barber shops, bath rooms, theaters, skating rinks, concert, 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.*"

Pasfield, 212 Ill.App. at 75-76 (emphasis added). Noticeably absent from the many examples of "public places of accommodation or amusement," are any non-business locales not engaged in providing some accommodation to the public at large. *See Corbett v. County of Lake*, 2017 IL 121536, ¶32 (noting that the canon of *noscitur a sociss* is particularly useful to courts when construing one term in a list, in order to avoid ascribing to one word a meaning so broad that it gives unintended breadth to legislative acts). The same definition carried through to the criminal code in 1962, when the "Violation of Civil Rights" provisions became effective. *See McGill v. 830 S. Michigan Hotel*, 68 Ill.App.2d 351, 355 (1st Dist. 1966); Ill. Rev. Stat. 1969, ch. 38, § 13-1(a); Ill. Rev. Stat. 1969, ch. 38, § 12-3(b)(8); *see also Lombard v. Louisiana*, 373 U.S. 267, 279 (1963) ("public accommodation" encompasses establishments "such as retail stores, restaurants, and the like [which] render a service which had become of public interest [. . .] in the manner of innkeepers

and common carriers of old").

Importantly, "place of public amusement" is currently defined elsewhere in the Criminal Code as "includ[ing], but [. . .] not limited to: a playing field, an athletic surface, a stage, a locker room, or a dressing room located at the place of public amusement." 720 ILCS 5/21-9(a) (2015). Similarly, "public accommodation" is defined elsewhere in Illinois law. In the Illinois Counties and Municipal Code, "public accommodation" means "a refreshment, entertainment, or recreation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, or advantages are extended, offered, sold, or otherwise made available to the public." 55 ILCS 5/5-1125 (2019); 65 ILCS 5/11-42-10.1 (2019). Likewise, the Illinois Human Rights Act defines "public accommodation" as "an inn, hotel, motel, or other place of lodging [. . .], a restaurant, bar, or other establishment serving food or drink; [. . .] a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment." 775 ILCS 5/5-101 (2019).

Thus, the common thread among all of these definitions is a place that is generally open to the public wherein the public *is invited* to come partake in some accommodation or service that is being provided. Thus, these definitions shed light on the legislature's intent as it is evident that the use of the phrase "public place of accommodation or amusement" is grounded in a historical understanding that it does not include private locations if they are not engaged in commerce or not providing some accommodation to the public at large. The stoop of an individual apartment would simply not fit into any of these other statutory definitions.

The statute itself also provides support for the argument that the legislature did not intend for the term "public place of accommodation or amusement" to have

such an expansive meaning that the stoop at the threshold of a door to a residence is a public place of accommodation solely because of public accessibility. Simple battery can be enhanced to a felony if it took place "on or about a public way, public property, a public place of accommodation or amusement, a sports venue, or a domestic violence shelter." 720 ILCS 5/12-3.05(c). Here, the broad definition of "public place of accommodation or amusement" as being any place that is accessible to the public renders every other clause of the location-based aggravated battery statute superfluous. *See Yang v. City of Chicago*, 195 Ill.2d 96, 105-06 (2001) (noting that statutes should be construed so that no term is rendered superfluous or meaningless). There would be no need for the legislature to include "public way," "public property," "sports venue," or "domestic violence shelter," if the legislature intended public place of accommodation or amusement to mean any location that is merely accessible to the public. *See* 720 ILCS 5/12-3.05(c).

Furthermore, since 1987, the legislature has added new locations to the statute on multiple occasions. *See, e.g.*, Public Act 92-516 (adding "any building or other structure used to provide shelter or other services to victims or to the dependent children of victims of domestic violence"); Public Act 94-482 (adding any "publicly or privately owned sports or entertainment arena, stadium, community or convention hall, special event center, amusement facility, or a special event center in a public park during any 24–hour period when a professional sporting event * * * is taking place"); Public Act 96-1551 (adopting the language applicable at the time of the offense including five locations); Public Act 101-223 (adding "or in a church, synagogue, mosque, or other building, structure, or place used for religious worship"). If the legislature intended for public place of accommodation

or amusement to have the broad definition used in the present case, all of the aforementioned additions would have been unnecessary. *See Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, ¶ 29 (noting that courts have the "obligation not to construe a statute in a way that makes one of its provisions redundant and superfluous.").

Thus, the popularly understood meaning of the term, the language of the statute, and the legislative history indicate that the location where the battery takes place must not only be accessible to the public, but also must, at least, refer to a place wherein the public, in general, is invited to partake in some good, service, or accommodation being provided.

Moreover, Fourth Amendment jurisprudence further supports this conclusion. It is undisputed that the location at which the instant offense occurred is within the curtilage of the home as defined by Fourth Amendment jurisprudence. *Whitehead*, 2021 IL App (2d) 210104-U, ¶ 32; *see also People v. Bonilla*, 2018 IL 122484, ¶¶ 25-27 (finding that the common area hallway immediately outside the door of the suspect's apartment, located in an *unlocked* apartment building, fell within the curtilage of the home); *People v. Burns*, 2016 IL 118973, ¶¶ 37, 44. (finding that the third-floor landing outside defendant's apartment door within locked apartment building was within "curtilage" of defendant's residence).

Importantly, rather than constituting a "public place of accommodation," Fourth Amendment jurisprudence has long recognized that the "protection of curtilage has long been black letter law. '[W]hen it comes to the Fourth Amendment, the home is first among equals.'" *Collins v. Virginia*, 138 S.Ct. 1663 (2018) (citations omitted). "The protection afforded the curtilage is essentially a protection of families

and personal privacy in an area intimately linked to the home, both physically and psychologically, *where privacy expectations are most heightened.*" *California v. Ciraolo*, 476 U.S. 207, 212-213 (1986) (emphasis added). As such, to afford the term "public place of accommodation" such an expansive definition so that the curtilage of one's home is so accessible to the public that it is a public place of accommodation under the aggravated battery statute, and then conversely is an area where privacy expectations are most amplified under Fourth Amendment jurisprudence, would be an absurd result. *See Illinois State Treasurer v. Illinois Workers' Compensation Com'n*, 2015 IL 117418, ¶ 39 ("courts do have an obligation to construe statutes in a way that will avoid absurd, unreasonable, or unjust results").

Yet, the Second District reasoned that, because the public could technically access the stoop at the threshold of one's apartment door, such location is a "public place of accommodation." *Whitehead*, 2021 IL App (2d) 210104-U, ¶¶ 31, 35. Specifically, the Second District relied upon the fact that "society recognizes an implicit license allowing the general public to approach [the complainant's] door," in finding that the location the battery occurred was "accessible to the public," and therefore a "public place of accommodation." *Whitehead*, 2021 IL App (2d) 210-104-U, ¶ 33. However, such limited "access" alone, is not enough to transform the curtilage of one's home into a public place of accommodation.

To the extent the public has any "access" to the stoop at the threshold of one's apartment, such access is extremely limited, regardless of whether there is an implicit license to approach the door or not. The nature and extent of the public's "access" to a location should play a decisive factor in determining whether

a particular location is a "public place of accommodation or amusement." *See People v. Dexter*, 328 Ill.App.3d 583, 591-592 (2d Dist. 2002) (considering the scope of the public's access to the front porch of an apartment building in determining that it was not a public way under the drug possession statute). As such, to the extent that the public can access the stoop at the threshold of one's door, such limited access does not transform the area into a public place of accommodation. Indeed, the legislature presumably recognized as much, as the plain meaning of "public place" is "A place to which the general public has a right to resort. . . a place which is in point of fact public rather than private." Black's Law Dictionary (abridged 6th ed. 1991).

Furthermore, the Second District primarily relied on *People v. Murphy*, 145 Ill.App.3d 813 (3rd Dist. 1986), and *People v. Ward*, 95 Ill.App.3d 283 (2d Dist. 1981), for the assertion that mere accessibility, alone, is enough to transform an otherwise private location into a "public place of accommodation." However, *Ward*, *Murphy*, and other cases where reviewing courts have considered the meaning of the phrase "public place of accommodation" are distinguishable from the instant case.

In *People v. Murphy*, the Third District considered whether a privately owned bar was a public place of accommodation under the statute. 145 Ill.App.3d at 814. In finding that the battery occurred in a public place of accommodation, the court indicated that it "doubt[ed] that a fight in a bar should be characterized as [felonious]," but held "that 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." *Murphy*, 145 Ill.App.3d at 815. Unlike

the instant case, the bar at issue was a place where the public, in general, was invited to partake in some good, service, or accommodation being provided.

In *People v. Ward*, the Second District found that the defendant, who assaulted a woman in the parking lot of an adjacent hotel, was not prejudiced when the information, charging him with aggravated battery on "public property," was amended during the jury instruction conference to a "public place of accommodation." 95 Ill.App.3d at 287-288. The court explained that "the essential allegation" for a charge under the location-based aggravated battery statute "is that the battery occurred in a public area." *Ward*, 95 Ill.App.3d at 287-288. Whether the location "was actually owned and, therefore, 'public property,' rather than a privately owned 'public place of accommodation' [was] irrelevant; what [was] significant [was] that the alleged offense occurred in an area accessible to the public." *Ward*, 95 Ill.App.3d at 287-288. Again, the location at issue–a parking lot of a hotel–was a place where the public was invited to partake in some good, service, or accommodation being offered.

Here, unlike the locations in the aforementioned cases, the "area accessible to the public" is not a business or other place offering goods, services, or accommodation to the public at large, nor the parking lot to such a place. Rather, it is a stoop located immediately outside of the front door of a residence, which is located in a privately-owned apartment complex. Notably, not only is the stoop at the threshold of one's apartment door not generally open to the public, but importantly, unlike the locations in the aforementioned cases, there are no accommodations, services, or goods being offered therein. As such, the appellate court's reliance on *Ward* and *Murphy* for the proposition that mere accessibility,

alone, is all that is required to transform a location into a public place of accommodation, is misguided where the locations at issue in the aforementioned cases were not just accessible to the public, but also were places where the public was invited to partake of something being offered.

Additionally, to interpret the aggravated battery statute such that the threshold of one's apartment would constitute a "public place of accommodation" would be inconsistent with the legislature's purpose in enhancing the penalty for public batteries. The reason certain batteries are considered aggravated batteries is that they are committed in "circumstances under which 'great harm might and usually does result.'" *People v. Clark*, 70 Ill.App.3d 698,700 (5th Dist. 1979) (quoting the S.H.A. Committee Comments). Moreover, "the intent of the legislature in defining the presence upon a public way as an aggravated circumstance was to protect an innocent member of the public who might also be situated upon the public way and thus be endangered by a battery committed in close proximity to his person." 70 Ill.App.3d at 700. This subsection was "designed to deter the possibility of harm to the public." *People v. Handley*, 117 Ill.App.3d 949, 952 (4th Dist. 1983). This legislative objective is not advanced by enhancing the penalty for a battery committed at the threshold of one's apartment door.

When Mr. Whitehead was on the threshold of the victim's apartment door, and the complainant was standing inside his apartment, there was no need to "deter the possibility of harm to the public." *Handley*, 117 Ill.App.3d at 952. Hence, the legislative purpose does not apply in this case. Holding this case to be an aggravated battery would thus "broaden the implications of the statute to situations clearly not intended to be encompassed within it." *People v. Johnson*, 87 Ill.App.3d

306, 309 (1st Dist. 1980).

In fact, the ever-expanding definition of what constitutes a "public place of accommodation or amusement" threatens to undermine the justification for the increased penalty associated with location-based aggravated battery as it compares to misdemeanor battery. To the extent that location-based felony battery continues to swallow misdemeanor battery, it increasingly undermines its constitutionality under the due process and proportionate penalty clauses of the Illinois Constitution. The Illinois proportionate penalties clause "bars the imposition of unreasonable sentences," (*People v. Patterson*, 2014 IL 115102, ¶101), and mandates that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. With every place outside of one's own home essentially being "accessible to the public," every misdemeanor battery can be enhanced to a Class 3 felony.

The justification for the location-based aggravated battery enhancement is that "[i]t 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." Ill. Ann. Stat., ch. 38, par. 12-4, Committee Comments, at 465 (Smith-Hurd 1972). If every battery essentially involves "a more serious threat to the community than a simple battery" because almost every possible locale of a battery will occur in an area accessible to the public, then the justification for the increased penalty does not withstand constitutional scrutiny. *See People v. Steppan*, 105 Ill.2d 310, 319 (1985) (noting that this Court "has interpreted the due process guarantee of section 2 to require

that penalty provisions be reasonably designed to remedy the particular evil which the legislature has selected for treatment under the statute in question"); *People v. Bradley*, 79 Ill.2d 410, 417 (1980) (requiring that the penalty prescribed for the particular crime to be "reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety and general welfare").

For all of these reasons, the appellate court's holding in the instant case has stretched the term "public place of accommodation or amusement" beyond any connection with the plain meaning of that phrase, or the legislative intent behind the statute. Thus, this Court should find that a stoop at the threshold of an individual apartment door–a location within the curtilage of the home for Fourth Amendment purposes–is not a place of public accommodation under the aggravated battery statute. As such, Mr. Whitehead's convictions must be reduced from aggravated battery to misdemeanor battery.

CONCLUSION

For the foregoing reasons, Vonzell Whitehead, Petitioner-Appellant, respectfully requests that this Court reverse the decision of the appellate court and reduce his convictions from aggravated battery to misdemeanor battery.

Respectfully submitted,

THOMAS A. LILIEN
Deputy Defender

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 21 pages.

/s/Zachary Wallace
ZACHARY WALLACE
Assistant Appellate Defender

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LAKE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS
Plaintiff/Petitioner

Reviewing Court No: 2-21-0104
Circuit Court/Agency No: 2019CF002483
Trial Judge/Hearing Officer: MARK L. LEVITT

v.

VONZELL WHITEHEAD
Defendant/Respondent

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THE PEOPLE OF THE STATE OF ILLINOIS
Plaintiff/Petitioner

Reviewing Court No: 2-21-0104
Circuit Court/Agency No: 2019CF002483
Trial Judge/Hearing Officer: MARK L. LEVITT

v.

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THE PEOPLE OF THE STATE OF ILLINOIS
Plaintiff/Petitioner

v.

VONZELL WHITEHEAD
Defendant/Respondent

Reviewing Court No: 2-21-0104
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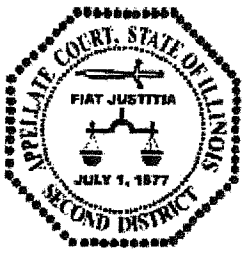

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FILED

IN THE CIRCUIT COURT OF LAKE COUNTY, ILLINOIS
19TH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS)
) Case No. 19CF2483
Vs.)
VONZELL WHITEHEAD)
Defendant)

Date of Sentence 06/22/2020 JUN 22 2020
Date of Birth 07/12/1986 (Defendant)

✓ ORIGINAL AMENDED

Ena Cervantez Weinstein
CIRCUIT CLERK

JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below; IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
5	AGGRAVATED BATTERY	11/05/2019	720 ILCS 5/12-3.05(C)	3	42 Yrs.	1 Yrs.
To run ✓ concurrent with	consecutively to count(s) 6	and served at ✓ 50%,	75%,	85%,	100% pursuant to 730 ILCS 5/3-6-3	
6	AGGRAVATED BATTERY	11/05/2019	720 ILCS 5/12-3.05(C)	3	42 Yrs.	1 Yrs.
To run ___ concurrent with	consecutively to count(s) ___	and served at 50%,	75%,	85%,	100% pursuant to 730 ILCS 5/3-6-3	
___	___	___	___	___	___ Yrs. ___ Mos.	___ Yrs.
To run ___ concurrent with	consecutively to count(s) ___	and served at 50%,	75%,	85%,	100% pursuant to 730 ILCS 5/3-6-3	

This Court finds that the defendant is:

___ Convicted of a class ___ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-4.5-95(b) on count(s) ___.

✓ The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 229 days as of the date of this order) from (specify dates) 11/06/2019 - 06/22/2020. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections.

✓ The defendant remained in continuous custody from the date of this order.

___ The defendant did not remain in continuous custody from the date of this order (less ___ days from a release date of ___ to a surrender date of ___).

___ The Court further finds that the conduct leading to conviction for the offenses enumerated in counts ___ resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(2)(iii)).

___ The Court further finds that the defendant meets the eligibility requirements for possible placement in the Impact Incarceration Program. (730 ILCS 5/5-4-1(a)).

___ The Court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program. (730 ILCS 5/5-4-1(a)).

___ The defendant successfully completed a full-time (60-day or longer) Pre-Trial Program ___ Educational/Vocational ___ Substance Abuse ___ Behavior Modification ___ Life Skills ___ Re-Entry Planning – provided by the county jail while held in pre-trial detention prior to this commitment and is eligible and shall be awarded additional sentence credit in accordance with 730 ILCS 5/3-6-3(a)(4) for ___ total number of days of program participation, if not previously awarded.

___ The defendant passed the high school level test for General Education and Development (GED) on ___ while held in pre-trial detention prior to this commitment and is eligible to receive Pre-Trial GED Program Credit in accordance with 730 ILCS 5/3-6-3(a)(4.1). THEREFORE IT IS ORDERED that the defendant shall be awarded 60 days of additional sentence credit, if not previously awarded.

___ IT IS FURTHER ORDERED the sentence(s) imposed on count(s) ___ be (concurrent with) (consecutive to) the sentence imposed in case number ___ in the Circuit Court of ___ County.

___ IT IS FURTHER ORDERED that ___

The Clerk of the Court shall deliver a certified copy of this order to the sheriff. The Sheriff shall take the defendant into custody and deliver defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law.

This order is (✓ effective immediately) (___ stayed until ___).

DATE: 06/22/2020

ENTER:

MARK L. LEVITT
(PLEASE PRINT JUDGE'S NAME HERE)

Approved by Conference of Chief Judges (Rev. 10/01) (Rev. 10/01/2019)

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS)
)
VS.) GEN. NO. 19CF2483
VONZELL WHITEHEAD)

FILED
FEB 26 2021
Eva Carbonell Weinstein
CIRCUIT CLERK

NOTICE OF APPEAL

An Appeal is taken from the Order described below.

(1) Court to which Appeal is taken: Appellate Court - Second District

(2) Name of Appellant and address to which notices shall be sent.
Name: VONZELL WHITEHEAD #Y42450
Address: 16830 So. Broadway St. P.O. Box 112Joliet, IL 60434

(3) Name and address of Appellant's attorney on appeal.
Name: Mr. Thomas A. Lilien Deputy Appellate Defender
Address: One Douglas Ave. 2nd Floor, Elgin, IL 60120
If Appellant is indigent and has no attorney, does he want one appointed? Yes

(4) Date of Judgment Order: JUNE 6, 2020

(5) Offense of which convicted: AGGRAVATED BATTERY

(6) Sentence: DEFENDANT SENTENCED TO 42 MONTHS IN THE DEPARTMENT OF CORRECTIONS WITH CREDIT FOR 229 DAYS PREVIOUSLY SERVED IN CUSTODY

(7) If appeal is not from a conviction, nature of Order appealed from:

(Signed) Eva Carbonell Weinstein
(May be signed by appellant, attorney for appellant, or Clerk of the Circuit Court)

171-89 Rev 2/01

2021 IL App (2d) 210104-U
No. 2-21-0104
Order filed December 17, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 19-CF-2483
	)	
VONZELL WHITEHEAD,	)	Honorable
	)	Mark K. Levitt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 Held: Apartment stoop was a public place of accommodation for purpose of aggravated battery statute; the State did not misstate the law regarding what constitutes a public place of accommodation in its closing argument; and trial court's erroneous instruction to the jury did not amount to plain error.

¶ 2 I. INTRODUCTION

¶ 3 Following a jury trial in the circuit court of Lake County, defendant, Vonzell Williams, was convicted of two counts of aggravated battery and sentenced to 42 months' imprisonment. He now appeals, raising four main issues. First, he contends that he was not on or about a public place of accommodation when he committed an alleged battery, so his conviction on that count must be

reduced to simple battery. In a related argument, he asserts that, in its closing argument, the State misstated the law on this issue. Second, he argues that the trial court did not instruct the jury properly regarding verdict forms for greater and lesser included offenses. Third, he asserts, and the State agrees, that this case must be remanded for a Krankel hearing. See People v. Krankel, 102 Ill. 2d 181 (1984). Fourth, defendant contends, and the State again agrees, that one of his aggravated-battery convictions must be vacated on one-act, one-crime principles. See People v. King, 66 Ill. 2d 551 (1977). For the following reasons, we affirm in part, vacate in part, and remand.

¶ 4 II. BACKGROUND

¶ 5 Defendant was charged with six counts of aggravated battery. Three of them charged he caused bodily harm to Steven Box, the victim, and, respectively, he knew the victim was disabled, he used a deadly weapon, or it was committed on or about a public way. The remaining three counts charged that defendant made contact of an insulting or provoking nature with the victim, along with the three respective attendant circumstances. Three witnesses testified at defendant's trial.

¶ 6 The State's first witness was Box. Box testified that he became disabled in 2007 in a motorcycle accident and that he had open heart surgery shortly thereafter. In 2015, a mass was found on his right kidney, leading to its removal. Box developed cancer eight months later. Subsequently, half of his left kidney was removed. He limps when he walks without a cane.

¶ 7 Box identified photographs of his apartment complex. Public sidewalks lead from the parking lot to the stoops of the various apartments.

¶ 8 On November 5, 2019, at about 7:30 p.m., Box was watching television. He heard "a lot of arguing, a lot of loud banging, a lot of noise," and people "screaming at each other." It was

coming from the apartment next door. Box testified that "Mrs. Parks and her family" live there. He mostly heard a male voice, but he also heard "several women yelling with the gentleman." He added, "They were pleading with him to leave the apartment." Box stated that he was "very good friends with the Parks family." He was concerned as to what was happening, so he opened his door. Box leaned on the door frame. He heard Mrs. Parks's voice. As Box was standing in his doorway, defendant "popped out onto the stoop." Box did not say anything. Defendant looked at him, said "something very derogatory[,] and socked [Box] in the left side of [his] face." Defendant said, " 'What are you looking at.' " He then struck Box.

¶ 9 After being struck, Box "went down" but got back up. Box feared that defendant would enter his apartment. He attempted to push the door closed. Defendant had "both feet in [his] door." Box attempted to swing his cane at defendant. Defendant caught it and struck Box's left wrist with the cane. Box fell again. Defendant struck Box again. Box managed to shut and lock the door. Defendant struck the door, causing a dent. Box called 9-1-1. Defendant remained outside, yelling at Box through the door. The police and EMTs arrived. Box made an in-court identification of defendant.

¶ 10 Box testified that when defendant punched him, Box was standing in his doorway. Box's and Parks's doors share a common stoop. There are neither security guards at nor fences around the apartment complex. Anyone "off the street can just walk onto [the] sidewalks up to [Box's] apartment."

¶ 11 On cross-examination, Box testified that he rented his apartment. The complex is owned by a company called Bottom Line Innovators. The incident took place on the stoop of Box's apartment. Box never left his apartment. Box was not in a cast or brace during the incident, and he

was not using a walker. On redirect-examination, Box stated that his cane was near the door and that defendant took it from him.

¶ 12 The State's next witness was Edna Parks. She resides in her apartment with her daughter and three grandchildren aged 16, 14, and 7. Defendant is her son. Defendant did not live with her. At about 7:30 p.m. on November 5, 2019 (a Tuesday), defendant came over. He knocked on the door, and Parks's granddaughter opened it. Parks was in her room. She came out when she heard defendant. Defendant was yelling and sounded upset. Parks told her grandchildren to go to a different room. Defendant said his arm hurt. Parks was yelling at defendant, trying to find out what was wrong. Parks noted that defendant smelled like "[h]e had been drinking." Parks told defendant he had to leave. As he was leaving, defendant hit the apartment's interior wall. This was the wall between her apartment and Box's apartment. After defendant left, Parks closed her door.

¶ 13 She then heard defendant asking Box why he was standing in the door. She opened her door and saw defendant standing on the sidewalk. Box was standing in his door. Defendant was addressing Box using vulgarities. Box never left his apartment. Defendant made a fist and asked why Box was standing in the door. Parks could not actually see Box from where she was standing. Defendant advanced to the stoop in front of Box's apartment. Defendant made a movement with his hand, but Parks could not actually see whether defendant struck Box. She saw Box hit defendant with his cane twice (she clarified that she could only see the cane); then, defendant grabbed the cane away from Box and hit him. The police were called, and when they arrived, defendant was still holding the cane. Parks never heard Box say anything to defendant.

¶ 14 The paramedics arrived and examined Box. They were outside on the stoop. Box declined to go to the hospital. Parks was present and heard Box tell them that defendant had hit him in the jaw. In her written statement, when she wrote that defendant had hit Box, she based it on hearing

Box say this. Parks testified that Box was standing in his door when defendant hit him. She never saw defendant strike Box's door with the cane.

¶ 15 On cross-examination, Parks stated that after the incident with Box, defendant asked for someone in her home to call the police. Parks asked a police officer to go speak with the property manager because she was concerned that she might be evicted. The officer did so, returned, and stated, "You're going to be a witness, don't worry."

¶ 16 The State then called Officer Robert Ogden of the Zion Police Department. On November 5, 2019, at about 7:59 p.m., he was dispatched to a disturbance occurring at an apartment complex in Zion. The complex is unfenced, and anyone can walk on its sidewalks. As Ogden approached the complex, he saw defendant coming toward him. Defendant was carrying what appeared to be a "black metal object, like a pole or something." Defendant was trying to get Ogden's attention. Ogden directed defendant to put the object down, and defendant complied. Defendant "seemed a little agitated, and he was speaking quickly." Defendant approached within "a couple feet." Ogden noted a "strong odor of alcohol." Ogden asked defendant where Box had kicked him; defendant could not "provide an answer." Defendant declined when asked if he needed an ambulance.

¶ 17 Ogden then spoke with Box. Box was calm and collected. Ogden took photographs of Box's face and wrist, as well as his door.

¶ 18 Ogden spoke with defendant a second time at the police department. Ogden photographed defendant's arm. After this interview, defendant requested an ambulance as he was being escorted to a cell. Defendant stated that the injury was caused by Box hitting him in the arm with the cane. Defendant did not cross-examination Ogden.

¶ 19 The State then rested. Defendant moved for a directed finding on all six counts. The trial court granted the motion with respect to the two counts based on defendant committing harmful

or insulting/provoking contact knowing the victim to be disabled. It denied the motion regarding the remaining four counts. The defense then rested as well. Defendant subsequently requested that the jury be instructed on the lesser-included offense of misdemeanor battery, and the trial court agreed to give that instruction.

¶ 20 The jury found defendant guilty of both counts of aggravated battery (causing harm and making contact of an insulting or provoking nature) based on the offense occurring on or about a public place of accommodation. It also found defendant guilty of simple battery. Finally, it acquitted defendant of the two counts of aggravated battery based on using a deadly weapon. On April 22, 2020, defendant filed a motion, pro se, asserting ineffective assistance of counsel and requesting a Krankel hearing. The trial court never addressed this motion. Defendant was sentenced to concurrent counts of 42-months' imprisonment on the two aggravated battery counts. This appeal followed.

¶ 21 III. ANALYSIS

¶ 22 On appeal, defendant raises the following issues. He first argues that where he committed the battery was not "on or about a public place of accommodation" and, in a related argument, he asserts that the State misstated the law on this issue. Next, he contends that the trial court failed to instruct the jury properly regarding the verdict forms for greater and lesser included offenses. Third, defendant argues that we must remand this case for a Krankel hearing. See People v. Krankel, 102 Ill. 2d 181 (1984). Fourth, defendant asserts that one of his aggravated-battery convictions should be vacated on one-act, one-crime principles. See People v. King, 66 Ill. 2d 551 (1977).

¶ 23 The State concedes the latter two arguments. Accordingly, we remand this case to allow the trial court to conduct a Krankel hearing. Additionally, we vacate defendant's conviction for

aggravated battery entered pursuant to Count 6. This count is based on defendant making contact with the victim of an insulting or provoking nature. 720 ILCS 5/12-3(c) (West 2018). As a less serious offense than the aggravated battery count premised on defendant causing harm, this is the proper count to vacate. People v. Young, 362 Ill. App. 3d 843, 853 (2005). We now turn to the issues that remain in dispute.

¶ 24 A. PUBLIC PLACE OF ACCOMMODATION

¶ 25 Defendant raises two subarguments here. First, he argues that he was not on or about a public place of accommodation when he committed the battery, so his conviction must be reduced from aggravated battery to simple battery. Second, he contends that the State misstated the law regarding what constitutes a public place of accommodation during its closing argument.

¶ 26 1. The Aggravated-Battery Conviction

¶ 27 Defendant first argues that the place where he was convicted of committing a battery was not a public place of accommodation. Thus, he continues, his conviction for aggravated battery must be reduced to simple battery.

¶ 28 Generally speaking, to prove aggravated battery, the State must first prove simple battery. People v. Ojeda, 397 Ill. App. 3d 285, 286 (2009). Aggravated battery occurs, inter alia, when a person commits a simple battery and, pertinent here, "he or she is 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 in a church, synagogue, mosque, or other building, structure, or place used for religious worship." 720 ILCS 5/12-3.05(c) (West 2018)). Here, the meaning of the term "public place of accommodation" is at issue. We are thus presented with a question of statutory interpretation. See People v. Ward, 215 Ill. 2d 317, 324 (2005). The interpretation of a statute presents a question of law subject to de novo review. Id.

¶ 29 Our main objective in construing a statute is to ascertain and give effect to the intent of the legislature. People v. Garcia, 241 Ill. 2d 416, 421 (2011). The plain language of the statute is typically the best indicator of that intent. People v. Collins, 214 Ill. 2d 206, 214 (2005). Moreover, a court " 'may properly consider not only the language of the statute, but also the purpose and necessity for the law, and evils sought to be remedied, and goals to be achieved.' " Id. (quoting People ex rel. Sherman v. Cryns, 203 Ill. 2d 264, 280 (2003)). "It is always presumed that the legislature did not intend to cause absurd, inconvenient, or unjust results." Garcia, 241 Ill. 2d at 421 (quoting People v. Lewis, 234 Ill. 2d 32, 44 (2009)). Where a statute is ambiguous, a court may employ extrinsic aids of construction as well. Collins, 214 Ill. 2d at 214.

¶ 30 Considerable case law exists regarding the meaning of the phrase "public place of accommodation." In People v. Ward, 95 Ill. App. 3d 283, 288 (1981), this court addressing an earlier version of the statute now before us, explained, "Whether 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." In People v. Murphy, 145 Ill. App. 3d 813, 815 (1986), the court, finding a privately-owned tavern to be a place of public amusement, observed, "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." Moreover, the Fifth District of this appellate court recently held, "The required question for an aggravated battery under section 3.05(c) 'is whether the area where the offense occurred is accessible to the public.' " People v. Crawford, 2021 IL App (5th) 170496, ¶ 60 (quoting Blackburn v. Johnson, 187 Ill. App. 3d 557, 564 (1989)).

¶ 31 We have little difficulty determining that defendant was on or about a place accessible to the public when he committed the battery against Box. The testimony clearly established that he was on the stoop of Box's apartment. Box testified that he was standing in his doorway when defendant struck him. Parks testified that defendant advanced to the stoop in front of Box's apartment and made a movement with his hand, though she could not actually see if defendant struck Box. This evidence was uncontroverted. Moreover, Box testified that anyone "off the street can just walk onto [the] sidewalks up to [Box's] apartment." Thus, the evidence established that defendant was on the stoop and the stoop was open to the public. Defendant cites In re Jerome S., 2012 IL App (4th) 100862, ¶ 13, for the proposition that the "threshold" of Box's apartment "is simply not a place 'shared by all members of the community.' " A" threshold" is "the plank, stone, or piece of timber or metal that lies under a door." Webster's Third New International Dictionary 2383 (2002). Conversely, the evidence indicated that defendant was on the stoop and not in the threshold. Further, Jerome S., 2012 IL App (4th) 100862, ¶ 13, addressed whether a school bus constituted public transportation, so it does not provide particularly useful guidance here.

¶ 32 Defendant points out that the stoop constituted curtilage as defined by fourth amendment case law. Cf. People v. Bonilla, 2018 IL 122484, ¶ 25 ("The common-area hallway immediately outside of defendant's apartment door is curtilage."). We have no quarrel with this proposition; however, it has no bearing on this case. Defendant cites no case where the fact that an area was curtilage has been given any weight in ascertaining whether it was a "public place of accommodation." Moreover, the precedent we have located points to a different result.

¶ 33 It is important to note that Box's stoop, in addition to being curtilage, is also the point of ingress into the home. In People v. Burns, 2016 IL 118973, ¶ 92 (Garman, J., specially concurring), Justice Garmin noted that in a plain-view analysis "curtilage may also act as a buffer to shield the

core fourth amendment area within the home, and [plain-view] cases typically focus on where law enforcement officers stand in making their observations." Id. That is, "where an officer uses his own natural senses from a permitted vantage point on public property to discover what is occurring inside a private residence, it is not a search in violation of the fourth amendment." Where an officer makes an observation within the curtilage of a dwelling, the case often turns on an "inquiry into the license afforded the general public to approach." Id. She cited Florida v. Jardines, 569 U.S. 1, 8 (2013), for the following:

> " 'A license may be implied from the habits of the country,' notwithstanding the 'strict rule of the English common law as to entry upon a close.' McKee v. Gratz, 260 U.S. 127, 136 (1922) (Holmes, J.). We have accordingly recognized that 'the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds.' Breard v. Alexandria, 341 U.S. 622, 626 (1951). This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters."

Hence, regardless of whether Box's stoop was curtilage, society recognizes an implicit license allowing the general public to approach Box's door. Here, defendant's approach was unobstructed and unrestricted in any way. In other words, "the area where the offense occurred is accessible to the public.' " Crawford, 2021 IL App (5th) 170496, ¶ 60.

¶ 34 Indeed, numerous Illinois cases have recognized that the dweller of a home has a diminished expectation of privacy in areas such as stoops and porches. In People v. Jones, 119 Ill.

App. 3d 615, 619 (1983), the police arrested the defendant on the front porch of his house. They had no warrant. They approached a closed screen door with an open interior door and knocked. The defendant came to the door and, recognizing the officers, stepped onto the porch. The defendant argued that since the arrest occurred in the curtilage of his home, it constituted a warrantless arrest within the privacy interest protected by the home and thus violated the fourth amendment. The reviewing court held that no constitutional violation occurred, explaining, "At the time Jones stepped outside, the police had no more unreasonably intruded upon his privacy than does a boy collecting for the newspaper or a little girl selling girl scout cookies." Id. at 622 (citing State v. Corbett, 15 Or. App. 470, 516 (1973)). Similarly, in People v. Arias, 179 Ill. App. 3d 890, 895 (1989), the court found no invasion of a constitutionally protected interest where the police entered an enclosed porch and knocked on the door leading to the main house. If there is no reasonable expectation of privacy in an enclosed porch, surely the same is true of an open stoop. See also United States v. Santana, 427 U.S. 38, 42 (1976) (finding the threshold of a house to be a public place for purposes of the fourth amendment). Moreover, we also note that the stoop in this case was shared by two households. Thus, defendant's reliance on the status of the victim's stoop as potential curtilage is misplaced.

¶ 35 However, defendant further asserts that construing "public place of accommodation" to apply in the instant case would not serve the purpose intended by the legislature. Defendant points to People v. Clark, 70 Ill. App. 3d 698, 700 (1979), where the court explained, "[T]he intent of the legislature in defining the presence upon a public way as an aggravated circumstance was to protect an innocent member of the public who might also be situated upon the public way and thus be endangered by a battery committed in close proximity to his person." As explained above, members of the public could approach Box's door and stand on his stoop. As such, a battery

committed there could affect members of the public. Parenthetically, we decline to draw a distinction based on the likelihood that there would be a relatively fewer number of people on Box's stoop than one might find on a busy avenue or in a shopping mall.

¶ 36 In short, we reject defendant's argument on this point.

¶ 37 2. Closing Argument

¶ 38 Next, defendant asserts that the State repeatedly misstated the law concerning what constitutes a public place of accommodation during its closing argument. A defendant is, of course, "entitled to a fair, orderly, and impartial trial." People v. Wheeler, 226 Ill. 2d 92, 122 (2007). A prosecutor "has an ethical duty to the People of the State of Illinois, including all defendants prosecuted by him, to insure that a fair trial is accorded to the accused." People v. Valdery, 65 Ill. App. 3d 375, 378 (1978). To this end, a prosecutor must not misstate the law during closing argument. People v. Moody, 2016 IL App (1st) 130071, ¶ 68. Nevertheless, it is well established that "[p]rosecutors are granted wide latitude in delivering closing arguments." People v. Bona, 2018 IL App (2d) 160581, ¶ 57. "Whether statements made by a prosecutor at closing argument were so egregious that they warrant a new trial is a legal issue this court reviews de novo." Wheeler, 226 Ill. 2d at 121.

¶ 39 As a preliminary matter, defendant concedes that this issue is not properly preserved, so it may only be reviewed for plain error. See People v. Piatkowski, 224 Ill. 2d 551, 565 (2007). However, before we can determine if error is plain, we must first determine whether error occurred in the first place. People v. Young, 2013 IL App (2d) 120167, ¶ 21.

¶ 40 Defendant complains of two comments. First, he complains that the State defined "public place of accommodation" as follows:

> "And when we say public place of accommodation, that is going back to places that are open to the public, places that you don't need to hop over a fence, that no guard is telling you that you can't go by there."

Defendant points out that courts have held places that are unfenced are not "public places of accommodation." See People v. Jackson, 87 Ill. App. 3d 306, 308 (1980) (holding a tavern's restroom was not a public place of accommodation."). Strictly speaking, defendant is correct; areas other than those that are fenced or guarded have been found to be outside the scope of "public places of accommodation." We do note that in this passage, the State also states that public places of accommodation are "places that are open to the public."

¶ 41 The State counters that defendant is taking the passage quoted in the previous paragraph out of context. Of course, "comments of counsel must be evaluated in the context in which they were made." People v. Burgess, 176 Ill. 2d 289, 319 (1997). In context, the State asserts, the comments defendant identifies are not problematic:

> "And when we say public place of accommodation, that is going back to places that are open to the public, places that you don't need to hop over a fence, that no guard is telling you that you can't go by there. It's a way that our legislature wanted to stop people from committing batteries in the open public where people are going through walking through doing their days. [Sic.] The legislature decided that that is a reason to make what is just a normal battery to an aggravated battery. I submit to you that the testimony that you have heard has shown that these sidewalks next to the street are open and accessible to the public. It's accommodating in the sense you can walk wherever they want to in that complex. No one stops them. It's not some sheltered foyer in an apartment complex. This is an open air

> walkway, open place of accommodation, and for that, this would make it an aggravated battery."

Read in its entirety, it is clear that the prosecutor is speaking of a place that is open to the public. Throughout, the State uses the terms "open to the public" twice, "open and accessible to the public" once, and "open place of accommodation" once. It was not asking the jury to find that Box's stoop was a "public place of accommodation" based simply on the absence of a fence or a guard. We find this argument unpersuasive.

¶ 42 Defendant also points to a second passage: "No instruction is going to tell you that the sidewalk abutting the apartment there can't be a public place of accommodation. You're not going to hear that instruction because that's not the law." It is difficult to apprehend how this is even colorably erroneous. As the State points out, this is literally true. Defendant endeavors to characterize this as an attempt by the State to remove this issue from the jury's consideration: "[I]nstead of leaving this question for the jury to decide based off of the guidance given by the pattern instructions, the State again attempted to restate the applicable law in its own words." However, the State did not say that an instruction compelled a certain conclusion (i.e., that the stoop necessarily was a public place of accommodation). Rather, the State simply (and correctly) stated that no instruction existed that would preclude the jury from determining that the stoop was a public place of accommodation. This does not contradict the law and does not invade the province of the jury's role as fact finder. We find this argument unpersuasive as well.

¶ 43 Having found no error here, we have no occasion to consider whether plain error occurred.

¶ 44 B. JURY INSTRUCTIONS

¶ 45 Defendant further contends that the trial court failed to instruct the jury properly regarding how to use the verdict forms in light of the fact that the jury was considering a lesser included

offense. The State agrees but counters that this omission did not rise to the level of plain error. We agree with the State.

¶ 46 During the instruction conference, defense counsel requested that the jury be instructed on the lesser included offense of simple battery. The trial court agreed. Accordingly, the jury should have been instructed with IPI Criminal 4th No. 2.01Q and IPI Criminal 4th No. 26.01Q. The former provides:

> "The defendant[s] [(is) (are)] [also] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty [of [greater offense] and not guilty of [lesser offense]]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense]."

The latter states:

> "When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.
>
> Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.
>
> [1] The defendant[s] [(is) (are)] [also] charged with the offense of ____. Under the law, a person charged with [greater offense] may be found (1) not guilty [of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].
>
> [2] Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of [greater offense] 'not guilty [of [greater offense] and not guilty of [lesser offense]'; 'guilty of [greater offense],' and "guilty of [lesser offense].'

[3] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant). Sign only one of these verdict forms [as to each defendant].

[4] (If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[5] [(Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]"

The pertinent point here is that the jury should return only one form either finding defendant not guilty, finding him guilty of the greater offense, or finding him guilty of the lesser offense.

¶ 47 Instead of the two instructions set forth above, the trial court gave the following two instructions. First, it gave IPI Criminal 4th No. 2.01, which, as given by the trial court, states:

"The defendant is charged with the offenses of Aggravated Battery and Battery. The defendant has pleaded not guilty."

It also gave IPI Criminal 4th No. 26.01, which states:

"When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdicts.

> Your agreement on a verdict must be unanimous. Your verdicts must be in writing and signed by all of you, including your foreperson.
>
> The defendant is charged in different ways with the offenses of Aggravated Battery and Battery. You will receive two forms of verdict pertaining to each particular way that the offenses of Aggravated Battery and Battery are charged. As to each particular way the offenses of Aggravated Battery and Battery are charged, you will be provided with both a 'not guilty' and 'guilty' form of verdict. From these two verdict forms as to each particular way that the offenses of Aggravated Battery and Battery are charged, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other verdict form. Sign only one verdict form as to each particular way that the offenses of Aggravated Battery and Battery are charged."

Here, the jury found defendant guilty of both the greater and lesser offenses, apparently selecting one verdict form for each charge regardless of whether it was a lesser-included offense.

¶ 48 As noted, the State and defendant agree that this was error. They also agree that the issue was not properly preserved for review. Defendant asks that we conduct plain-error review. The plain-error doctrine provides an exception to normal forfeiture principles. People v. Herron, 215 Ill. 2d 167, 186-87 (2005). Where an error is not properly preserved, it may be considered by a court of review in two circumstances: (1) where the evidence is closely balanced, regardless of the magnitude of the error and (2) where the error is serious, regardless of whether the evidence is close. Id. at 187. A defendant bears the burden of persuasion in establishing plain error. People v. Thurow, 203 Ill. 2d 352, 363 (2003). Defendant contends that both exceptions apply in this case.

¶ 49 Before proceeding further, we are cognizant of the important role jury instruction serve in the delivery of justice. It has been stated, "Instructions convey the legal rules applicable to the

evidence presented at trial and thus guide the jury's deliberations toward a proper verdict." People v. Mohr, 228 Ill. 2d 53, 65 (2008); see also People v. Grant, 2016 IL App (5th) 130416, ¶ 29. Nevertheless, this case involves plain error, so it remains defendant's burden to show that an error in the jury instructions prejudiced him. Thurow, 203 Ill. 2d at 363.

¶ 50 As a preliminary matter, we find the evidence in this case is not closely balanced. Defendant points out that he claimed that he had acted in self-defense. He notes that Parks was unable to see Box during the crime and could not tell whether defendant actually struck him. Defendant completely ignores Box's testimony, which is corroborated by photographs of Box's injuries. Indeed, Box's testimony is essentially uncontradicted. See People v. Ayoubi, 2020 IL App (1st) 180518, ¶ 60 (finding no plain error where the victim's "uncontradicted testimony showed that defendant not only moved her with the intent to confine her but actually did confine her."). Thus, we find unpersuasive defendant's claim that the evidence is closely balanced.

¶ 51 Turning to the second prong of the plain-error analysis, we find that inapplicable here as well. To succeed on this prong, a "defendant must prove there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." Herron, 215 Ill. 2d at 187 (citing People v. Keene, 169 Ill. 2d 1, 17 (1995)). Defendant has not met this high standard.

¶ 52 Defendant asserts that the failure by the trial court to give proper instructions "misled and confused the jury." As a result, according to defendant, the jury "returned inconsistent verdicts, returning both a 'guilty' form for the greater offense and a 'guilty' form for the lesser offense." Defendant does not explain how these verdicts were truly inconsistent.

¶ 53 After all, in the present case, the offenses at issue are simple battery and aggravated battery. There are no inconsistent elements in these two crimes. To prove aggravated battery, the State

must first prove simple battery. Ojeda, 397 Ill. App. 3d at 286. Indeed, the statute defining aggravated battery states that "A person commits aggravated battery when, in committing a battery, other than by the discharge of a firearm, he or she knowingly does any of the following." 720 ILCS 5/12-3.05 (West 2018). It then goes on to enumerate a number of aggravating circumstances that the State must prove to enhance simple battery to aggravated battery, including the aggravating circumstance at issue here. Id. It is difficult to see how the jury's verdicts in this case were inconsistent, as it had to first find that a battery occurred before considering whether an aggravating circumstance elevated the offense to the level of an aggravated battery.

¶ 54 Indeed, this is not a situation where the lesser offense includes an element that is different than an element of the greater offense. This may occur in certain circumstances, for example, where the lesser offense is based on having a less culpable mental state. People v. Willett, 2015 IL App (4th) 130702, ¶ 59. Section 2-9 of the Criminal Code of 2012 defines "included offense" as an offense that "[i]s established by proof of the same or less than all of the facts or a less culpable mental state (or both), than that which is required to establish the commission of the offense charged." 720 ILCS 5/2-9 (West 2018). In such circumstances, it would be possible for a jury to render an inconsistent verdict if it found that a defendant acted with two mutually exclusive mental states. In the instant case, there is no comparable element.

¶ 55 It is true that the jury should have only returned a verdict on the greater offense here. However, as explained above, that the jury also signed the "guilty" verdict form for the lesser included offense does not indicate a misunderstanding of the elements. Under the present circumstances, it at most shows the jury misunderstood the formal steps it should have taken to render its verdict.

¶ 56 Defendant relies on People v. Carter, 389 Ill. App. 3d 175 (2009), in support of this argument. Carter involved an error similar to the one at issue here in that the jury in that case was instructed as if there were no lesser-included offenses when there actually were. It differs, however, in that the jury in that case should have been instructed using IPI Criminal 4th No. 26.01R, which is used when a defendant is charged with offenses other than the greater and lesser-included offenses. In this case, defendant was only charged with the lesser-included and greater offenses, which calls for the use of IPI Criminal 4th No. 26.01Q. In Carter, the defendant was charged with the following six counts: "(1) possession with intent to deliver more than 100 grams, but less than 400 grams of a substance containing cocaine; (2) two counts of possession with intent to deliver more than 15 grams, but less than 100 grams of a substance containing cocaine; (3) possession of more than 100 grams, but less than 400 grams of a substance containing cocaine; (4) possession with intent to deliver more than 500 grams, but less than 2,000 grams of a substance containing cannabis; and (5) possession of more than 500 grams, but less than 2,000 grams of a substance containing cannabis." Id. at 177. Some involved cannabis, some cocaine. Some were lesser-included offenses of certain other greater offenses but not of other offenses.

¶ 57 During deliberations, the jury inquired of the trial court, "Can [the defendant] be guilty for under 100 grams and over 100 grams using the same evidence?" Id. at 179. "Following deliberations, the jury found defendant guilty of possession with intent to deliver more than 100 grams, but less than 400 grams of a substance containing cocaine and possession of cannabis with intent to deliver more than 500 grams, but less than 2,000 grams as well as the offenses of simple possession for each charge. However, the jury found defendant not guilty of the lesser included offense of possession with intent to deliver more than 15 grams, but less than 100 grams of a substance containing cocaine." Id. On its face, there is no direct contradiction between finding the

defendant guilty of possession with intent to deliver 100 grams to 400 grams of cocaine while acquitting him of possessing with intent to deliver 15 grams to 100 grams of the same substance.

¶ 58 However, the jury's inquiry indicating that it was considering convicting the defendant of both counts based on the same evidence belies its confusion. Id. Moreover, the Carter court expressly noted the following:

> "Instead, the jury received a misleading instruction that it would 'receive 12 verdict forms' and it 'should select the one verdict form that reflects [its] verdict.' The given instruction was especially confusing because defendant was charged with two different types of offenses—one involving cocaine and one involving cannabis."

We perceive no similar potential for confusion here. The six counts in this case were clearly delineated. Moreover, the same evidence would have supported a conviction for simple battery, and, along with the aggravating circumstance, the relevant count of aggravated battery. This was not a situation where the jury would have been considering an inconsistent verdict like the Carter jury that was apparently contemplating convicting the defendant in that case with simultaneously possessing more and less than 100 grams of cocaine. Carter is therefore distinguishable.

¶ 59 In sum, the jury in this case entered verdicts that contained no inconsistent elements. To obtain relief as plain error, a defendant must show the error was prejudicial. Thurow, 203 Ill. 2d at 363. Defendant has not carried his burden of establishing that the error in instructing the jury "create[d] a serious risk that the jurors incorrectly convicted the defendant because they did not understand the applicable law, so as to severely threaten the fairness of the trial." People v. Hopp, 209 Ill. 2d 1, 8 (2004).

¶ 60 IV. CONCLUSION

¶ 61 In light of the foregoing, we vacate defendant's conviction for aggravated battery entered pursuant to Count 6. We otherwise affirm and remand this case for a Krankel hearing.

¶ 62 Vacated in part and affirmed in part; cause remanded.

No. 128051

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- VONZELL WHITEHEAD, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-21-0104. There on appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, No. 19 CF 2483. Honorable Mark L. Levitt, 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 May 3, 2022, the Brief and Argument 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 in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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