No. 127894

IN THE
SUPREME COURT OF ILLINOIS

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

BRIEF OF PLAINTIFF-APPELLEE
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ORAL ARGUMENT REQUESTED

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NATURE OF THE ACTION

Following a bench trial in the Circuit Court of Livingston County, defendant was convicted of two counts of aggravated battery. R101-05; C92.[1]

Defendant appealed, and the Illinois Appellate Court affirmed. *People v. Castillo*, 2021 IL App (4th) 190633-U. Defendant now appeals from the appellate court's judgment. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

To sustain the challenged conviction of aggravated battery, the People were required to prove that defendant (1) "knowingly [and] without legal justification . . . ma[de] physical contact of an insulting or provoking nature with an individual," 720 ILCS 5/12-3(a)(2), and (2) that he did so while "on or about . . . public property," 720 ILCS 5/12-3.05(c). At issue in this appeal is:

1. Whether the phrase "public property" in the aggravated battery statute has its plain, commonly understood meaning of government-owned property; and

2. Whether a rational trier of fact could have concluded that the battery occurred on public property — *i.e.*, government-owned property — where the evidence at trial showed that defendant committed the crime in the Pontiac Correctional Center.

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[1] The common law record is cited as "C__"; the report of proceedings as "R__"; the People's exhibits in the physical record as "Peo. Exh."; and defendant's opening brief as "Def. Br. __."

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JURISDICTION

On January 26, 2022, this Court allowed defendant's petition for leave to appeal. Accordingly, this Court has jurisdiction under Supreme Court Rules 315 and 612(b).

STATEMENT OF FACTS

In June 2017, defendant was charged by indictment with two counts of aggravated battery for making insulting or provoking contact with a correctional officer and an inmate at the Pontiac Correctional Center by throwing a liquid substance on them. C17-18. Count one was aggravated because the victim was a correctional officer, John Thorp, who was performing his authorized duties. C17; 720 ILCS 5/12-3.05(d)(4)(i). Count two, for battering inmate John Eilers, was aggravated because the location of the battery, Pontiac Correctional Center, was public property. C18; 720 ILCS 5/12-3.05(c).

At defendant's bench trial, Thorp testified that he was employed as a correctional officer at Pontiac Correctional Center. R54-55. On February 9, 2016, he was escorting an inmate (Eilers) from the north cell house to the east cell house. R56. The inmate walked in front of Thorp, in restraints. R61. As they walked past defendant's cell, defendant threw a liquid substance smelling of feces through the screen of his cell door; the liquid struck Eilers in the face and Thorp in the arms and chest. R57, 60, 62.

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Jeremy Olson testified that he was employed by the Department of Corrections as an investigator at Pontiac Correctional Center, and as part of his duties, he interviewed defendant about the incident. R67-69. Defendant told Olson that he and Eilers had a verbal disagreement earlier that day after Eilers threatened defendant's family; defendant also admitted that he (defendant) threw feces at Eilers from his cell. R68.

By stipulation of the parties, a surveillance video from the Department of Corrections was admitted that depicted Thorp walking just behind Eilers while escorting him past defendant's cell in the prison cell block. R71; Peo. Exh. 1A.

Defendant testified in his own defense. R85. At the time of trial, defendant had been incarcerated "in the Department of Corrections" for nearly a decade. R85-86. On February 9, 2016, he resided in the north cell house at Pontiac. R86-88, 95. Eilers had been taunting defendant for some time and eventually threatened to rape and kill defendant's mother and kill defendant's children upon his (Eilers's) release. R88-90. Defendant testified that on the day of the attack, Eilers was being released from prison; while Officer Thorp was retrieving Eilers's property from his cell, Eilers walked to defendant's cell unescorted. R92-93. Eilers then threatened to rape defendant's mother with a hot curling iron. R92-93. In retaliation, defendant threw a mixture of his feces, urine, and semen at Eilers's face. R93. Defendant testified that other inmates in Pontiac threw such substances, but

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he had not previously done so. R95-96. Defendant denied throwing the liquid at Officer Thorp, whom he claimed ran over to his cell after he threw the liquid at Eilers. R96-97.

The Court found defendant guilty of both aggravated battery counts, R101-05, and sentenced him to prison terms of ten years for count one and five years for count two, to be served concurrently with each other and consecutively to sentences defendant was serving for four prior, unrelated convictions, R120-22; C92.[2]

Defendant appealed, arguing, as relevant here, that the evidence was insufficient to prove him guilty of count two (for battering inmate Eilers) because (1) a cell block in a maximum security prison does not constitute "public property" within the meaning of the aggravated battery statute, and (2) the People failed to prove State ownership of Pontiac Correctional Center. *People v. Castillo*, 2021 IL App (4th) 190633-U, ¶¶ 7, 26.

The Fourth District affirmed defendant's conviction, holding, as it had in *People v. Hill*, 409 Ill. App. 3d 451, 454 (4th Dist. 2011), that "public property" means government-owned property, and that decisions from the First and Third Districts support this conclusion, *Castillo*, 2021 IL App (4th) 190633-U, ¶¶ 13-15 (citing *People v. Wells*, 2019 IL App (1st) 163247, ¶ 40,

[2] Defendant's prior convictions were for possession of a weapon by a felon (Johnson Cty. No. 11 CF 61), failure to register as a sex offender (Kane Cty. 10 CF 1527), domestic battery (Kane Cty. No. 10 CF 1478), and aggravated battery (Livingston Cty. No. 12 CF 279). *See* R121; C92.

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and *People v. Messenger*, 2015 IL App (3d) 130581, ¶¶ 22-23). The court rejected defendant's argument that the government-owned property must also be publicly accessible. *Id.* ¶¶ 12-15. It further held that the State's ownership of Pontiac was a readily verifiable fact not subject to reasonable dispute of which it could take judicial notice. *Id.* ¶¶ 16-18. The court held that the People presented sufficient evidence of count two's public property element because the record evidence proved that the battery took place in Pontiac, and the court could take judicial notice that the State owned Pontiac. *Id.*

STANDARDS OF REVIEW

Which facts must be proven to establish an element of an offense presents a question of statutory construction, which this Court reviews de novo. *People v. Newton*, 2018 IL 122958, ¶¶ 12, 14; *see also People v. Casler*, 2020 IL 125117, ¶ 22.

"When a defendant challenges the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Jackson*, 2020 IL 124112, ¶ 64; *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

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ARGUMENT

The Evidence is Sufficient to Sustain Defendant's Second Count for Aggravated Battery.

As relevant here "aggravated battery . . . consists of two principal statutory elements: (1) a battery (2) coupled with a statutory aggravating circumstance." *People v. Espinoza*, 184 Ill. 2d 252, 259 (1998). Here, the aggravating circumstance for count two was that the offense occurred on "public property." 720 ILCS 5/12-3.05(c). Defendant does not challenge his conviction on count one but contends that his conviction on count two, for which he was sentenced concurrently, should be reduced to simple battery because "public property" does not mean government-owned property but *publicly-accessible* government-owned property, and that the prison did not qualify. Def. Br. 6-16. Defendant is incorrect; "public property" means government-owned property, without regard to whether it is also publicly accessible. *See infra* Part A.

Defendant alternatively contends that, even if "public property" means government-owned property, such that a State-owned prison would qualify, the Court should still reduce his conviction on count two to simple battery because the People failed to prove at trial that Pontiac Correctional Center was State-owned property. Def. Br. 17-21. This is also incorrect; viewed in a light most favorable to the People, the evidence sufficed to prove that Pontiac, where defendant committed the battery, was a government-owned prison. *See infra* Part B.

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A. The Plain, Commonly Understood Meaning of "Public Property" is Government-Owned Property.

1. The unambiguous plain meaning of "public property" is government-owned property.

Defendant's argument presents an issue of statutory construction, the primary goal of which is to ascertain and give effect to the intent of the legislature. *See, e.g.*, *People v. Grant*, 2022 IL 126824, ¶ 24. The most reliable indication of the legislature's intent is the language of the statute itself, which must be given its plain and ordinary meaning. *Id.* Thus, this Court has instructed that "[w]here the language is plain and unambiguous, it must be applied without resort to further aids of statutory construction." *People v. Bradford*, 2016 IL 118674, ¶ 15.

When, as here, a statutory term is not expressly defined, this Court determines its meaning through the term's ordinary and popularly understood definition. *See, e.g.*, *Newton*, 2018 IL 122958, ¶ 14. In determining the plain, ordinary, and popularly understood meaning of a term, it is appropriate to look to the dictionary definition. *People v. Dominguez*, 2012 IL 111336, ¶ 18. Under virtually all dictionary definitions, the plain, commonly understood meaning of "public property" is "something owned by the city, town, or state." Public Property, Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/public%20property; *see also, e.g.*, Public Property, Black's Law Dictionary (11th ed. 2019) (defining term as "State- or community-owned property not restricted

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to any one individual's use or possession"); Public Property, Ballantine's Law Dictionary (3d Ed. 2010) ("Property owned by the government or . . . the public as such in a governmental capacity," or "property belonging to the state or a political subdivision thereof . . . [and] used exclusively for a public purpose."); Public Property, Bouvier Law Dictionary (Desk ed. 2012) ("Public property includes all property owned by a government, usually but not always meaning public lands."); *cf.* Public Land, Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/public%20land ("land owned by the government"); *see also* Public Property, Bouvier Law Dictionary (Desk ed. 2012) ("Public property is not inherently open to use by the public"). Critically, none of these definitions provides that the government-owned property must be publicly accessible. Because the meaning of "public property" is plain and unambiguous, the Court's inquiry ends at this straight-forward definition: public property is government-owned property.[3]

The dictionary definitions on which defendant relies, *see* Def. Br. 8, are inapt because he defines the wrong word. Faced with the multitude of definitions establishing that "public property" is government-owned property,

[3] Courts in other States construing the undefined phrase "public property" in their state statutes have similarly held that its plain, commonly understood meaning is government-owned property. *See, e.g.*, *People v. Berry*, 457 P.3d 597, 600 (Colo. 2020) (finding the phrase "unambiguous"); *Cuffee v. Commonwealth*, 735 S.E.2d 693, 700 (Va. App. 2013) (adopting same "commonly accepted definition").

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defendant resorts instead to dictionary definitions of "public," including one defining it as "accessible to or shared by all members of the community." *Id.* (citing Merriam-Webster Dictionary, "Public," available at http://www.merriam-webster.com/dictionary/public). But the relevant statutory term is not "public" but "public *property*."

Defendant's construction would also read the phrase "publicly accessible" into the statute and impermissibly add a qualification to the statute that the General Assembly did not include. *See, e.g.*, *Grant*, 2022 IL 126824 ¶ 25 (courts may not "under the guise of construction, 'correct' a perceived error or oversight by the legislature" or "'supply omissions, remedy defects, annex new provisions, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of the language employed in the statute'") (quoting *People v. Pullen*, 192 Ill. 2d 36, 42 (2005), and *King v. First Cap. Fin. Serv. Corp.*, 215 Ill. 2d 1, 26 (2005)); *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶ 23 ("A court may not read into a statute any limitations or conditions which are not expressed in the plain language of the statute.").

It is unsurprising, therefore, that most of Illinois's appellate districts have defined "public property" in the aggravated battery statute as government-owned property. *See People v. Hill*, 409 Ill. App. 3d 451, 454-55 (4th Dist. 2011); *People v. Messenger*, 2015 IL App (3d) 130581, ¶ 23.

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And this plain, commonly understood meaning is also consistent with the General Assembly's self-evident intent when it aggravated batteries committed on public property — to deter violence on government-owned property, because such violence disrupts the important public functions frequently carried out on such property and places the government employees performing them at risk.

A legislator's chambers, a courtroom during a grand jury hearing or other proceeding closed to the public, a fire or police station, the surgery ward of a publicly owned hospital are all examples of government-owned property that is closed to the public but home to government activity and employees in need of protection. Similarly, public schools, even though they often are not open to the public, are deserving of special protection due to the nature of the activities that occur in them, as the First District observed when it held that public schools qualify as "public property" under the aggravated battery statute. *See People v. Wells*, 2019 IL App (1st) 163247, ¶ 40 (noting that public schools serve the "public purpose of educating children"). Prisons similarly serve an important public purpose, as the Third and Fourth Districts recognized when holding that jails qualify as "public property" under the statute. *See Messenger*, 2015 IL App (3d) 130581, ¶ 22 (noting that prison property serves the "'public purpose of housing inmates'") (quoting *Hill*, 409 Ill. App. 3d at 455). And that public function is sensitive to disruption by assaults and batteries in prisons, which risk not only the safety

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of inmates targeted by that violence, but may escalate into wider disputes between inmates or harm other bystanders, including government employees (as this case demonstrates).

In sum, the plain, commonly understood meaning of "public property" is government-owned property, and this definition is entirely consistent with the General Assembly's intent of deterring violence in places where sensitive public functions are performed.

2. Neither the aggravated battery statute's other text nor its legislative history justify departing from the plain and ordinary meaning of "public property."

Defendant's invocation of *noscitur a sociis*, legislative history, and other tools is misplaced because "public property" clearly and unambiguously means government-owned property, regardless of its accessibility to the public. *See, e.g.*, *People v. Clark*, 2019 IL 122891, ¶ 43 ("When the statutory language is clear and unambiguous, it must be given effect without resort to other tools of construction.").

To begin, *noscitur a sociis* is a canon of statutory construction which provides that "[t]he meaning of *questionable* words or phrases in a statute may be ascertained by reference to the meaning of words or phrases associated with it," *People v. Diggins*, 235 Ill. 2d 48, 56 (2009) (emphasis added); like other canons of construction, and by its very terms, its application is unnecessary when, as here, the plain meaning of the relevant language is clear, *see, e.g.*, *Davison*, 233 Ill. 2d at 37-38, 43 (refusing to go

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beyond unambiguous, plain meaning of relevant language and apply *noscitur a sociis*); *see also Graham Cty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 281 (2010) (quoting *S. D. Warren Co. v. Maine. Bd. Of Envtl. Prot.*, 547 U.S. 370, 378 (2006)) (""That a word may be known by the company it keeps is . . . not an invariable rule, for the word may have a character of its own not to be submerged by its association.'").

Nor would application of *noscitur a sociis* support defendant's interpretation. The terms neighboring "public property" in the aggravated battery statute do not suggest that the General Assembly intended it to mean anything other than government-owned property. When the General Assembly added "public property" to the aggravated battery and assault statutes in 1968, Laws 1968, at 166-68 (Senate Bill 1785 (approved Aug. 20, 1968)), it elevated battery to aggravated battery when the defendant "[i]s, or the person battered is, on or about a public way, public property or a public place of accommodation or amusement." Ill. Rev. Stat. ch. 38, 12-4(b)(8) (1969) (now at 720 ILCS 5/12-3.05(c)); *see also* Ill. Rev. Stat. ch. 38, 12-2(b)(9) (1969) (substantially identical aggravated assault provision). The structure of this list does not suggest that the legislature intended to define these terms by reference to each other, for the use of the disjunctive (here "or") "[g]enerally . . . indicates alternatives and requires separate treatment of those alternatives." *See, e.g.*, *People v. Phyllis B. (In re E.B.)*, 231 Ill. 2d 459, 468 (2008).

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Moreover, this list of three "public" locations is too short and diverse to suggest that the legislature was attempting to describe a general category of publicly accessible property. *See, e.g.*, *Graham Cty. Soil & Water Conservation Dist.*, 559 U.S. at 288 (*noscitur a sociis* canon did not apply to a list of three items, which were "too few and too disparate" from one another to suggest terms were meant to be read together to describe a single concept); *Our Country Home Enter. v. Comm'r*, 855 F.3d 773, 786 (7th Cir. 2017) (canon inapplicable to statute with disjunctive "list" of two terms). If the General Assembly had intended to limit "public property" to a subset of government-owned property that is *also* publicly accessible, it could have clearly expressed that intent by, for example, listing multiple examples of government property open to the public and then using the qualified phrase "*other* public property." *See, e.g.*, Laws 1933, p. 725 (now at 70 ILCS 1505/1) (granting Chicago Park District authority over "parks, boulevards, ways and *other public property*") (emphasis added); Laws 1961, p. 576 (now at 65 ILCS 5/4-1-2) (Municipal Code defining "franchise" as "every special privilege or right in the streets, alleys, highways, bridges, subways, viaducts, air, waters, public places, *and other public property* that does not belong to the citizens generally by common right") (emphasis added).

In other words, if the General Assembly wanted to limit the scope of "public property" to publicly accessible property, it knew to provide examples that would clearly show that intent. But it did not; the General Assembly

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instead used "public property," without qualification, to show that the term was meant to have its plain and ordinary meaning of government-owned property. *See, e.g.*, *People v. Scharlau*, 141 Ill. 2d 180, 193 (1990) (use of "compendious" and "sweeping" term "interest" without express definition or qualifying language showed legislative intent that term have naturally broad meaning); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 338 (1979) (in disjunctive phrase "business or property," "business" did not modify "property" or limit its "naturally broad and inclusive meaning").

Contrary to defendant's argument, moreover, "public way, public property or public place of accommodation or amusement" is not a "general description of places open to the public." Def. Br. 15 (internal citation and quotation marks omitted). These are rather three, discrete phrases, each with their own meanings. "Public ways" are thoroughfares, which are traditionally open to the entire public as a matter of right. *See, e.g.*, *Herman Armanetti, Inc. v. Chicago*, 415 Ill. 165, 167 (1953) ("the public is rightfully entitled to the use of such thoroughfare free of all obstructions and impediments"). In contrast, a public place of accommodation or amusement need not be open to the *entire* public. *See, e.g.*, *People v. Murphy*, 145 Ill. App. 3d 813, 815 (3d Dist. 1986) (bar qualified as public place of accommodation under aggravated battery statute); *People v. Logston*, 196 Ill. App. 3d 96, 100 (4th Dist. 1990) (same, notwithstanding restricted access for minors); *see also, e.g.*, *Walton Playboy Clubs, Inc. v. Chicago*, 37 Ill. App. 2d 425, 431 (1st Dist.

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1962) (club with pro-forma membership requirements and one-time admission fee did not violate civil rights law regulating public accommodations and amusements, noting that public accommodations may lawfully exclude non-paying customers by charging generally-applicable fees). And "public property," as discussed, *supra* Part A.1, is commonly defined as government-owned property, regardless of accessibility. That each of these three kinds of "public" location conveys a different level of openness (if any), shows that openness was never the point.

Instead, the more relevant trait shared by the statutory terms "public way," "public property," and "public place of accommodation or amusement" is that all are places that serve public functions sensitive to acts of nearby violence. Places are sensitive either because of the people who go there or the activities that take place there. Violence in a public place of accommodation or amusement, where people gather, is more likely to harm innocent bystanders and deter business in that place and surrounding area. Moreover, many public places of accommodation or amusement, such as bars, restaurants, and stadiums, serve alcohol, which heightens the risk of violent conflict. Public ways, where people travel, may also be crowded, and they also frequently have motor vehicle traffic nearby, such that fighting or battery in public ways may risk causing deadly accidents. And, as explained, *supra* Part A.1, government-owned public property is frequently the site of governmental activities sensitive to disruption by violence, and the State has

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an interest in protecting those activities and the government employees performing them. The common denominator among these three terms is simply that they all describe sensitive places serving functions important to the public; public ways and public places of accommodation or amusement must be accessible to large parts of the public to serve their particular functions, but public property need not be.

People v. Ward, 95 Ill. App. 3d 283 (2d Dist. 1981), on which defendant relies, Def. Br. 8-9, 11, 13-15, is flawed because it similarly overlooked the individual meanings of "public way," "public property," and "public place of accommodation or amusement" and construed them as mere examples of open places. Rather than look first to the plain and ordinary meaning of the term "public property" as the best indicator of the legislature's intent, the *Ward* court leapt to its own conclusion that the purpose of all three terms was to deter batteries in places open to the public. 95 Ill. App. 3d at 288. The court suggested that the purpose of listing both public property and public places of accommodation or amusement was to include places accessible to the public whether publicly or privately owned. *See id.* But the notion that this list represents a simple dichotomy of private versus government-owned property open to the public ignores not only that the ordinary definition of public property does not require public accessibility, but also that public places of accommodation or amusement need not be privately owned. Soldier Field, for example, clearly a public place of amusement, is owned by the

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Chicago Park District. *Coughlin v. Chicago Park Dist.*, 364 Ill. 90, 101-02 (1936) (noting ownership).

Nor is it relevant that the General Assembly used the term "government supported property" in a property damage statute. *See* Def. Br. 9 (suggesting that use of phrase "government supported property" in 720 ILCS 5/21-1.01 (2016) is evidence that General Assembly would have specified same in the aggravated battery statute had it meant to include all government-owned property). First, the property damage statute did not exist in 1968 when the General Assembly used "public property" in the aggravated battery and assault statutes. Moreover, the initial version of the property damage statute applied to all property "supported in whole or in part with State funds or Federal funds administered through State agencies," Public Act 76-1581, § 2 (eff. Sept. 26, 1969); Ill. Rev. Stat., ch. 38, par. 21-4 (1969), and the General Assembly obviously would not have used such language in the aggravated battery statute because there is no reason why it would have wanted to deter violence on State property while excluding violence on property of cities, counties, and other governments.

But even after this property damage statute was amended in 1995 to include property financially supported by local governments, *see* Public Act 89-30, § 5 (eff. June 23, 1995), government-subsidized property is still a different category than government-owned property. The scope of the property damage statute is naturally defined solely in relation to a

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government's financial interest in property because it was designed to deter damage *to* property supported by public funds, which drains those financial resources. By contrast, the location-based aggravated battery and assault provisions are intended to deter violent crimes against people on government-owned, public property because it is frequently the site of characteristically governmental activities prone to disruption by nearby violence, and to protect government employees from that violence. For these purposes, the government-supported property language is too broad, as the General Assembly may not have the same concerns about government functions and employees on property a government helps support financially but does not directly control.

Defendant's reliance on legislative history is also misplaced. First, as discussed, resort to legislative history is unnecessary here because the plain language is unambiguous. *See, e.g.*, *People v. Jarquan B. (In re Jarquan B.)*, 2017 IL 121483, ¶ 35.

In any event, the legislative history does not support defendant's position. Defendant claims that the General Assembly's decision to aggravate batteries committed on public property "was predicated on the determination 'that a battery committed *in an area open to the public* . . . constitutes a more serious threat to the community.'" Def. Br. 8 (emphasis defendant's) (quoting *Ward*, 95 Ill. App. 3d at 287 (citing Ill. Ann. Stat., ch. 38, par. 12-4, Committee Comments, at 465 (Smith-Hurd 1979)). This

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committee comment is the only legislative history that *Ward* or any other case has ever cited for this proposition. Yet the comment said nothing about an "area open to the public." Rather, this comment said that section 12-4(b) — which contained most of the aggravating circumstances for battery at the time, including using a firearm, wearing a mask or hood to conceal one's identity, battering peace officers, teachers, and other types of victims, as well as the location-based aggravators — "involves a battery committed under aggravated circumstances from which great harm might and usually does result, (although it did not in the particular case), and it therefore constitutes a more serious threat to the community than a simple battery." Ill. Ann. Stat., ch. 38, par. 12-4, Committee Comments, at 464-65 (Smith-Hurd 1979). Not only did the comment say nothing about the location-based aggravators in particular, but it cannot have been drafted with them in mind because it was drafted years before they were added to the statute in 1968. *See, e.g.*, Ill. Ann. Stat., ch. 38, par. 12-4, Committee Comments, at 712-13 (Smith-Hurd 1964) (containing identically-phrased Committee Comment about section 12-4(b) from original, 1961 comments to Criminal Code of 1961). In sum, this committee comment simply sheds no light on why the General Assembly thought batteries on "public property" were more harmful to public interests and warranted additional deterrence. It certainly provides no reason to ignore the ordinary meaning of the statute's plain language.

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Defendant's reliance on a 1979 amendment to a different part of the aggravated battery statute, Def. Br. 8-9, is similarly misplaced. In 1979, the General Assembly amended a provision that aggravated battery on correctional officers performing their official duties, expanding it to apply to batteries on all correctional institution employees (and not merely correctional officers). Public Act 81-0571 (eff. Sept. 14, 1979) (now at 720 ILCS 5/12-3.05(d)(4)).

This 1979 amendment says nothing about the meaning of "public property." Defendant's argument that it would have been unnecessary to amend the statute if any battery in a prison could be prosecuted as aggravated battery on public property, Def. Br. 9, ignores that the amended provision also applied to battery on correctional employees wherever they are performing their official duties (such as transporting inmates to and from prison). In other words, this provision is not superfluous to the provision that makes battery aggravated on government-owned, "public property." Not all batteries of correctional institution employees occur on public property, and, obviously, not all batteries on public property involve correctional institution employees. The fact that some aggravated batteries involve both is hardly cause to ignore the plain meaning of either term.

Indeed, more recent legislative history shows that the General Assembly has acquiesced to judicial constructions of "public property" in the aggravated battery statute as government-owned property. "[W]here the

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legislature chooses not to amend terms of a statute after judicial construction, it will be presumed that it has acquiesced in the court's statement of legislative intent." *See, e.g.*, *Bd. of Educ. v. Moore*, 2021 IL 125785, ¶ 30. The Fourth and Third Districts held that the plain meaning of "public property" in the aggravated battery statute was government-owned property in 2011 and 2015, respectively. *See Hill*, 409 Ill. App. 3d at 454-55; *Messenger*, 2015 IL App (3d) 130581, ¶ 23; *see also People v. Childs*, 305 Ill. App. 3d 128, 140 (4th Dist. 1999) (finding, without discussion, that jail and courthouse were "public property" under aggravated battery and assault statutes). The General Assembly has amended the aggravated battery statute or the definitions of its terms eight times since *Hill* was decided and three times since *Messenger* was decided and has never seen fit to "clarify" that "public property" means anything other than government-owned property. *See* Public Act 97-313 (eff. Jan. 1, 2012); Public Act 97-467 (eff. Jan. 1, 2012); Public Act 97-597, § 5 (eff. Jan. 1, 2012); Public Act 98-369, § 5 (eff. Jan. 1, 2014); Public Act 99-143, § 880 (eff. July 27, 2015); Public Act 99-816 (eff. Aug. 15, 2016); Public Act 101-223, § 5 (eff. Jan. 1, 2020); Public Act 101-651, § 15 (eff. Aug. 7, 2020).

Two of those amendments even changed the provision containing the location-based aggravators, yet did not change or redefine "public property." Public Act 97-597, § 5 (eff. Jan. 1, 2012) (consolidating all location-based aggravating circumstances into one subsection at 720 ILCS 5/12-3.05(c) by

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moving the newer terms "sports venue" and "domestic violence shelter" from their own paragraphs to the end of the list starting with "public way"); Public Act 101-223, § 5 (eff. Jan. 1, 2020) (adding new terms to the end of this provision which make batteries aggravated in places of religious worship). Where, as here, the legislature amends a statute several times following judicial interpretations, it is presumed to have acquiesced to those interpretations. *See Pam v. Holocker,* 2018 IL 123152, ¶ 31 (finding legislative acquiescence to two appellate court decisions after ten amendments); *Moon v. Rhode*, 2016 IL 119572, ¶¶ 31-33 (legislature acquiesced to interpretation in ten appellate court decisions, despite one case adopting contrary view, given five amendments).

3. Defendant's proposed approach is unworkable and would produce unintended results.

Defendant's proposed construction of "public property" — government-owned property accessible to the public — is contrary to legislative intent, and its application would produce absurd and unintended results.

More specifically, defendant argues that the People must prove that the part of the property where a battery occurs is open to the public, and that the cell block of the prison where the battery occurred here did not qualify. Def. Br. 13-14.[4] This approach would create absurd results, such as batteries

[4] The People understand defendant to argue that the property must be open "to the general public" or the "community at large." Def. Br. 6, 8, 10, 15. To the extent he argues that "public property" should mean "government-owned property that is accessible to *all* members of the community," Def. Br. 15, 16

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in the publicly accessible parts of government-owned buildings being aggravated while batteries in more sensitive and restricted parts of the same buildings (e.g., a judge's chambers in a courthouse) are not. Defendant's approach would also mean that most batteries in public schools would not qualify as batteries on public property, as the First and Second districts have held that they do, *People v. Ojeda*, 397 Ill. App. 3d 285, 288 (2nd Dist. 2009); *Wells*, 2019 IL App (1st) 163247 ¶¶ 31-43. Defendant insists that his approach is consistent with the reasoning in *Ojeda*, and that under that reasoning, this Court need not disrupt the holdings in *Ojeda* and *Wells* that a public school is public property. Def. Br. 13. But *Ojeda* itself would have failed defendant's proposed test, as that case did not discuss where in the school the battery took place, or analyze if that part of the building or area was open to the public. *See* 397 Ill. App. 3d at 286-88. *Ojeda* rather determined, as a matter of law, reviewed de novo, that public schools, as a category, qualify as "public property" because they serve the "public's use," and parts of them are sometimes open to the public as spaces for public functions. *See id.* at 288.

And to the extent that defendant argues that the Court should instead adopt *Ojeda*'s approach, under which an entire building qualifies as "public"

(emphasis added), no authority supports such an interpretation, its application would lead to even more absurd results, and it is inconsistent with not only the commonly-understood meaning of "public property" but also of "public place[s] of accommodation and amusement," as the latter need not be accessible to the entire public, *see supra* Part A.2.

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if enough of it is open enough to the public (rather than his location-specific accessibility test), *Ojeda*'s approach is unmoored from the statutory language and too vague to be consistently applied. Again, there is no textual basis upon which one could conclude that "public property" means "publicly accessible public property." *See supra* Part A.1. Nor is there a principled way to determine what percentage of a building must be open to the public so that the remainder of the building can be considered publicly accessible. *Ojeda* certainly did not offer such a principle, and neither does defendant. Case in point, defendant fails to explain why, under *Ojeda's* rationale, a prison, which has visiting areas sometimes open to members of the public, is not sufficiently open to qualify as public property.

Finally, contrary to defendant's argument, rewriting "public property" to mean "publicly accessible public property" is not necessary to avoid absurd or unintended results, such that a battery inside a rented apartment in a public housing complex would be aggravated because it was committed on "public property." Def. Br. 14. Such a result might follow if government-owned property necessarily meant any property a government owns in the strictest, legal sense. But an undefined statutory term of ownership does not necessarily refer to the party with legal title, but may also describe a more practical, realistic relationship to property which focuses on whether a party controls it, benefits from it, and has rights characteristic of ownership, such as the right to use, occupy, exclude, and convey. *See, e.g.*, *People v. Chicago*

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Title & Trust Co., 75 Ill. 2d 479, 489 (1979) (holding that "owner" under tax statute included trust beneficiary with control and beneficial ownership); *City of Chicago v. Ill. Dept. of Revenue*, 147 Ill. 2d 484, 505-09 (1992) (under similar "realistic approach to ownership," city could "own" property it leased for purposes of tax exemption if it had sufficient incidents of ownership); *Rohr Aircraft Corp. v. Cty. of San Diego*, 362 U.S. 628, 634 (1960) (whether land was surplus property of federal government (which the opinion also called "public property") and was thus exempt from state taxation turned "on practical ownership . . . rather than . . . naked legal title"). If it were necessary, defendant's concern could be addressed by adopting a more practical definition of government "ownership," under which an apartment in a public housing complex is not "public property" because it primarily benefits an individual tenant, who has the right to control it and occupy it during the duration of the lease.

In sum, the plain, commonly understood meaning of "public property" is government-owned property, and neither the text, the structure, nor the legislative history of the statute show that the General Assembly intended it to have any other meaning. Indeed, the legislature has acquiesced to multiple judicial interpretations of public property as meaning government-owned property.

B. The Trial Evidence Sufficed to Prove that Defendant Committed Battery on Government-Owned Property.

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Defendant's alternative argument that even if "public property" means government-owned property, the evidence was insufficient to sustain his conviction on count two because the People failed to prove that Pontiac Correctional Center was government-owned property, Def. Br. 17-21, is also meritless.

To prove this offense, the People had to establish that defendant (1) knowingly made physical contact of an insulting or provoking nature (2) while on public property. 720 ILCS 5/12-3(a)(2); 720 ILCS 5/12-3.05(c); *see also* IPI Criminal 11.112 ("Issues In Aggravated Battery – Based on Location Of Conduct"). Defendant does not dispute that he knowingly made physical contact of an insulting or provoking nature when he threw a slurry of feces, semen, and urine at Eilers. And the evidence proved beyond a reasonable doubt that defendant committed the battery "on. . . public property." 720 ILCS 5/12-3.05(c).

Defendant's sufficiency challenge is assessed under the familiar *Jackson* standard: "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *Casler*, 2020 IL 125117, ¶ 60 (citing *Jackson*, 443 U.S. at 318-19, and *People v. Cunningham*, 212 Ill. 2d 274, 278-79 (2004)). "Once a defendant has been found guilty of the crime charged, the factfinder's

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role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution." *Jackson*, 443 U.S. at 319 (emphasis in original). "This same standard of review applies regardless of whether the defendant received a bench or jury trial," *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009), and "regardless of whether the evidence is direct or circumstantial," *Jackson*, 2020 IL 124112, ¶ 64.

Moreover, "[a]ll reasonable inferences from the evidence must be drawn in favor of the prosecution." *See, e.g.*, *Newton*, 2018 IL 122958, ¶ 24; *People v. Aljohani*, 2022 IL 127037, ¶ 67 ("All reasonable inferences are drawn in favor of a finding of guilt.") "'[T]he trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.'" *Newton*, 2018 IL 122958, ¶ 24 (quoting *People v. Hardman*, 2017 IL 121453, ¶ 37)). The trier of fact may also "apply his or her common knowledge," and "consider the evidence in light of his or her own knowledge and observations in the affairs of life[.]" *Id.* ¶¶ 20, 28.

Here, viewed in a light most favorable to the People, the evidence established both elements of aggravated battery beyond reasonable doubt — that defendant committed battery, and that he did so "on or about . . . public property." 720 ILCS 5/12-3.05(c). The undisputed evidence proved that

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defendant committed battery on a fellow inmate, Eilers, outside defendant's cell in the Pontiac Correctional Center. R57-62, 67-69, 71, 92-93. And the evidence supported the reasonable inference that the State owned Pontiac. Jeremy Olson testified that he was employed by the Illinois Department of Corrections (IDOC) as an investigator at Pontiac, that he investigated potential infractions and crimes at Pontiac as part of his official duties, and that he interviewed defendant in his office at Pontiac during his investigation. R67-69. The parties stipulated to the admission of a video IDOC provided that depicted defendant's offense at Pontiac. R71. And defendant himself testified that he was "in the Department of Corrections," and had been in IDOC for the last ten years, including when he threw his bodily fluids at Eilers, which he claimed was common "in Pontiac." R86, 92-93, 95-96.

In other words, the evidence showed that (1) IDOC employees were responsible for critical, security-related functions at Pontiac, such as investigating crimes and maintaining security camera footage, and (2) the prison housed and cared for inmates in IDOC custody, including defendant. It is common knowledge (and common sense) that the Illinois Department of Corrections is an agency of the State of Illinois. Accordingly, viewing all the evidence in a light most favorable to the People, a rational trier of fact could reasonably infer that Pontiac — a prison run by IDOC on behalf of the State, which houses inmates in IDOC's (the State's) custody — was, in fact, a prison

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owned by the State. *See, e.g.*, *Wells*, 2019 IL App (1st) 163247, ¶ 40 (high school principal's testimony that defendant was employed by Chicago Public Schools and worked at the high school where he battered students as security guard and coach sufficed to prove the school "was a public school, and as a government-owned entity, it was therefore 'public property' within the meaning of the aggravated battery statute").

Courts have long recognized that some categories of property are commonly known to be government-owned. *Wells*, 2019 IL App (1st) 163247, ¶ 40 (treating evidence that school in question was a public school as evidence that it was government-owned); *Ojeda*, 397 Ill. App. 3d at 287 (treating evidence that "Belvidere High School" was maintained by a government and supported by local property taxes as evidence of government ownership); *see also People v. Pulley*, 345 Ill. App. 3d 916, 921 (1st Dist. 2004) (jury could reasonably infer defendant did not own building police chased him into and through as he held a gun, and he committed aggravated firearm possession on land he did not own, based on police officer's testimony that he patrolled Chicago Housing Authority projects and that the building was a "CHA building," in a "CHA public housing complex.").

Prisons are likewise commonly known to be government-owned. *See United States v. Golden*, 843 F.3d 1162, 1165 (7th Cir. 2016) (rejecting argument that the "government somehow failed to *prove*" that "carceral property" (namely Sangamon County Jail) was "public property" because "*the*

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proposition was so obvious that a detailed discussion of it by the parties would have been a waste of time" (latter emphasis added)). Indeed, the General Assembly banned privately-operated prisons in Illinois more than 30 years ago. *See* Public Act, 86-1412 (eff. Sept. 11, 1990) (now at 730 ILCS 140/2);[5] *see also* 730 ILCS 140/3 (2022) (barring State or local governments from contracting with private parties for services "relating to the operation of a correctional facility or the incarceration of persons in the custody of," *inter alia*, IDOC or a sheriff, except ancillary services "not directly related to the ownership, management or operation of security").

In sum, it was entirely reasonable, and indeed obvious, for a rational fact finder to infer that Pontiac was a State prison run by a State agency housing and caring for inmates in the State's custody, and that the State owned it as, indeed, it owns all State prisons in Illinois. *See People v. Cline*, 2022 IL 126383, ¶ 34 (citing *People v. Rhodes*, 85 Ill. 2d 241, 248-49 (1981)) (circumstantial evidence is proof of facts from which the fact finder "may infer other connected facts which usually and reasonably follow according to the common experience of mankind"). Thus, viewed in a light most favorable

[5] The General Assembly did so, in part, because operating prisons is "inherently governmental." Public Act, 86-1412 (eff. Sept. 11, 1990) (explaining that "the management and operation of a correctional facility or institution involves functions that are inherently governmental[,]" and that "issues of liability, accountability and cost warrant a prohibition of the ownership, operation or management of correctional facilities by for-profit private contractors.").

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to the People, the evidence sufficed to prove that defendant committed battery "on . . . public property." 720 ILCS 5/12-3.05(c).

Defendant's arguments to the contrary are meritless. He asserts that "the State provided no testimony or other evidence as to the ownership of Pontiac. . . at trial[,]" and that "the record is devoid of any evidence on this essential element of aggravated battery." Def. Br. 19-20. As an initial matter, the State's ownership of Pontiac is not an "element." The People were required to prove the crime occurred "on or about . . . public property." 720 ILCS 5/12-3.05(c). Part of that element is the battery's physical location, which the evidence directly and conclusively proved was Pontiac Correctional Center. And, as explained, there was plenty of circumstantial evidence from which a rational trier of fact could reasonably infer that Pontiac was government-owned property in that it was a facility run by IDOC employees to house inmates in IDOC custody; in other words, it was a State prison, all of which are owned by the State.

Defendant's remaining arguments have nothing to do with the sufficiency of the trial evidence. Instead, they take issue with the appellate court's decision to take judicial notice of the State's ownership of Pontiac. *See* Def. Br. 17-21. But this Court determines the sufficiency of the evidence by reviewing the trial evidence under the *Jackson* standard, *see, e.g.*, *Cunningham*, 212 Ill. 2d at 278-79 (noting this Court's adoption of *Jackson* standard), and this Court may "affirm on any basis in the record,

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notwithstanding [any lower court's] reasoning." *Aljohani*, 2022 IL 127037, ¶ 63; *see also, e.g.*, *People v. Julie M. (In re Julie M.)*, 2021 IL 125768, ¶ 75 (same). And the evidence here was sufficient for a rational trier of fact to find beyond a reasonable doubt that the battery was committed on government-owned, and therefore public, property. Accordingly, defendant's arguments that the appellate court improperly took judicial notice are irrelevant because they would not entitle him to relief even if he were correct.

In any event, the appellate court did nothing improper in recognizing a commonly known and obvious fact merely because it was "not presented before the trial court." Def. Br. 21. Facts generally known as a matter of common knowledge are almost never explicitly "presented" at trial, and this Court has, on several occasions, nonetheless recognized that a rational factfinder would know them and could properly consider them in assessing the sufficiency of the evidence. *See, e.g.*, *Newton*, 2018 IL 122958, ¶¶ 20, 26-28 (recognizing that churches have commonly-known, identifiable characteristics, and evidence that a building had such traits supported reasonable inference that it was operating as a church); *People v. Beauchamp*, 241 Ill. 2d 1, 10 (2011) (commonly-known fact that hydraulic arms which lift the rear door of a truck were necessarily attached to the inside supported an inference establishing an element of burglary); *Cunningham*, 212 Ill. 2d at 281 (trier of fact could consider commonly-known fact that December nights in Chicago are usually cold in assessing credibility

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of testimony that someone was wearing only a t-shirt outside in December); *People v. Tassone*, 41 Ill. 2d 7, 12 (1968) (recognizing as common knowledge that a stolen semi-truck and trailer had a value of more than $150, because courts "are presumed to be no more ignorant than the public generally" and may consider "that which everyone knows to be true").

Because common knowledge is equally known to the trier of fact, recognizing it on appeal is not taking judicial notice. Thus, while reviewing courts do occasionally describe the practice of recognizing commonly known facts as taking "judicial notice," *see, e.g.*, *Tassone*, 41 Ill. 2d at 12, they more often simply say that such facts are or are considered common knowledge, *see, e.g.*, *Pereira v. United States*, 347 U.S. 1, 9 (1954) (recognizing that "[i]t [was] common knowledge that" checks drawing on out of state banks had to be sent there for collection); *Beauchamp*, 241 Ill. 2d at 10 ("we consider it a matter of common knowledge . . ."), or use other language, *see, e.g.*, *People v. Jordan*, 218 Ill. 2d 255, 271 (2006) (finding it "common sense" and "obvious" that leaving a child unattended in a populated, public place is dangerous). Recognizing that a rational trier of fact may consider commonly known or obvious facts in assessing the evidence is not, strictly speaking, "judicial notice," because it does not introduce new evidence. And regardless of the label, the practice is well established.

Cline, on which defendant relies, Def. Br. 21, is inapposite because it merely held that it was inappropriate to use judicial notice to introduce "new

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evidentiary material" that the trier of fact could not have considered. *See* 2022 IL 126383 ¶ 32. That is not what happened here. The appellate court instead recognized commonly known information that would allow a rational trier of fact possessing that same common knowledge to make reasonable inferences based on the evidence presented at trial. *Cline* is also distinguishable because the defendant there asked the Court to judicially notice new evidence and then use the new evidence to second-guess the factfinder's credibility determinations. *See id.* ¶¶ 29, 33 (internal citation omitted) (explaining that "[i]t is not the function of a court of review to retry a defendant," or to judicially notice "material that was not considered by the trier of fact in weighing the credibility of an expert witness's testimony"). By contrast, the appellate court here recognized commonly known information and used it to respect the rationality of the trier of fact's verdict.

Finally, *People v. Murray*, 2019 IL 123289, on which defendant also relies, Def. Br. 17-18, 20, is distinguishable. There the Court held that a State expert witness's conclusory testimony that the Latin Kings were a "streetgang" for purposes of the offense of unlawful possession of a firearm by a street gang member, was insufficient to prove that element of the offense. *Murray*, 2019 IL 123289, ¶¶ 3-4, 8, 11, 21-30. But that offense includes a very precise statutory definition of the term "street gang," and while it is certainly common knowledge that the Latin Kings are a street gang in a general sense, more was required to meet that statutory definition. *See id.* ¶

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65 (Kilbride, J., specially concurring) (explaining that *Murray's* holding resulted from the specificity of the statutory definition imposing a higher evidentiary burden). By contrast, the aggravated battery statute relies on the commonly understood definition of "public property" rather than any precise statutory definition, and so, unlike the facts to be established in *Murray*, specific evidence beyond common knowledge was not required to establish that the State prison was government-owned, "public property." Indeed, two appellate districts have recognized that public ownership of "public property" can be inferred from circumstantial evidence. *See Wells*, 2019 IL App (1st) 163247, ¶ 40*; Ojeda*, 397 Ill. App. 3d at 287.

In sum, the trial evidence, when viewed in the light most favorable to the People, was sufficient to permit a rational trier of fact to find that defendant committed the battery charged in count two "on . . . public property." 720 ILCS 5/12-3.05(c).

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CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court affirm the judgment of the appellate court.

August 1, 2022

Respectfully submitted,

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RULE 341(c) 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, and the certificate of service, is 36 pages.

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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 1, 2022, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which served the person named below at this registered email address:

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