No. 127538

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LANCE M. DAVIDSON, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, Fifth District, No. 5-19-0217 There on Appeal from the Circuit Court of the Fifth Judicial Circuit, Montgomery County, Illinois, No. 18 CF 78 Honorable James Roberts, Judge Presiding.

**BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS**

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE CASE

A Montgomery County jury found defendant, Lance Davidson, guilty of aggravated battery under 720 ILCS 5/12-3.05(d)(4)(i), and he was sentenced to three-and-a-half years in prison. He appealed, and the appellate court rejected his argument that the evidence was insufficient to sustain his conviction. Defendant now appeals from the appellate court's judgment affirming his conviction.

ISSUE PRESENTED

As relevant here, a person commits battery if he knowingly without legal justification by any means "makes physical contact of an insulting or provoking nature with an individual"; the offense is aggravated battery if, *inter alia*, the victim is a peace officer performing their official duties. The issue presented is whether the evidence was sufficient to sustain defendant's conviction for aggravated battery. To answer that question, this Court must determine, as a matter of statutory interpretation, whether the "insulting" or "provoking" nature of a defendant's conduct is measured against an objective standard — requiring that a reasonable person find the conduct insulting or provoking — or a subjective one — requiring that the victim have personally found the conduct insulting or provoking.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 602. This Court allowed petitioner leave to appeal on November 24, 2021. *People v. Davidson*, 451 Ill. Dec. 443 (2021) (Table).

STATUTORY PROVISIONS INVOLVED

§ 5/12-3. Battery.

a) A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.

720 ILCS 5/12-3.

§ 5/12-3.05. Aggravated Battery.

* * *

d) Offense based on status of victim. A person commits aggravated battery when, in committing a battery, other than by discharge of a firearm, he or she knows the individual battered to be any of the following:

* * *

4) A peace officer, community policing volunteer, fireman, private security officer, correctional institution employee, or Department of Human Services employee supervising or controlling sexually dangerous persons or sexually violent persons:

i) performing his or her official duties. . .

720 ILCS 5/12-3.05.

STATEMENT OF FACTS

Defendant was charged with one count of aggravated battery for battering a correctional institution employee performing his official duties. C24.[1] The evidence at trial showed that on the day of the battery, the victim, James Stitt, was working as a correctional officer at the Montgomery County Jail. R384. About ten minutes after a group of detainees were returned to the jail from court, Stitt heard a persistent banging coming from the day room. R385. Stitt stepped into the hallway and saw a dry erase board fall from the day room door. *Id.* Stitt walked to the day room entrance, where he found defendant "screaming and cussing." R386.

Stitt warned defendant that he needed to calm down or he would be "put on a lock down." R387. Defendant replied "that he would not go on lock down." *Id.* Stitt called dispatch and asked them to open the door to the day room. R388. Stitt then stepped into the room and told defendant that he was going on lock down. *Id.* Defendant again said "he wouldn't go" and that Stitt "would have to make [him] go on lock down." *Id.* Stitt approached defendant and, after a brief chase within the room, "cut him off." R389. Stitt stepped

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[1] Citations to defendant's appendix, the common law record, the report of proceedings, and defendant's opening brief appear as "A_," "C_," "R_," and "Def. Br. __," respectively.

towards defendant with the intent to return him to his cell, and defendant shoved Stitt in the chest. *Id.* Stitt said he was glad he did not fall back into the table and chairs behind him when defendant shoved him. R390. Stitt then turned defendant around, pinned his arms to his side, and pushed him back into his cell. R389. The prosecutor did not ask Stitt whether he felt insulted or provoked by defendant's shove.

On cross-examination, Stitt admitted that he was not aware whether he had sustained any "contact marks" or injuries from defendant's shove. R400. Stitt also acknowledged that the white board neither hit him nor broke when it came off the day room door. R403.

Defendant, who represented himself at trial, presented testimony from Derrick Wallace, a fellow detainee in the Montgomery County Jail. R408-09. Wallace testified that he did not see defendant shove Stitt and cause him to stumble backwards. R409. But on cross-examination, Wallace admitted that he did not see the end of the chase involving Stitt and defendant because Wallace was trying to wake his cellmate so that he, too, could watch the confrontation. R414. Wallace also acknowledged that he could not see the corner of the holding room where Stitt testified that defendant had shoved him. R415.

Defendant testified on his own behalf that on the day in question, he was expecting the court to order his release from jail. R421. The court did not order his release and, as a result, he kicked the metal door of the day room and yelled in frustration. *Id.* Defendant said that he yelled at Stitt "not because he (Stitt) was doing anything wrong," but just because defendant was frustrated and Stitt "was there." R421-22. His testimony largely tracked Stitt's account, but, defendant testified, "Stitt alleges that I hit him, but I never did. I never did hit Officer Stitt. I ran away from him." R424. He also testified, "We were cool. It was no big deal, and still to this day, I don't think we would have a personal problem." R430.

After closing arguments, the court instructed the jury. The instructions stated, in part, that "[a] person commits the offense of Aggravated Battery when he knowingly and by any means other than by discharge of a firearm makes physical contact of an insulting or provoking nature with another person" whom he knows "to be a correctional institution employee performing his official duties." R447-48. The jury was further instructed that"[a] person acts knowingly with regard to the nature or attendant circumstances of his conduct when he is consciously aware that his conduct is of such a nature or that such circumstances exists." R448. After

deliberation, the jury found defendant guilty of aggravated battery. R457. The court sentenced him to three-and-a-half years in prison. R722.

On appeal, defendant argued that the evidence was insufficient to convict because it failed to demonstrate that Stitt was actually insulted or provoked by defendant's actions. A18. The appellate court held that it was not necessary for the victim to testify that he was insulted or provoked. *Id.* (citing *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 55). Ultimately the court concluded:

> In this context, it would be reasonable for the jury to infer that defendant's act of defiance was "insulting" to the officer and his authority. It would be equally reasonable for the jury to infer that defendant's escalation to physical contact would be considered "provoking" the officer into a physical altercation. As such, a rational trier of fact could have found beyond a reasonable doubt that defendant's contact with Officer Stitt was of an insulting or provoking nature.

Id.

ARGUMENT

This Court should hold that the evidence was sufficient to convict defendant of aggravated battery because the plain language of the statute unambiguously provides that it is the "nature" of the defendant's conduct that must be evaluated by the trier of fact, not the victim's subjective reaction to that conduct, and the evidence here was sufficient to conclude that

defendant's act of pushing Stitt was contact of an insulting or provoking nature.

I. Sufficiency Standard and Standards of Review

It is well settled that in reviewing the sufficiency of the evidence in a criminal case, this Court's inquiry asks whether, after viewing the evidence in the light most favorable to the People, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *People v. Brand*, 2021 IL 125945, ¶ 58. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Id.* at 225.

Issues of statutory construction are questions of law, which are reviewed *de novo*. *In re Jarquan B.*, 2017 IL 121483, ¶ 21. The primary objective of statutory interpretation is to ascertain and give effect to the General Assembly's intent. *Id.* ¶ 22. The plain and ordinary meaning of the statutory language is the surest and most reliable indicator of this intent. *Id.* Accordingly, where that language is clear and unambiguous, this Court applies the statute without further aids of statutory construction. *People v.*

Legoo, 2020 IL 124965, ¶ 14. The Court construes the statute as a whole and affords the language its plain and ordinary meaning. *Id.*

II. The Insulting or Provoking Nature of a Battery Defendant's Conduct Is an Objective Question — Requiring That a Reasonable Person Find the Conduct Insulting or Provoking.

To sustain defendant's conviction for aggravated battery, the People were required to prove that defendant (1) knowingly; (2) without legal justification; (3) made contact of an insulting or provoking nature; (4) knowing the complainant to be a correctional institution employee. 720 ILCS 5/12-3.05, 12-3. Defendant concedes that three of the four elements were proven. Def. Br. 11. The only question before this Court is whether the People proved the third element beyond a reasonable doubt, i.e., that defendant made contact of an insulting or provoking nature.

The plain language of the battery statute demonstrates that the legislature intended this question to be an objective one, asking the trier of fact to determine whether the contact was "of an insulting or provoking *nature*," 720 ILCS 5/12-3 (emphasis added), under the circumstances, *see, e.g.*, *People v. DeRosario*, 397 Ill. App. 3d 332, 334 (2d Dist. 2009) (whether physical contact is insulting or provoking depends upon the factual context in which the contact occurs); *People v. Peck*, 260 Ill. App. 3d 812, 814 (4th Dist. 1994) (same); *People v. d'Avis*, 250 Ill. App. 3d 649, 651 (1st Dist. 1993)

(same). The dictionary defines "nature" in relevant part as "a kind or class usually distinguished by fundamental or essential characteristics." *Nature*, Merriam-Webster, https://tinyurl.com/yc5nvcxt (last visited Sep. 11, 2022); *see People v. Leib*, 2022 IL 126645, ¶ 32 (where term is undefined in statute, Court may look to dictionary to discern undefined term's plain and ordinary meaning).

Thus, whether the fundamental characteristic of contact is to insult or provoke is an objective inquiry, independent of the effect of the contact on a specific victim. That this is so is evident from the common law history of the tort of battery, from which Illinois draws the "insulting or provoking nature" language in its battery statute. *United States v. Evans*, 576 F.3d 766, 767 (7th Cir. 2009) ("The terms 'insulting' and 'provoking' are taken from the common law tort of battery."). At common law, the tort of battery required the defendant to have engaged in voluntary conduct that brought about harmful or offensive contact with another person without their legal consent. *See* Restatement (Second) of Torts, §§ 13, 18. Contact was deemed offensive when it would offend a reasonable person's sense of dignity. *Id*. § 19; *Herr v. Booten*, 398 Pa. Super. 166, 170 (1990). In other words, the relevant question was whether a reasonable person would find the contact offensive.

Had the General Assembly intended to deviate from this long-held understanding and require that the People instead prove the subjective effect on the victim, it would have expressly provided that the defendant's physical contact must *cause* a victim to be insulted or provoked. The distinction is evident in the battery statute itself. A defendant can commit battery in either of two ways: if he knowingly (1) "*causes* bodily harm to an individual" or (2) "makes physical contact of an insulting or provoking *nature* with an individual." 720 ILCS 5/12-3 (emphasis added). The first looks to the result of the defendant's actions, while the second looks to the nature of defendant's actions. That the nature of conduct and the result of conduct are two separate inquiries is evident from the Illinois statute defining the "knowing" mental state, which must be proven in all battery cases. A person acts with knowledge of "[t]he *nature* . . . of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature." 720 ILCS 5/4-5 (emphasis added). He acts with knowledge of "[t]he result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that that result is practically certain to be *caused* by his conduct." *Id.* (emphasis added).

The distinction between crimes premised on the objective nature of conduct and those premised on the subjective effect of that conduct on a

victim is further established by the relevant jury instructions. The pattern instruction for "knowledge" reads:

> [1] A person [(knows) (acts knowingly with regard to) (acts with knowledge of)] the nature or attendant circumstances of his conduct when he is consciously aware that his conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.
>
> [2] A person [(knows) (acts knowingly with regard to) (acts with knowledge of)] the result of his conduct when he is consciously aware that that result is practically certain to be caused by his conduct.

Illinois Pattern Jury Instructions, Criminal, No. 5.01B (hereinafter, IPI 5.01B); *see also* R338 (trial court giving IPI 5.01B in this case). The committee notes instruct, "In cases where the instruction is given, use paragraph [1] if the offense is defined in terms of prohibited conduct. Use paragraph [2] if the offense is defined in terms of a prohibited result." *Committee Notes*, IPI 5.01B. Battery based on making contact of an insulting or provoking nature is plainly an offense defined in terms of prohibited conduct, not a prohibited result. *See People v. Dorn*, 378 Ill. App. 3d 693, 700 (4th Dist. 2008) (second paragraph of IPI 5.01B did not accurately convey law where defendant was charged with making contact with peace officer of insulting or provoking nature). By contrast, the second paragraph of IPI 5.01B is appropriate when a defendant is charged with battery because his

conduct *caused* bodily harm. *See People v. Lovelace*, 251 Ill. App. 3d 607, 618-19 (2d Dist. 1993) ("Under the battery and aggravated battery statutes, a defendant charged with knowingly causing great bodily harm or bodily harm must be consciously aware that his conduct is practically certain to cause great bodily harm or bodily harm, *i.e.,* the result of his conduct is in issue. Accordingly, the trial court should have given both paragraphs of IPI Criminal No. 5.01(B)." (cleaned up)); *see also Committee Notes*, IPI 5.01B (citing *Lovelace* favorably).

Indeed, this Court has already held that certain types of contact are of an insulting or provoking nature regardless of the subjective effect on the actual victim of the offense. In *People v. Meor*, 233 Ill. 2d 465 (2009), a 19-year-old defendant was charged with criminal sexual abuse for an act of sexual penetration against a 15-year-old. *Id.* at 466. The complaint did not allege that the contact was of an insulting or provoking nature, but Meor argued that battery was, nonetheless, a lesser included offense of his charged crime, and that both the trial court and his counsel erred in failing to consider battery as an alternative to criminal sexual abuse. *Id.* at 466-68. The appellate court concluded that battery was not a lesser included offense of criminal sexual abuse because the complaint did not allege insulting contact. *Id.* at 469-70. This Court disagreed. The Court noted that that,

"within certain age limits and with applicable age differences, an act of sexual penetration . . . is necessarily insulting or offensive." *Id.* at 471. That is, an act of sexual penetration that falls within the criminal sexual abuse statute is inherently insulting, regardless of whether the victim would consider it to be so. Plainly, this could not be the case if a battery conviction depended on a showing that the victim was actually insulted or provoked.

And, as *Meor* demonstrates, requiring such a showing of subjective insult on the victim's part would thwart the statute's intended effect of protecting victims from conduct that is, by its *nature*, insulting or provoking. This is especially true where the victim is from a vulnerable population. Notably, the Court's resolution of the issue presented in this case will affect many kinds of battery, including domestic battery. *See* 720 ILCS 5/12-3.2 (a person commits domestic battery if they make "physical contact of an insulting or provoking nature with any family or household member"). One domestic battery case in which resolution of this issue was dispositive, *People v. Ward*, 2021 IL App (2d) 190243, on which defendant relies, Def. Br. 15-17, illustrates why, plain language aside, requiring proof of the subjective effect of conduct on the victim thwarts the domestic battery statute's legislative goal of prosecuting abusers. In *Ward*, the defendant was convicted of domestic battery for making contact of an insulting nature with his wife,

Leslie, by pushing her with both hands on her shoulders and neck, causing her to lose her balance and stumble backwards. 2021 IL App (2d) 190243, ¶ 3. The incident occurred as Ward argued with police after his son rear-ended a car while driving. *Id.* at ¶ 11. Barbara Stilling, the woman whose car had been rear-ended by Ward's son, testified that Ward's wife stepped between Ward and two officers responding to the accident, and Ward used his hand to push his wife away, causing her to stumble two or three steps. *Id.* Stilling testified that she was "shocked," "surprised," and "startled" by defendant's conduct toward his wife. *Id.* But Leslie denied that she was insulted by the contact. *Id.* at ¶ 12.

The appellate court reversed Ward's conviction, finding that the circuit court should have granted Ward's motion for directed verdict because the People's evidence did not prove that Ward's actions insulted or provoked his wife. *Id.* at ¶¶ 50, 83-85; *see also id.* at ¶ 82 (holding People's evidence insufficient as a matter of law because it did not prove that victim was "actually insulted"). As a result, Ward's conduct towards his wife, which was deemed insulting by bystanders, officers on the scene, and a jury, went unpunished.

The appellate court's holding in *Ward* rests on a construction of the battery statute that is contrary to the General Assembly's intent. The law

criminalizing domestic battery was enacted to address circumstances where victims might be reluctant to incriminate their abusers or otherwise have reason to display no reaction to their abusers' conduct. *See People v. Williams*, 2020 IL App (4th) 180554, ¶ 51. As Justice Zenoff explained in her dissent in *Ward*, "[v]ictims of domestic violence might not show outward emotion because of stoicism, fear of reprisal, pride, shame, humiliation, or even feelings of guilt and self-loathing." 2021 IL App (2d) 190243, ¶ 102. By adopting a rule that limits domestic violence convictions to circumstances where the victim displays an emotional reaction when the abusive conduct occurs or admits such a reaction on the stand at trial, the subjective effect approach is both inconsistent with the legislature's intent and, Justice Zenoff explained, "detrimental to the prosecution of well-founded domestic battery cases" and will result "in fewer convictions in cases that could otherwise be proved beyond a reasonable doubt." *Id.* at ¶ 103; *see also People v. Beaty*, 377 Ill. App. 3d 861, 870 (5th Dist. 2007) (discussing expert testimony "that someone with battered woman's syndrome might be very reluctant to report abuse, might delay reporting abuse, might be hesitant about following through with a criminal prosecution of the abuser, might consult with others about whether or not to proceed with the prosecution, and might recant her allegations of abuse"); *People v. Brown*, 94 P.3d 574, 577 (Cal. 2004) ("in

domestic violence cases prosecutors are often faced with exceptional challenges" including "victims who refuse to testify" or "who recant previous statements"). The General Assembly did not intend to exclude this vulnerable population from the protection of the battery statute, and defendant's argument otherwise would produce absurd and unjust results. *See People v. Garcia*, 241 Ill. 2d 416, 421 (2011) ("It is always presumed that the legislature did not intend to cause absurd, inconvenient, or unjust results.").

The appellate court's opinion in *Williams* further illustrates the point. There, the evidence at trial showed that Williams punched the victim and knocked him unconscious, then kicked the victim in the back of the head several times. 2020 IL App (4th) 180554, ¶¶ 12-24. In defending against a battery charge, Williams argued "that a person cannot make contact of an insulting or provoking nature with an individual who is already unconscious." *Id.* at ¶ 49. The *Williams* court first held that "[t]he plain language of the statute applies the terms 'insulting or provoking' to the type of contact, not to the reaction of the victim," and that "[i]f the legislature intended to criminalize this conduct only if the victim actually was insulted or provoked, it could have used the same style of language as it did for battery involving bodily harm." *Id.* at ¶ 50. The court then noted:

> If we were to agree with defendant, it would produce absurd results. A defendant could spit on a victim who is unconscious or unaware with impunity. We conclude that the law criminalizing battery protects the sedated person in a hospital bed, or the drunkard passed out in the gutter, in the same manner that it protects other persons in perfect control of their faculties of perception.

Id. at ¶ 51. Accordingly, the court concluded, "whether the victim, in fact, was able to be insulted or provoked is immaterial. Any person would know that when defendant kicked [the victim], that was 'physical contact of an insulting or provoking nature' at minimum, and the jury was entitled to come to that conclusion." *Id.* at ¶ 50.

Contrary to defendant's assertion, it is not true that "nearly all of the cases that have interpreted" the battery statute have held that it requires the People "to prove that the person contacted was insulted or provoked." *See* Def. Br. 13. In addition to the Fifth District below, the Fourth District in *Williams* held that it is the insulting or provoking *nature* of the defendant's conduct that is at issue in battery prosecutions, and not the victim's subjective reaction to the conduct. 2020 IL App (4th) 180554. And prior to *Ward*, the Second District had expressly adopted *Williams's* holding in *People v. Pruitt*, 2021IL App (2d) 190772-U.[2]

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

To be sure, the appellate court is split on the issue presented in this case, but defendant's assertion that the weight of authority is largely on one side results from conflating a requirement that the objective analysis of the "nature" of defendant's conduct take into consideration its factual context with a requirement that the conduct be analyzed for its subjective effect on the victim. For example, defendant mistakenly contends that the First District adopted a subjective standard in *d'Avis*. *See* Def. Br. 14. In *d'Avis*, the victim, Luis Lopez, received a rectal exam from d'Avis, a licensed medical doctor. 250 Ill. App. 3d at 650. During the course of the exam, d'Avis asked if Lopez was enjoying it, and Lopez then discovered that d'Avis was masturbating while performing the exam. *Id.* The appellate court held that "it was perfectly reasonable for the trial court to have found that the otherwise noninsulting medical procedure performed on Lopez became an insulting and provoking contact once Lopez realized that d'Avis was using the rectal examination as a vehicle to bring about his own sexual gratification." *Id.* at 651.

Defendant's claim that the "First District . . . focused on the factual context to determine whether the contact insulted or provoked the victim," Def. Br. 14, is incorrect. While the appellate court did indeed focus on the factual context, it did so to determine if the contact was of an insulting and

provoking *nature*, not if the victim was insulted or provoked. That is, *d'Avis* adopted the approach advocated by the People (and dictated by the plain language of the battery statute). Indeed, the *d'Avis* court cited with approval *People v. Wilkinson*, 194 Ill. App. 3d 660 (1st Dist. 1990), which found that the defendant's conduct was insulting when he placed his hand inside the victim's blouse and pants, though the victim did not testify that she was insulted or provoked by the touching. *d'Avis*, 250 Ill. App. 3d at 651-52 (citing *Wilkinson*, 194 Ill. App. 3d at 664).

Defendant's reliance on *DeRosario*, Def. Br. 13-14, again conflates the appellate court's holding that the objective analysis of the nature of defendant's conduct take into consideration its factual context with a holding that defendant's conduct should be analyzed for its subjective effect on the victim. Indeed, in holding that contact "can be insulting or provoking depending on the context," *see DeRosario*, 397 Ill. App. 3d at 334, the Second District cited the Fourth District's opinion in *Peck*, which held that "[a]lthough we can envision contexts in which a defendant's spitting might not constitute insulting or provoking behavior, defendant's spitting in the face of a police officer in this case clearly amounts to insulting or provoking contact," without *any* discussion of the officer's subjective reaction, *see Peck*, 260 Ill. App. 3d at 814-15.

Moreover, defendant incorrectly asserts that the *DeRosario* court "then explained that 'the statute's plain language defines the offense in terms of contact that insults or provokes the victim.'" Def. Br. 13 (quoting *DeRosario*, 260 Ill. App. 3d at 334). By truncating this quotation from *DeRosario*, defendant has impermissibly changed the court's meaning. The issue before the appellate court was not whether to consider the "nature" of the contact or its "effect" upon the victim, but rather whether contact must "injure" the victim to constitute "battery," as the remainder of the quoted sentence makes clear: "However, the statute's plain language defines the offense in terms of contact that insults or provokes the victim, *not contact that injures the victim*." *See DeRosario*, 260 Ill. App. 3d at 334 (emphasis added). In sum, contrary to defendant's argument, courts interpreting the battery statute have not regularly held that finders of fact must consider whether the contact had an insulting or provoking effect on the victim.

Similarly, defendant's discussion of the transitive verbs "to insult" and "to provoke," *see* Def. Br. 11-12, demonstrates that the battery statute's plain language does not require the victim to have been insulted or provoked. First, the statute does not use the transitive verbs to provoke or to insult. The General Assembly could have written, "A person commits battery if he or she knowingly without legal justification by way of physical contact provokes

or insults an individual." Instead the General Assembly used the adjectives "provoking" and "insulting" to modify the word "nature." An adjective denotes the "quality of the thing named." *Adjective*, Merriam-Webster, https://tinyurl.com/5xfeuwus (last visited Sep. 11, 2022). Thus, by using these adjectives to modify the word "nature," the statute unambiguously asks the objective question "what is the quality of the nature of this contact" as opposed to the subjective question "did the contact have this effect on the object of the contact."

Moreover, while to insult and to provoke are transitive verbs that require an object to be acted upon, the use of a transitive verb does not require that the action be viewed from the subjective perspective of that object. For example, the Cook County jaywalking ordinance provides: "No pedestrian shall cross a roadway other than in a crosswalk on any through street." Cook County, Illinois Code of Ordinances Sec. 82-140. "To cross" is a transitive verb. And it is used as a verb in the jaywalking ordinance. Nevertheless, no one would suggest that the ordinance requires that the roadway must testify that it subjectively felt "crossed" in order to prove the offense. Plainly, the question is whether an objective observer could have concluded that the defendant crossed the roadway.

In sum, because the plain language of the battery statute and its legislative purpose of protecting victims against physical abuse dictate that it is an objective question whether contact was of an insulting or provoking nature, the People need not introduce evidence that the victim of a battery was in fact insulted or provoked to prove the offense beyond a reasonable doubt.

III. The evidence was sufficient to prove defendant made contact of an insulting or provoking nature with Officer Stitt.

Again, to sustain a conviction for aggravated battery, the People must prove that defendant (1) knowingly; (2) without legal justification; (3) made contact of an insulting or provoking nature; (4) knowing the complainant to be a correctional institution employee. 720 ILCS 5/12-3.05, 12-3. As noted, only the third element is at issue here.

For the reasons discussed above, to satisfy that third element, the People must prove that a reasonable person could conclude that the defendant's contact was of an insulting nature, and not that the victim was personally insulted. Accordingly, it is not necessary for a victim to testify that he was insulted or provoked. *See Wrencher*, 2011 IL App (4th) 080619, ¶ 55 ("victim does not have to testify he or she was provoked"). The trier of fact may consider the context of the

defendant's contact when determining whether the contact was insulting or provoking. *People v. Fultz*, 2012 IL App (2d) 101101, ¶ 49.

Here, considering all of the evidence in the light most favorable to the People, a rational finder of fact could conclude beyond a reasonable doubt that the contact between defendant and Stitt was of an insulting or provoking nature. *See Brand*, 2021 IL 125945, ¶ 58 (in reviewing sufficiency evidence, inquiry asks whether any rational trier of fact could have found elements of offense beyond reasonable doubt). Defendant ignored Stitt's commands and taunted Stitt by telling him that he would have to "make him" go into lock down. When Stitt entered the day room, defendant ran to the opposite side of the room and then jumped over a table. After Stitt cut off defendant's escape, defendant pushed Stitt in the chest, causing him stumble backwards. Stitt then responded by pinning defendant's arms and pushing him into his cell. R389. In this context, it was entirely reasonable for the jury to infer that defendant's defiant shove of Stitt was of an "insulting" nature. Defendant's suggestion that defendant's conduct could not be "insulting" to Stitt if Stitt knew that he was not the cause of defendant's anger, *see* Def. Br. 20, ignores that regardless of the cause of defendant's anger, he defied Stitt's authority and forced him to resort to physically pushing defendant into his cell.

It would also have been reasonable for the jury to infer that defendant's shove was of a "provoking" nature and invited Stitt's response. Indeed, defendant's shove *did* provoke a physical response, in that Stitt responded by pushing defendant into his cell. Accordingly, a rational trier of fact could have found beyond a reasonable doubt that defendant's contact with Officer Stitt was of an insulting or provoking nature and, by extension, that he was guilty of aggravated battery.

CONCLUSION

This Court should affirm the appellate court's judgment.

September 26, 2022

Respectfully submitted,

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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 containing 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(a), is twenty-five pages.

/s/ Garson S. Fischer
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 26, 2022, the foregoing **Appellee's Brief** was electronically filed with the Clerk, Illinois Supreme Court, and served upon the following:

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