No. 127538

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- LANCE M. DAVIDSON, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 5-19-0217. There on appeal from the Circuit Court of the Fourth Judicial Circuit, Montgomery County, Illinois, No. 18-CF-78. Honorable James Roberts, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

JAMES E. CHADD
State Appellate Defender

CATHERINE K. HART
Deputy Defender

KARL H. MUNDT
Assistant Appellate Defender
Office of the State Appellate Defender
Fourth Judicial District
400 West Monroe Street, Suite 303
Springfield, IL 62704
(217) 782-3654
4thdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

ORAL ARGUMENT REQUESTED

E-FILED
4/27/2022 11:14 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

NATURE OF THE CASE

Lance Davidson was convicted of aggravated battery after a jury trial and was sentenced to three years and six months in prison followed by two years of mandatory supervised release.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether the plain language of the phrase "contact of an insulting or provoking nature with an individual" requires the State to prove that the individual contacted was insulted or provoked, and whether the evidence was sufficient to prove that Officer Stitt was insulted or provoked by the contact made by Lance Davidson.

STATUTES AND RULES INVOLVED

§ 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.

(b) Sentence.

Battery is a Class A misdemeanor.

720 ILCS 5/12-3 (West 2018).

§ 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;

* * *

(h) Sentence. Unless otherwise provided, aggravated battery is a Class 3 felony.

Aggravated battery as defined in subdivision (a)(4), (d)(4), or (g)(3) is a Class 2 felony.

720 ILCS 5/12-3.05 (West 2018).

§ 4-5. Knowledge.

A person knows, or acts knowingly or with knowledge of:

(a) The nature or attendant circumstances 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 or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.

(b) The 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.

Conduct performed knowingly or with knowledge is performed wilfully, within the meaning of a statute using the term "willfully", unless the statute clearly requires another meaning.

When the law provides that acting knowingly suffices to establish an element of an offense, that element also is established if a person acts intentionally.

720 ILCS 5/4-5 (West 2018).

STATEMENT OF FACTS

Lance Davidson was charged with aggravated battery to a correctional institution employee predicated on insulting or provoking contact for allegedly pushing Correctional Officer James Stitt during an altercation at the jail. (C. 24 V1). Davidson was convicted after a jury trial where he represented himself, and sentenced to three years and six months in prison. (C. 40 V3); (R. 457, 722).

At Davidson's jury trial, the State's only witness was Officer James Stitt, a correctional officer with the Montgomery County Sheriff's office, who testified that his assignment at the Montgomery County jail required him to engage in a number of interactions with inmates, including performing disciplinary functions such as placing inmates on lock down. (R. 383–384, 387–88). Stitt was working in the booking area of the Montgomery County jail on March 28, 2018, at 3:00 p.m., when he heard a loud banging on the doors. (R. 384–385). This was not unusual, so Stitt did not think anything of it at first. (R. 385). The noise continued, so Stitt stepped out into the hallway and, when he did so, he saw a dry erase board that had been attached to the door with magnets fall off the door and hit the floor. (R. 385). The dry erase board did not strike Stitt, nor was it broken. (R. 403). He walked down the hall until he reached the "North Day 2" common area. (R. 385).

Upon reaching the door, he saw Davidson standing on the other side of the door in front of a window, screaming and swearing. (R. 386–387). Stitt asked him what the problem was, but Davidson continued to scream and swear. (R. 386). Stitt told Davidson that he was going to be put on lock down, but Davidson said he would not go on lock down. (R. 387, 392). Stitt told him to calm down, but Davidson remained worked up and continued swearing. (R. 387, 391). Davidson was upset, agitated, and angry, and was shaking and could not stand still. (R. 391).

Stitt had the dispatcher open the door to North Day 2, and when Stitt entered the square cell, Davidson walked to the opposite side. (R. 388). There were two other inmates inside at the time, Garret Austin and Michael Neville, and they went to their individual cell doors and stood back, while Davidson ran down to the far end of North Day 2. (R. 388–89, 91).

As Stitt approached Davidson, Davidson jumped across a table and went by the door. (R. 389). Stitt then moved to cut Davidson off so that he could not run across the room again. (R. 389). Stitt stepped toward Davidson to restrain him and put him in his cell, and when he approached, Davidson shoved him in the chest with his hands. (R. 389). The shove "pushed [Stitt] back a little bit," but Stitt spun Davidson around, locked his arms to his side, and took him to his cell. (R. 389). Stitt did not have any marks or injuries as a result of the push. (R. 400, 403).

Stitt testified that he was not aware of any previous physical altercations involving Davidson, but knew Davidson had previously been locked down for engaging in verbal altercations. (R. 400–401). Stitt knew that Davidson had recently returned from court that afternoon. (R. 393, 399). Stitt testified that he believed something happened in court that made Davidson upset because Davidson's agitation and disruptive behavior started after he returned from court. (R. 399). Stitt believed that Davidson's behavior of running around the room to avoid Stitt was a result of not wanting to go on lock down. (R. 399).

In his case in chief, Davidson called Derrick Wallace, who was incarcerated in the nearby area called "North Dorm 2." (R. 408–410). Wallace saw Davidson go to court that morning and knew Davidson was hoping to get released. (R. 408). Wallace was lying in bed when Davidson returned. (R. 408). Wallace was able to see into the day room through a window, but could not see Davidson's individual cell. (R. 409).

When Davidson returned from court, he was aggravated, as he had been hoping to get released that day, but was not released. (R. 412). Wallace heard shouting, and saw Davidson run around the day room. (R. 408, 410). He saw Davidson run and jump over a table, saw the dry erase board fall off the door, and saw Davidson pound on the door. (R. 410–411). Wallace did not see any physical contact between Davidson and Stitt. (R. 408, 414). Wallace said he was trying to wake someone up in his cell during the commotion, so he missed the very end of the interaction between Davidson and Stitt. (R. 414). Wallace also said that he could not see the corner of the day room where the pushing allegedly occurred from his vantage point. (R. 415).

Davidson also testified on his own behalf. He said that on March 28, 2018, he had a court appearance and expected to be released that day. (R. 420). He found out that he would not be released, which, in addition to some family issues, caused him to be stressed out. (R. 421). Because he was upset about his court appearance, he began kicking the steel doors, which he described as "indestructible." (R. 421). He was yelling and upset because he was generally upset by what had happened in court, but his anger was not directed at anything or anyone in particular. (R. 421).

Stitt came to investigate, and Davidson yelled at him. (R. 421–22). Davidson explained that he was not yelling at Stitt because of anything Stitt had done, but because Davidson was upset and Stitt was there. (R. 422). Stitt told him to lock down, but Davidson refused. (R. 422). When Stitt came in the room, he tried to grab Davidson, but Davidson ran to the other end of the day room. (R. 422). Stitt followed him to the other side of the room and nearly had Davidson cornered, but Davidson jumped across the table to get away from him. (R. 422). Stitt then pushed Davidson into his cell, forced him onto the bunk, and closed the cell door. (R. 422). Davidson said that he never hit Stitt, but admitted to running away from him and refusing to lock down. (R. 424).

Davidson explained that he was upset that day because did not get released, had not seen his family in a long time, and had never seen his daughter. (R. 426–27). Davidson acknowledged that he kicked a metal door because he was angry, and that he ran away from Stitt, but said he never shoved Stitt. (R. 428–29). The prosecutor tried to get Davidson to admit he was angry, and Davidson agreed that he was upset and kicked the door, but explained that he was not personally upset with Stitt, he just happened to be working that shift. (R. 429–30). Davidson said he and Stitt got along and Stitt was just doing his job, but Davidson was mad and ran away from Stitt. (R. 430).

In rebuttal, the State introduced Davidson's 2016 conviction for aggravated battery. (R. 431).

After an hour and a half of deliberations, the jurors returned and indicated they were hung. (R. 454). The court instructed the jury to review the instructions, reconsider the evidence, and continue to deliberate until a verdict was reached. (R. 456). The jury subsequently returned a verdict finding Davidson guilty of aggravated battery. (C. 39 V2); (R. 457).

Following a sentencing hearing, the court sentenced Davidson to three years and six months in prison. (C. 40 V3); (R. 659–722).

On appeal, Davidson argued that the State failed to prove that Davidson made physical contact of an insulting or provoking nature with Stitt where the evidence did not show that Stitt was insulted or provoked by the contact. *People v. Davidson*, 2021 IL App (5th) 190217-U, ¶15. The appellate court rejected this argument, noting that "It is not necessary for a victim to testify that he was insulted or provoked [citation omitted]. The trier of fact may consider the context of defendant's contact when determining whether the contact was insulting or provoking." *Id.* The court explained that the facts showed that Davidson made contact with Stitt, and the contact was "intended to avoid or delay capture and lock down." *Id.* at ¶ 16.

The court affirmed Davidson's conviction, concluding:

> Defendant's contact with the officer was neither accidental nor incidental. 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.*

No petition for rehearing was filed. This Court granted leave to appeal on November 24, 2021.

ARGUMENT

The plain language of the phrase "contact of an insulting or provoking nature with an individual" requires the State to prove that the individual contacted was insulted or provoked. As the evidence failed to prove that Officer Stitt was insulted or provoked by the contact made by Lance Davidson, his conviction for aggravated battery should be reversed.

Lance Davidson was convicted of aggravated battery to a correctional institution employee for making "contact of an insulting or provoking nature." (C. 24 V1); 720 ILCS 5/12-3(a) (West 2018). The evidence showed that Davidson was agitated after returning from court and Officer Stitt was attempting to physically restrain Davidson to put him on lock down when Davidson pushed Stitt in an attempt to prevent Stitt from restraining him. Stitt acknowledged that Davidson was upset by what happened at court and pushed him because he did not want to go on lock down, and there was no evidence presented that Stitt was personally insulted or provoked by Davidson's contact. (R. 388–91, 399). On appeal, Davidson argued that the evidence failed to prove the contact made was "of an insulting or provoking nature" where the evidence did not show that Stitt was insulted or provoked. The appellate court rejected this argument, holding that"it is not necessary for a victim to testify that he was insulted or provoked." *People v. Davidson*, 2021 IL App (5th) 190217-U, ¶ 15. The court affirmed the conviction, noting that Davidson's contact with Stitt was "neither accidental nor incidental" and that a rational juror could have found the conduct insulting or provoking. *Davidson*, 2021 IL App (5th) 190217-U, ¶¶ 15–16.

The appellate court's analysis conflicts with the plain language of the statute and the weight of authority, which establish that the State is required to prove that the person contacted was actually insulted or provoked, not merely that a hypothetical person could have been. Though the appellate court correctly stated that "it is not necessary for a victim to testify that he was

insulted or provoked," the court did not evaluate whether the evidence proved that Stitt was, in fact, insulted or provoked. While "a victim does not have to testify that he or she was insulted or provoked by a defendant's physical contact, there must be evidence presented from which a trier of fact could logically infer that the victim was insulted or provoked." *People v. Ward*, 2021 IL App (2d) 190243, ¶ 56. Here, neither Stitt's testimony nor the factual context in which the contact was made proved that Stitt was insulted or provoked by the contact.

This Court should clarify that the plain language of the phrase "contact of an insulting or provoking nature with an individual" in the battery statute requires proof that the individual contacted was insulted or provoked by the contact. As there was no evidence that Stitt was insulted or provoked by the contact, Davidson's conviction for aggravated battery should be reversed.

Standard of Review

The resolution of this case will require two different standards of review. First, the issue of whether the "insulting or provoking" clause of the battery statute requires the victim to be subjectively insulted or provoked is a question of law that is reviewed *de novo*. *People v. Gonzalez,* 239 Ill. 2d 471, 479 (2011) ("We review *de novo* the construction of a statutory element"). Once that question is resolved, a review of whether the evidence was sufficient to sustain Davidson's conviction asks "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. Cunningham*, 212 Ill. 2d 274, 278 (2004).

Argument

Lance Davidson was convicted of aggravated battery to a correctional institution employee for making "contact of an insulting or provoking nature." (C. 24 V1). As charged in this case, the State was required to prove that Davidson (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 performing his official duties. (C. 24 V1); 720 ILCS 5/12-3; 720 ILCS 5/12-3.05 (West 2018). The only element at issue in this case is whether Davidson "made contact of an insulting or provoking nature." The first step in answering that question is understanding the meaning of that phrase as used in the statute.

The Plain Language of the Statute Requires the State to Prove That the Person Contacted Was Insulted or Provoked

The cardinal rule of statutory construction is to give effect to the legislature's intent by giving language its plain meaning while avoiding absurd results. *People v. Hanna*, 207 Ill. 2d 486, 497–98 (2003). "In determining the plain meaning of the statute, we consider the statute in its entirety and are mindful of the subject it addresses and the legislative purpose in enacting it." *People v. Christopherson*, 231 Ill.2d 449, 454 (2008). "We will not depart from the plain meaning of a statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent." *People v. Hammond*, 2011 IL 110044, ¶ 53.

Statutory interpretation must start with the statute itself. "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(a) (West 2018). The statute does not define "insulting or provoking" so one must look to the ordinary meaning of the words. *People v. Baskerville*, 2012 IL 111056, ¶ 19 (citing *People v. Beachem*, 229 Ill.2d 237, 244–45 (2008)) ("When a statutory term is not expressly defined, it is appropriate to denote its meaning through its ordinary and popularly understood definition.").

"Insulting" is an adjective form of the verb "insult," which is defined as "To treat with gross insensitivity, insolence, or contemptuous rudeness"; "To affront or demean." The American Heritage Dictionary of the English Language, Fifth Edition, "insult", available at

https://www.ahdictionary.com/word /search.html?q=insult. "Provoking" is the adjective form of the verb "provoke," which is defined as "To incite to anger or resentment"; "To stir to action or feeling"; "To give rise to; bring about"; "To bring about deliberately; induce." The American Heritage Dictionary of the English Language, Fifth Edition, "provoke", available at https://www.ahdictionary.com/word/search.html?q=provoke.

Both "insult" and "provoke" are transitive verbs, which means their actions are directed at a person or an object. Thus, under the plain language of the statute, to insult someone necessitates them being treated with gross insensitivity or being affronted or demeaned. Similarly, to provoke someone requires inciting a reaction from them. Since "insulting" and "provoking" are simply adjective forms of those transitive verbs, they are also defined by their effect on another person. In other words, conduct is "insulting or provoking" if it insults or provokes *someone*.

That raises the question at the heart of this case: Who must be insulted or provoked to hold a person criminally liable for battery? The battery statute provides that a person commits battery if he or she knowingly "makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a). The object of that sentence–the person receiving the contact– is "an individual." Since the statute is written in terms of the effect of the defendant's actions on (contact with) "an individual," it follows that the same individual is the person who must be insulted or provoked by that contact. This means, then, that the plain language of the statute dictates that the phrase "makes physical contact of an insulting or provoking nature with an individual" requires that the person receiving the contact also be the person who is insulted or provoked by the contact. Accordingly, this Court should clarify that a conviction for battery based on "contact of an insulting or provoking nature" requires proof that the victim was insulted or provoked by the contact.

Nearly Every Case Construing the Phrase "Insulting or Provoking" Agrees That the Statute Requires Evidence That the Person Contacted Was Insulted or Provoked by the Contact

The appellate court in this case affirmed the conviction based on its conclusion that a trier of fact *could have* decided that the contact was insulting or provoking. *Davidson*, 2021 IL App (5th) 190217-U, ¶ 16. The court's analysis was incorrect, though, because it should have been deciding whether the evidence established that Stitt was actually insulted or provoked. An examination of the Illinois cases that have analyzed this issue reveals that nearly all of the cases that have interpreted the meaning of "insulting or provoking" have agreed that the statute requires the State to prove that the person contacted was insulted or provoked, as opposed to deciding whether the type of the contact itself was insulting or provoking.

An illustrative example is *People v. DeRosario*, 397 Ill. App. 3d 332 (2nd Dist. 2009). In that case, the victim and the defendant worked in the same building and, on one occasion, the victim went into the smoking lounge and sat down in a mesh chair. *DeRosario*, 397 Ill. App. 3d at 332. The defendant entered the lounge and sat down on a couch immediately behind her, such that his right knee was touching her back through the chair and his left knee touched her hip. *Id.* at 332–33. The defendant was charged with battery based on insulting or provoking contact. *Id.* The defense argued that this was "the type of incidental touching that is inevitable in everyday life and cannot be criminalized regardless of the victim's reaction." *Id.* at 333. The appellate court noted that several prior cases had established that "a particular physical contact may be deemed insulting or provoking based upon the factual context in which it occurs. [Citations omitted]." *Id.* The court then explained that "the statute's plain language defines the offense in terms of contact that insults or provokes the victim." *Id.* at 334.

The facts in *DeRosario* showed that the victim and the defendant had been in a relationship, but since the end of that relationship the defendant had been stalking the victim and, on this occasion, he chose to sit immediately behind the victim such that his legs were touching her, though there were other available seats in the smoking lounge. *Id.*

Further, the victim testified that "in light of the history of their relationship, the incident in question made her feel 'scared,' 'uncomfortable,' 'trapped,' and 'mad.'" *Id.* The appellate court affirmed the defendant's conviction, explaining:

> the trial court reasonably concluded that defendant intentionally sat where he was bound to come in contact with the victim and that he knew that this conduct would provoke her. Thus, while the conduct might be completely innocent in another context, under the facts here the court could find that defendant knowingly provoked the victim. *Id.* at 334–35.

The court's analysis demonstrates that whether contact is "insulting or provoking" is not based solely on the nature of the contact, but depends on the factual context to determine whether the contact insulted or provoked the person contacted.

The First District also focused on the factual context to determine whether the contact insulted or provoked the victim in *People v. d'Avis*, 250 Ill. App. 3d 649, 650–52 (1st Dist. 1993). In that case, a physician was charged with battery for insulting of provoking contact when he was accused of masturbating while performing a rectal examination on a patient. *d'Avis*, 250 Ill. App. 3d at 650. That defendant argued he could not be convicted of making insulting or provoking contact because the patient consented to the rectal exam and the patient testified that he was not embarrassed about the rectal examination itself, so the contact–the rectal examination–was not insulting or provoking. *Id.* at 651. The court disagreed, stating that it would not view the rectal examination in isolation, but would also consider the factual context surrounding the examination–that the physician was masturbating during the rectal examination and the victim testified that he was embarrassed by the fact that the physician was masturbating during the examination. *Id.* The court affirmed the trial court's finding that the "noninsulting medical procedure" became an insulting an provoking contact based on the context in which it occurred, explaining that "a particular physical contact may be deemed insulting or provoking based upon the factual context in which it occurs. In other words, what may be an innocent touching in one instance, may be interpreted quite differently in a different set of circumstances." *Id.*

The Fourth District has also recognized the necessity of looking beyond the contact itself and focusing on the factual context to determine whether contact insulted or provoked the victim. In *Dunker*, the defendant got upset while meeting with his child's teacher to discuss his child's performance. *People v. Dunker*, 217 Ill. App. 3d 410, 411 (4th Dist. 1991). The defendant yelled at the teacher, used profanity, waved his finger in her face, and then poked her in the chest with his finger. *Dunker*, 217 Ill. App. 3d at 412. The teacher testified that the incident left her crying and shocked, and she reported the incident to the school principal who called the police. *Id.* at 413. The appellate court affirmed the defendant's conviction for battery, holding that victim's reaction of crying and being shocked after being poked in the chest by defendant while he used profanity "was sufficient evidence for the jury to conclude [the victim] was insulted or provoked by defendant's touching." *Id.* at 415.

Indeed, the Second District appellate court recently recognized, "Every district in our state has consistently held that, when a defendant is accused of battery or domestic battery (insulting or provoking contact), the State must prove that the defendant's physical contact was insulting or provoking to the victim, not to some third party. [Citations omitted]." *People v. Ward*, 2021 IL App (2d) 190243, ¶ 50; *see People v. Green*, 2011 IL App (2d) 091123, ¶ 23 (stating that "[t]he domestic battery statute's plain language defines the offense in terms of contact that insults or provokes the victim."). The weight of authority agrees that the statute requires that the victim be insulted or provoked by the contact.

Split in Authority

However, a recent Fourth District appellate court decision explicitly disagreed with this reading of the statute in *People v. Williams*, 2020 IL App (4th) 180554. In *Williams*, the appellate court affirmed the defendant's battery conviction where the victim was laying on the ground unconscious when the defendant kicked him in the head several times. *Williams*, 2020 IL App (4th) 180554, ¶¶ 19, 23, 49–51. The defense argued that the State failed to prove

that the victim was insulted or provoked by the contact because he was unconscious at the time of the contact. *Id.* at ¶ 49. The court rejected this argument, stating "The plain language of the statute applies the terms 'insulting or provoking' to the type of contact, not to the reaction of the victim." *Id.* at ¶ 50. *Williams* held that "whether the victim, in fact, was able to be insulted or provoked is immaterial" and that "the jury should determine if the contact was of the sort that *would* be insulting or provoking." *Id.* (emphasis in original). Finally, *Williams* stated, "Insofar as the Second District [in *People v. DeRosario*, 397 Ill. App. 3d 332, 332–35 (2nd Dist. 2009)] may have endorsed the notion that a victim must in fact be subjectively insulted or provoked, we decline to follow the Second District's reasoning." *Id.* at ¶ 52.

The Second District responded to *Williams*' analysis in *People v. Ward*, 2021 IL App (2d) 190243. In *Ward*, the defendant was involved in a verbal altercation with a police officer at the scene of a traffic accident involving his son. *Ward*, 2021 IL App (2d) 190243, ¶ 3. While the defendant was arguing with an officer, his wife stepped between the defendant and the officer. *Id.* The defendant pushed her to the side, causing her to lose her balance and take a few steps back, and continued to argue. *Id.* A witness testified she was shocked and surprised when the defendant moved his wife out of the way. *Id.* at ¶ 11. In addition, the police officer arrested the defendant immediately after the push and stated, "that was domestic abuse." *Id.* at ¶ 13. Defendant's wife explained that she viewed the contact as him moving her out of his way, and testified that "she was not insulted, shocked, or provoked when defendant moved her out of the way" and did not believe the defendant had done anything wrong. *Id.* at ¶¶ 12–13. The defendant was charged with domestic battery for making "contact of an insulting nature." *Id.* at ¶ 3.

On review, the court noted that the State had argued below that the victim did not need to be personally insulted or provoked, because "It is the nature of the act that is insulting and provoking." *Id.* at ¶¶ 22, 48. Similarly, in denying the defense's motion for a directed verdict,

the trial court accepted the State's argument "that under the domestic battery statute the State is required to prove not that the victim was herself insulted or provoked but only that the contact itself was insulting or provoking." *Id.* at ¶ 48. The appellate court rejected this argument. *Id.* at ¶ 50.

The *Ward* court conducted a thorough analysis of the phrase "insulting or provoking" in Illinois law and noted that "Our court has consistently held that "[t]he domestic battery statute's plain language defines the offense in terms of contact *that insults or provokes the victim*, and the contact does not need to cause physical injury." *Id.* at ¶ 50 (emphasis in original) (citing *People v. Green*, 2011 IL App (2d) 091123, ¶ 23, and *DeRosario*, 397 Ill. App. 3d at 334). The court also pointed out that "Every district in our state has consistently held that, when a defendant is accused of battery or domestic battery (insulting or provoking contact), the State must prove that the defendant's physical contact was insulting or provoking to the victim, not to some third party. [Citations omitted]." *Id.*

For similar reasons, the *Ward* court explicitly disagreed with *Williams'* holding that whether something is "insulting or provoking" depends only on the "type of contact." *Ward*, 2021 IL App (2d) 190243, ¶ 52. *Ward* explained, "If that were the case, we would not look to the context, the relationship of the parties, and the reaction of the victim at the time." *Id.* (citing *d'Avis*, 250 Ill. App. 3d at 651, and *DeRosario*, 397 Ill. App. 3d at 332–34). *Ward* rejected the reasoning of *Williams* because "Were we to accept that reasoning, cases like *DeRosario* would not result in conviction, because the nature of the contact was not insulting or provoking. It was the context along with the victim's reaction at the time that made the contact insulting or provoking." *Ward*, 2021 IL App (2d) 190243, ¶ 55. Accordingly, *Ward* declined to follow *Williams'* analysis.

Applying the plain language of the statute, *Ward* concluded that "a defendant cannot be found guilty of battery based on 'physical contact of an insulting or provoking nature with an individual' without some form of proof that the victim was insulted or provoked." *Id.* at ¶ 53. Further, *Ward* stated that while "a victim does not have to testify that he or she was insulted or provoked by a defendant's physical contact, there must be evidence presented from which a trier of fact could logically infer that the victim was insulted or provoked." *Id.* at ¶ 56.

This Court Should Reject the Holding of *Williams* Because it Contradicts the Plain Language of the Statute and the Bulk of Established Authority

As discussed above, the plain language of the statute and the vast majority of cases that have addressed the question agree that the statute refers to contact that insults or provokes the victim. This Court should decline to follow *Williams* because its conclusion is contrary to the established law and the statute. First, it is noteworthy that *Williams* did not cite any case law to support its reading of the statute, which is contrary to all of the prior cases evaluating the statute. *Williams*, 2020 IL App (4th) 180554, ¶¶ 49–52. Indeed, *Williams* did not acknowledge any of the prior cases on the issue, nor did it explain why it was departing from the analysis that it had conducted in prior similar cases like *Dunker*, where the court specifically looked beyond the type of contact by considering the context to decide whether the evidence showed the victim was insulted or provoked. *Dunker*, 217 Ill. App. 3d at 411–15; see *People v. Peck*, 260 Ill. App. 3d 812, 814 (4th Dist. 1994) (quoting the pronouncement from *d'Avis* that "a particular physical contact may be deemed insulting or provoking based upon the factual context in which it occurs."); *People v. Wrencher*, 2011 IL App (4th) 080619, ¶¶ 54–55 ("[W]e can envision contexts in which a defendant's spitting might not constitute insulting or provoking behavior. [citing *People v. Peck*]. We also can envision contexts in which spitting on someone would be insulting or provoking."). Second, the court's narrow focus on the type of contact is contrary to the plain language of the statute and the previously established law about what constitutes "contact of an insulting or provoking nature" as discussed above.

Williams' narrow focus on the contact itself would lead to absurd and unintended results. For example, following *Williams* would result in an acquittal in a case like *d'Avis*, despite the obviously problematic behavior by the physician. According to *Williams*, because the contact itself–the consensual rectal examination–was not insulting or provoking, *d'Avis* would not be guilty under the statute even though the factual context demonstrates that the person contacted was insulted or provoked by the contact. Similarly, the defendant in *DeResario* would also have been acquitted if *Williams* were followed because the contact itself was not insulting or provoking, even though the factual context of the case established that the victim was insulted or provoked.

In contrast, *Ward* conducted a thorough analysis of the phrase "insulting or provoking" and concluded that the law in Illinois is that "when a defendant is accused of battery or domestic battery (insulting or provoking contact), the State must prove that the defendant's physical contact was insulting or provoking to the victim, not to some third party. [Citations omitted]." *Ward*, 2021 IL App (2d) 190243, ¶ 50. This conclusion is reasoned and is in harmony with the plain language of the statute.

In sum, this Court should reject *Williams* and adopt the conclusion reached in *Ward*. Accordingly, this Court should clarify for the lower courts that the plain language of the statute dictates that "a defendant cannot be found guilty of battery based on 'physical contact of an insulting or provoking nature with an individual' without some form of proof that the victim was insulted or provoked." *Ward*, 2021 IL App (2d) 190243, ¶ 53.

The Evidence Failed to Prove Davidson Made "Contact of an Insulting or Provoking Nature" Where There Was No Evidence That Stitt Was Insulted or Provoked

As established above, to convict Davidson of aggravated battery in this case, the State was required to prove that Officer Stitt was insulted or provoked. *Ward*, 2021 IL App (2d) 190243, ¶¶ 50, 53. However, the evidence in this case failed to prove that Stitt was actually insulted or provoked by Davidson's contact and the appellate court's decision to the contrary should be reversed.

The case law has established that "a victim does not have to testify that he or she was insulted or provoked by a defendant's physical contact, [but] there must be evidence presented from which a trier of fact could logically infer that the victim was insulted or provoked." *Ward*, 2021 IL App (2d) 190243, ¶ 56. In making that determination, the trier of fact can evaluate the factual context in which the contact occurred, including the relationship of the parties and the victim's reaction at the time. *See, e.g., d'Avis*, 250 Ill. App. 3d at 651 ("a particular physical contact may be deemed insulting or provoking based upon the factual context in which it occurs. In other words, what may be an innocent touching in one instance, may be interpreted quite differently in a different set of circumstances."); *DeRosario*, 397 Ill. App. 3d at 334 (holding that the parties' relationship provided important context in determining that the contact was insulting or provoking); *Dunker*, 217 Ill. App. 3d 410, 415 (4th Dist. 1991) (holding that victim's reaction of crying after being poked in the chest by defendant while he used profanity "was sufficient evidence for the jury to conclude [the victim] was insulted or provoked by defendant's touching.").

The factual context in this case does not establish that Stitt was insulted or provoked. After returning from court, Davidson was upset by what had occurred in court, so he was yelling and kicking doors. (R. 421). Stitt knew that Davidson was upset by what had occurred in court. (R. 399). Stitt testified that he believed Davidson's behavior of running around the room to avoid Stitt was a result of not wanting to go on lock down. (R. 399). As Stitt was attempting to restrain Davidson to put him on lock down, Davidson "pushed [him] back a little bit," but Stitt did not fall over and Stitt immediately spun Davidson around, locked his arms to his side, and took him to his cell. (R. 389). Stitt did not testify that he thought Davidson's behavior was directed at him personally. In this context, the evidence shows that Davidson did not push Stitt for the purpose of causing insult to Stitt or to provoke him, but rather that Davidson made

contact with Stitt as part of his efforts to avoid being placed on lock down. Since there was no evidence presented that Davidson intended to insult or provoke Stitt by making contact, the evidence failed to prove that Davidson "knowingly" "made contact of an insulting or provoking nature." 720 ILCS 5/12-3; 720 ILCS 5/12-3.05(d).

The evidence regarding the parties' relationship also fails to establish that Stitt was insulted or provoked by the contact. Stitt's and Davidson's testimony agreed that Davidson was not upset with Stitt personally, but was upset about what happened at his court proceedings that day. (R. 393, 399, 421–22, 426–30). Davidson acknowledged yelling at Stitt, but said his anger was about what happened at court and was not directed at anyone in particular. (R. 421–22). Stitt was just doing his job and happened to be the person working that shift. (R. 422, 429–30). Stitt agreed that Davidson's anger was not directed at him but, rather, he believed that Davidson's behavior of running around the room to avoid Stitt was a result of not wanting to go on lock down. (R. 399). Unlike *DeRosario*, where the relationship of the parties demonstrated why the victim was insulted or provoked by the contact even though the contact itself was relatively innocuous, *DeRosario*, 397 Ill. App. 3d at 334–35, the evidence in this case shows that Stitt understood that Davidson was not upset with him personally and was trying to avoid being put on lock down, all of which indicates that Stitt was not personally insulted or provoked by the contact.

In addition, Stitt's reaction to the contact does not give rise to an inference that he was insulted or provoked. He explained that the shove "pushed [him] back a little bit," but he did not fall over and Stitt immediately spun Davidson around, locked his arms to his side, and took him to his cell. (R. 389). Stitt explained that he did not immediately look under his shirt to see if he had any marks or injuries, and did not see any when he got home later. (R. 400, 403). So, the only evidence about Stitt's reaction to the contact is that he was "pushed back a little

bit" but that did not stop him from being able to immediately restrain Davidson and place him in his cell, and he did not feel the need to check for marks or bruises. In addition, Stitt testified that placing inmates on lock down was one of his normal duties as a correctional officer. (R. 387–88). There is no evidence that Stitt was upset, offended, or angry following the push. *See Ward*, 2021 IL App (2d) 190243, ¶ 65 ("Noticeably absent from the State's evidence is any testimony that [the victim] looked 'startled,' 'upset,' 'angry,' 'surprised,' or 'agitated' or that she exhibited any of the emotions that most people feel when someone has 'insulted or provoked' them by uninvited contact."); *Dunker*, 217 Ill. App. 3d at 415 (holding that victim's reaction of crying after being poked in the chest by defendant while he used profanity "was sufficient evidence for the jury to conclude [the victim] was insulted or provoked by defendant's touching."). Rather, the evidence demonstrates that Stitt's reaction to the contact was to simply perform a routine task that is part of his normal duties as a correctional officer. This does not give rise to an inference that he was insulted or provoked by the contact.

Importantly, the appellate court's decision in this case applied the law incorrectly when evaluating the sufficiency of the evidence. The appellate court correctly noted that the victim is not required to testify that they were insulted or provoked, and that the contact should be viewed in context. *Davidson*, 2021 IL App (5th) 190217-U, ¶16. However, the court's sparse analysis demonstrates that it looked at the type of contact, noted that Davidson's "contact with the officer was neither accidental nor incidental," and determined that a jury could have found the contact insulting or provoking. *Id.* The court's comment seems to suggest that the intentionality of the contact permits a reasonable juror to find the contact insulting or provoking, but this is wrong. "Our supreme court observed long ago that not 'all intentional contact without legal justification' constitutes a battery." *Ward*, 2021 IL App (2d) 190243, ¶ 65. In *Ward*, the defendant intentionally pushed his wife to move her out of the way, but the appellate court reversed because

there was no evidence that the wife was personally insulted or provoked. *Ward*, 2021 IL App (2d) 190243, ¶¶ 3, 50–59, 64–68, 78–80, 83. Here, Davidson made contact with Stitt to avoid going on lock down, but there was no evidence that Stitt was personally insulted or provoked.

The appellate court in this case did not evaluate whether the evidence proved that Stitt was, in fact, insulted or provoked. As *Ward* established, while "a victim does not have to testify that he or she was insulted or provoked by a defendant's physical contact, there must be evidence presented from which a trier of fact could logically infer that the victim was insulted or provoked." *Ward*, 2021 IL App (2d) 190243, ¶ 56. The court did not conduct this analysis. As discussed above, "when a defendant is accused of battery or domestic battery (insulting or provoking contact), the State must prove that the defendant's physical contact was insulting or provoking to the victim, not to some third party. [Citations omitted]." *Ward*, 2021 IL App (2d) 190243, ¶ 50. Because the appellate court's decision did not consider the evidence in the proper light, it should be reversed.

In sum, the evidence shows that Stitt knew that Davidson was upset about what happened in court and that Davidson was trying to avoid being put on lock down when the contact was made. The evidence does not show that Stitt was offended or angered by the contact, but seemed to view it as a part of his routine duties of imposing lock down on inmates when needed. Accordingly, because the evidence failed to establish that Stitt was personally insulted or provoked by the contact, Lance Davidson's conviction should be reversed outright.

CONCLUSION

For the foregoing reasons, Lance Davidson, Petitioner-Appellant, respectfully requests that this Court reverse his conviction for aggravated battery outright.

Respectfully submitted,

CATHERINE K. HART
Deputy Defender

KARL H. MUNDT
Assistant Appellate Defender
Office of the State Appellate Defender
Fourth Judicial District
400 West Monroe Street, Suite 303
Springfield, IL 62704
(217) 782-3654
4thdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

CERTIFICATE OF COMPLIANCE

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

/s/ Karl H. Mundt
KARL H. MUNDT
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Lance M. Davidson, No. 127538

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 5-19-0217
	)	Circuit Court No: 2018CF78
	)	Trial Judge: James L Roberts
v	)	
	)	
	)	
DAVIDSON, LANCE M Y14472	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 7

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 5-19-0217
	)	Circuit Court No: 2018CF78
	)	Trial Judge: James L Roberts
v	)	
	)	
	)	
DAVIDSON, LANCE M Y14472	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 2 of 7

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 5-19-0217
	)	Circuit Court No: 2018CF78
	)	Trial Judge: James L Roberts
v	)	
	)	
	)	
DAVIDSON, LANCE M Y14472	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 3 of 7

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 5-19-0217
	)	Circuit Court No: 2018CF78
	)	Trial Judge: James L Roberts
v	)	
	)	
	)	
DAVIDSON, LANCE M Y14472	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 4 of 7

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 5-19-0217
	)	Circuit Court No: 2018CF78
	)	Trial Judge: James L Roberts
v	)	
	)	
	)	
DAVIDSON, LANCE M Y14472	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 5 of 7

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 5-19-0217
	)	Circuit Court No: 2018CF78
	)	Trial Judge: James L Roberts
v	)	
	)	
	)	
DAVIDSON, LANCE M Y14472	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 6 of 7

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 5-19-0217
	)	Circuit Court No: 2018CF78
	)	Trial Judge: James L Roberts
v	)	
	)	
	)	
DAVIDSON, LANCE M Y14472	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 7 of 7

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 5-19-0217
	)	Circuit Court No: 2018CF78
	)	Trial Judge: James L Roberts
v	)	
	)	
	)	
DAVIDSON, LANCE M Y14472	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 1

Report of Proceedings

127538

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ILLINOIS
FOURTH JUDICIAL CIRCUIT

FILED
NOV - 9 2018 2
HOLLY LEMONS
Circuit Court Clerk
4TH Judicial Circuit

PEOPLE OF THE STATE OF ILLINOIS)
vs.) Case No. 18-CF-78
)
LANCE M. DAVIDSON,)
Defendant)

Date of Sentence 11/08/2018
Date of Birth 12/26/1993
(Defendant)

JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

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

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
Amended I	**Aggravated Battery**	**03/28/2018**	**720 ILCS 5/12-3.05(d)(4)(i)**	**2**	**3 years 6 months DOC**	**2 Years**

To run (concurrent with) (consecutively to) count(s) and served 50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3

This Court finds that the defendant is:

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

__X__ The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of **104** days as of the date of this order) from **(03/28/2018-04/25/2018, 07/30/2018-07-30-2018, 08/13/2018-08/29/2018, 09/12/2018-11/07/2018)**. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections.

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

____ The defendant did not remain in continuous custody from the date of this order (less _____days from a release date if _____ to a surrender date of _____).

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

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

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

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

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

____ IT IS FURTHER ORDERED the sentence(s) imposed on count(s) _ be (consecutive to) the sentence imposed in case number ____in the Circuit Court of Montgomery County.

__X__ It is FURTHER ORDERED that **the defendant shall pay fines, costs and assessments enumerated on the Supplemental Sentencing Order. The defendant shall also report to the Montgomery County Court 30 days from release date from the Illinois Department of Corrections to set up a payment plan.**

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

This order is (X effective immediately) (____ stayed until_____).

Date: 11/9/18 ENTER: _____

JUDGE JAMES ROBERTS

C 40 V3

No. 5-19-0217

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the Fourth Judicial Circuit, Montgomery County, Illinois
Plaintiff-Appellee,	)	
	)	18-CF-78
-vs-	)	
	)	
LANCE M. DAVIDSON,	)	Honorable James Roberts,
Defendant-Appellant.	)	Judge Presiding.

AMENDED NOTICE OF APPEAL

An appeal is hereby taken from the order or judgment described below.

Court to which appeal is taken: Fifth District Appellate Court

Appellant(s) Name:	Mr. Lance Davidson, Register No. Y14472
Appellant(s) Address:	Western Illinois Correctional Center, 2500 Rt. 99, Mt. Sterling, Illinois 62353
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	909 Water Tower Circle, Mt. Vernon, Illinois 62864
Offense of which convicted:	aggravated battery,
Date of Judgment or Order:	May 22, 2019
Sentence:	three years and six months in the Department of Corrections, and two years of mandatory supervised release

If appeal is not from a conviction, nature of order appealed from:

Respectfully submitted,

ELLEN J. CURRY
Deputy Defender
Office of the State Appellate Defender
Fifth Judicial District
909 Water Tower Circle
Mt. Vernon, IL 62864
(618) 244-3466
5thdistrict.eserve@osad.state.il.us

C 84 V3

2021 IL App (5th) 190217-U

NO. 5-19-0217

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Montgomery County.
	)	
v.	)	No. 18-CF-78
	)	
LANCE M. DAVIDSON,	)	Honorable
	)	James L. Roberts,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Presiding Justice Boie and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction is affirmed where sufficient evidence existed to support conviction of aggravated battery against a correctional officer.

¶ 2 Following a jury trial in which defendant, Lance M. Davidson, represented himself, defendant was convicted of aggravated battery (720 ILCS 5/12-3.05(d)(4)(i) (West 2018)) and was sentenced to 3½ years' imprisonment. Defendant appeals, arguing that the State failed to produce sufficient evidence for the conviction. For the following reasons, we disagree.

¶ 3 I. BACKGROUND

¶ 4 On April 2, 2018, defendant was charged, by information, with one count of aggravated battery, a Class 3 felony, in that he knowingly, without legal justification, pushed Correctional Officer Jim Stitt in the chest with his hands on March 28, 2018, knowing Officer Stitt to be a

correctional institution employee engaged in the execution of his official duties, in violation of section 12-3.05(d)(4)(i) of the Criminal Code of 2012. 720 ILCS 5/12-3.05(d)(4)(i) (West 2018). An amended information was filed on June 22, 2018, indicating that the violation was a Class 2 felony.

¶ 5 At trial, the evidence revealed that on March 28, 2018, defendant returned to the Montgomery County jail following a Montgomery County court appearance. Defendant was angry that he had not been released and was yelling and cussing. Officer Stitt testified that after a dry erase board containing the detainees' names was knocked off the door and fell to the floor, he proceeded down the hallway until he got to North Day 2. There, Officer Stitt observed the defendant standing in front of the doors screaming and cussing. Officer Stitt testified that he asked defendant what the problem was, and defendant provided responsive comments but continued to scream and cuss while standing in front of a window in the door. The officer averred that he advised defendant to calm down, but defendant was still "worked up" and cussing. The officer then told defendant he was going to be put on a lock down and defendant replied that he would not go on lock down.

¶ 6 Officer Stitt testified that after defendant stated that he would not go on lock down, he called up to the dispatch area, where they open and close the cell doors to the main hallway, and requested they open the cell door to North Day 2 where defendant was located. Officer Stitt stepped inside the area and again told defendant he was going to go on lock down. Defendant stated "no, he would not go" and told the officer that he would have to "make him" go on lock down. In response, Officer Stitt stepped towards defendant, who then ran down the far wall to the very end of the cell. Officer Stitt testified that he then stepped across to the wall and started to walk towards defendant. Defendant then came down the front wall, in front of the windows, and jumped across

the table, ending at the door where he was first standing when the officer came in. The officer testified that he stepped over and cut off defendant so he could not run down the cell again. Officer Stitt testified that when he stepped toward defendant, defendant moved toward him and shoved him in the chest, causing him to step backwards. The officer then spun defendant around and put him in his cell. Officer Stitt confirmed that he was not injured by the contact.

¶ 7 Officer Stitt explained that if situations, like yelling and screaming, were not addressed, depending on how many people are in the area, it could get out of control. He testified that two other inmates were in the same area where the incident with defendant took place. The officer testified that he knew defendant was angry when he stepped into the cell because defendant was shaking, moving his arms, acting agitated, and cussing. Officer Stitt confirmed he was wearing a correctional officer uniform when the incident occurred and further confirmed there was no video of the altercation. Thereafter, the State rested.

¶ 8 Defendant called Derrick Wallace to testify. Wallace was an inmate in the Montgomery County jail on March 28, 2018. He stated he was aware of the incident between Officer Stitt and defendant and testified that he saw defendant running around the cellblock and jumping over the table. Wallace testified that he heard defendant shouting but did not see any physical contact between defendant and the officer. He stated that he was trying to wake someone up in his cell and missed the very end of it. He further stated that, even if he had not turned around, his view was obstructed, as he could not see the corner where the incident occurred.

¶ 9 Defendant provided testimony on his own behalf, stating that on March 28, 2018, he went to court expecting that he might be getting released from jail. That turned out not to be the case, and when he returned, he was stressed over family issues, so he kicked the steel doors and was yelling. He stated that he was not upset with anything or anybody at the jail but was just upset in

general after the court appearance. He acknowledged that Officer Stitt came down to check on the commotion. Defendant stated that he was not necessarily yelling at Officer Stitt; he was upset, and Officer Stitt was there. Defendant admitted that the officer told him to go to lock down, but he refused. He admitted running away from Officer Stitt but stated he never hit Officer Stitt.

¶ 10 The jury found the defendant guilty on July 23, 2018. Defendant filed a notice of appeal and motion for retrial on August 10, 2018. The motion for retrial was denied, and on November 8, 2018, the trial court sentenced defendant to 3½ years' imprisonment. On November 26, 2018, defendant moved for a reduction of sentence and filed a second notice of appeal. On April 24, 2019, defendant filed an amended motion for reduction of sentence, which was denied by the trial court in a docket entry dated May 22, 2019. A third notice of appeal was filed on May 29, 2019, and an amended notice of appeal was filed on June 20, 2019.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant contests the sufficiency of evidence at trial, claiming his conviction should be reversed because the State failed to prove that his actions of pushing Officer Stitt away were of an insulting or provoking nature. "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." *People v. Brown*, 2013 IL 114196, ¶ 48. In such cases, "a criminal conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Id.* However, when the defendant's challenge to the sufficiency of the evidence does not question the credibility of the witnesses, and instead, questions whether the uncontested facts were sufficient

to prove the elements of the crime, our review is *de novo*. *People v. Smith*, 191 Ill. 2d 408, 411 (2000). Here, defendant contends the facts are not in dispute and therefore requests *de novo* review.

¶ 13 "*De novo* review does not apply in every case where the facts are not in dispute." *People v. Ford*, 2015 IL App (3d) 130810, ¶ 16. If reasonable persons can draw different inferences from the facts, "it is left to the trier of fact to resolve those questions." *People v. Brown*, 345 Ill. App. 3d 363, 366 (2003) (citing *Jackson v. TLC Associates, Inc.*, 185 Ill. 2d 418, 424 (1998)). Here, we note that at trial defendant contended that he never touched Officer Stitt. On appeal, defendant now concedes he had contact with Officer Stitt, but the action was only a "push," and "was not even enough of a push to succeed" in defendant's attempt to resist lock down. Conversely, the State argues defendant's action did not involve "incidental contact" but was a purposeful shove with enough force to cause the officer to step backward. These contrary versions demonstrate that the inference drawn from the facts is very much in dispute. As such, we find the appropriate standard of review to be that which requires deference to the fact finders' inferences.

¶ 14 To sustain a conviction for aggravated battery, the State was 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 (West 2018). Defendant concedes three of the four elements were proven, and his sole contention on appeal is that the State failed to prove he made contact of an insulting or provoking nature. 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 (1994).

¶ 15 Defendant claims his contact was merely a reaction to Officer Stitt trying to restrain him and there was no evidence that defendant's contact was of an insulting or provoking nature. In support, defendant contends that the officer knew that defendant's anger was not caused by the

officer's actions but stemmed from his earlier court appearance. Defendant further contends that based on the officer's actions following the contact, as well as the officer's testimony at the hearing, the evidence failed to reveal that the officer was insulted or provoked by defendant's actions. Defendant's contentions have no merit. It is not necessary for a victim to testify that he was insulted or provoked. *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 55. The trier of fact may consider the context of defendant's contact when determining whether the contact was insulting or provoking. *People v. Fultz*, 2012 IL App (2d) 101101, ¶ 49.

¶ 16 Here, the physical contact was precipitated by defendant's intentional disregard of the officer's verbal command to lock down and subsequent taunting of the officer evidenced by defendant's statement to the officer that he would have to "make him" go into lock down. When the officer entered the cellblock area, defendant attempted to evade the officer by running to the opposite side of the area and jumping over a table. As the officer took steps to cut off defendant's attempt at further evasion, defendant amplified the situation by moving directly toward the officer and made contact, based on defendant's own statements, intended to avoid or delay capture and lock down. Defendant's contact with the officer was neither accidental nor incidental. 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.

¶ 17 III. CONCLUSION

¶ 18 For the foregoing reasons, we affirm the defendant's conviction.

¶ 19 Affirmed.

No. 127538

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- LANCE M. DAVIDSON, Petitioner-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 5-19-0217. There on appeal from the Circuit Court of the Fourth Judicial Circuit, Montgomery County, Illinois, No. 18-CF-78. Honorable James Roberts, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Mr. Patrick D. Daly, Deputy Director, State's Attorneys Appellate Prosecutor, 4114 North Water Tower Place, Suite C, Mt. Vernon, IL 62864, 05dispos@ilsaap.org;

Andrew Affrunti, Montgomery County State's Attorney, 120 N. Main St., Suite 212, Hillsboro, IL 62049, bryanth@montgomeryco.com;

Mr. Lance Davidson, 906 East Prairie St., Litchfield, IL 62056

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 April 27, 2022, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the Petitioner-Appellant in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/ Rachel A. Davis
LEGAL SECRETARY
Office of the State Appellate Defender
400 West Monroe Street, Suite 303
Springfield, IL 62704
(217) 782-3654
Service via email will be accepted at
4thdistrict.eserve@osad.state.il.us