No. 128051

IN THE

SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ORAL ARGUMENT REQUESTED

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ARGUMENT

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

In his opening brief, Vonzell Whitehead argued that defining the stoop immediately in front of one's apartment door, located in a privately-owned apartment complex, as a "public place of accommodation or amusement" runs afoul of a number of canons of statutory construction, fails to consider the historically understood meaning of the phrase, and threatens to undermine the constitutionality of the increased penalty associated with location-based aggravated battery. Because a "public place of accommodation or amusement" must, at least, refer to a place wherein the public, in general, is invited to partake in some good, service, or accommodation being provided, Mr. Whitehead's convictions must be reduced from aggravated battery to misdemeanor battery. In response, the State urges this Court to utilize a more expansive definition of the phrase and find that the stoop immediately in front of one's apartment door is a "public place of accommodation." For the reasons that follow, this Court should reject the State's arguments and reduce Mr. Whitehead's convictions from aggravated battery to misdemeanor battery.

As an initial matter, the State misapprehends Mr. Whitehead's position. In his opening brief, Mr. Whitehead argued that the plain meaning of the phrase "public place of accommodation" makes clear that mere public accessibility, alone, is not enough to transform a location into a "public place of accommodation" for purposes of the statute. (Def. Op. Br., p. 10) Rather, a "public place of accommodation" must, at least, refer to a place that is not only accessible to the

public, but wherein the public, in general, is invited to partake in some good, service, or accommodation being provided. Indeed, this popularly understood meaning of "public place of accommodation" is supported by the historically understood meaning of the phrase and by a review of the statute itself.

However, in response, the State contends that Mr. Whitehead is asking this Court to "read a limitation into the statutory language that the legislature did not include." (St. Br., p. 15) Specifically, the State argues that Mr. Whitehead's position would "impermissibly rewrite section 12-3.05(c) to change 'a public place of accommodation' to 'a public place of *commercial* accommodation.'" (St. Br., p. 15) (emphasis added). As such, the State argues that such a interpretation of the statute would lead to absurd results, such as whether or not a privately-owned park is a public place of accommodation would depend on whether or not the park charged an entrance fee. (St. Br., p. 15-16)

Contrary to the State's contentions, Mr. Whitehead never asserted that section 12-3.05(c) was limited to public places of accommodation with a commercial character. In fact, the word "commercial" never once appears in Mr. Whitehead's opening brief. Whether or not a location is commercial is inconsequential under the plain meaning of the phrase. Rather, the critical inquiry is whether a location is not only accessible to the public, but also invites the public, in general, to partake in something that is being offered therein regardless of whether it is being offered for a commercial or non-commercial purpose.

For this reason, the State's assertion that affording "public place of accommodation" its commonly understood meaning would lead to absurd results is misguided. For example, in the State's hypothetical regarding a battery occurring

in a privately-owned park, whether or not the park charged an entrance fee is inconsequential to the question of whether the location is a public place of accommodation. Rather, the primary question would be whether the location is a place that is made accessible to the public, and one that is inviting the public in to partake of some good, service, or accommodation being provided. As such, the privately-owned park would be a "public place of accommodation" because it is a place made available to the public at large, inviting the public in to partake in some good or accommodation being provided, namely, a location for picnickers' to have a picnic or for a family to have a party.

Indeed, there are various types of locations that are non-commercial, yet clearly qualify as public places of accommodation under the popularly understood meaning of the term. For example, consider a neighborhood baseball field, public basketball court, public skate park, neighborhood playground, forest preserve, and public campground. All of the aforementioned locations are non-commercial places, yet are all made available to the public at large, inviting the public to partake in some service, or accommodation being provided. Thus, while none of these locations are commercial in nature, they all would qualify as public place of accommodation.

On the merits, the State seemingly does not contest Mr. Whitehead's position that if the plain meaning of the phrase "public place of accommodation" refers to any place that is not only accessible to the public, but also invites the public in to partake of whatever is being offered therein, then this Court must reverse his convictions as the stoop at the threshold of one's apartment door is not a "public place of accommodation." Rather, the State argues that the phrase "public place

of accommodation" is not limited to places that invite the public to partake in some good, service, or accommodation being provided therein, but is much more expansive. (St. Br., p. 8-10, 15-17) Specifically, the State suggests that "public place of accommodation" refers to "any place that is available to the public to provide its members with convenience or otherwise satisfy their needs." (St. Br., p. 8) The State contends that to afford the phrase a more limited definition would be inconsistent with the plain meaning of the terms, and run afoul of the legislative intent behind enacting the location based aggravated battery statute. (St. Br., p. 15-16, 26)

However, the State's assertion that the plain meaning of "public place of accommodation" is consistent with their expansive definition of the phrase is misguided. As noted in Mr. Whitehead's opening brief, Black's Law Dictionary defines "public place" as "A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public (*e.g.* a park or public beach)." Black's Law Dictionary (abridged 6th ed. 1991); (Def. Op. Br., p. 9) Further, as the State acknowledges, Merriam-Webster's online dictionary defines "Accommodation" as "something supplied for convenience or to satisfy a need: such as lodging, food, and services or traveling space and related services[.]" Merriam-Webster, "Accommodation," *available at* http://www.merriam-webster.com/dictionary/accommodation; (St. Br., p.16-17) Notably, these definitions reveal that the plain meaning of the terms refers to *both* the nature of the accessibility of the location to the general public and to some good, service, or

accommodation that is being provided therein.

The State's reliance on the fact that *Webster's Third International Dictionary* first defines "accommodation" as "something that is supplied for convenience or to satisfy a need," and, second, as "lodging, food, and services (as a hotel) or seat, berth, or other space occupied together with services available (as on a train)" is misplaced, as both *Webster's Third international Dictionary* and Merriam-Webster's online dictionary refer to "Accommodation" as being a location where some good, service, or other accommodation is being provided. Therefore, both dictionary definitions for the term "Accommodation" provide support for the assertion that a place of accommodation is one that has some good, service, or other accommodation provided therein.

Similarly, as discussed in Mr. Whitehead's opening brief, the historically understood meaning of the phrase is consistent with the idea that a public place of accommodation is any place that is not only accessible to the public, but also, invites the public to partake in something that is being offered therein. (Def. Op. Br., p. 10-12) The State attempts to reject this argument by suggesting that this Court need not look elsewhere for interpretive aids because the State believes that the plain language of the statute is clear, rending other tools of interpretation unnecessary. (St. Br. 18). But sometimes applying the plain meaning of a term fails to yield a *clear* meaning. When that happens, other forms of statutory interpretation can shed light on the legislature's intended definition. *See, e.g., Neal v. Clark*, 95 U.S. 704, 709 (1877) (describing *noscitur a sociis* as a "very frequently applied" maxim that courts use as a tool to decipher the intended meaning of a term). Here, as the State has identified, different versions of the Merriam-

Webster dictionary have slightly different definitions of the term "accommodation." Thus, as this Court has held, "the existence of alternative dictionary definitions of [a word], each making some sense under the statute, itself indicates that the statute is open to interpretation." *Poris v. Lake Holiday Property Owners Ass'n*, 2013 IL 113907 ¶ 50. As such, the State's initial proposition should be rejected.

To the extent the State does address this argument, it argues that an examination of the way the phrase is used in other statues is inconsequential, as the General Assembly expressly limited the definition of these terms to the specific statutory context. (St. Br., p. 20) However, the State fails to recognize that when a statutory term is ambiguous, "it is proper not only to compare statutes relating to the same subject matter but to consider statutes upon related subjects though not strictly *in pari materia*." *Anderson v. City of Park Ridge*, 396 Ill.235, 244 (1947); *See also People v. Assmar*, 2020 IL App (2d) 180253 ¶ 13 (in determining the popularly understood meaning of "school grounds," the court looked at how Illinois courts have interpreted the phrase for purposes of other, unrelated, statutes). Importantly, these other statutory definitions shed light on the legislature's intent as it is evident that the use of the phrase "public place of accommodation or amusement" is grounded in a historical understanding that it does not include private locations if they are not engaged in commerce or not providing some accommodation to the public at large.

Additionally, contrary to the State's claim, affording the term "public place of accommodation" its popularly understood meaning would be consistent with the way Illinois courts have previously applied the phrase. Indeed, in *People v. Murphy*, in finding that the battery occurred in a public place of accommodation,

the appellate court indicated that it "doubt[ed] that a fight in a bar should be characterized as [felonious]," but held "that the terms 'place of public accommodation or amusement' seem to apply generically to places where the public *is invited* to come into and partake of whatever is being offered therein." *Murphy*, 145 Ill.App.3d at 815. Thus, the appellate court in *Murphy* already recognized that "public place of accommodation" is commonly understood to refer to places "where the public *is invited* to come into and partake of whatever is being offered therein. *Murphy*, 145 Ill.App.3d at 815.

The State's attempt to circumvent the *Murphy* court's understanding of the phrase is unpersuasive. The State first suggests that this Court should disregard *Murphy* because the State posits that the court referenced "public place of accommodation" only in passing. (St. Br., p. 17-18) However, the State misapprehends the holding in *Murphy*. In *Murphy*, the court considered whether a privately owned bar was a public place of accommodation or amusement under the statute. 145 Ill.App.3d at 814. After discussing all of the cases previously applying the phrase "public place of accommodation or amusement," the court then indicated that the phrase seemed to apply "generically to places where the public is invited to come into and partake of whatever is being offered therein." *Murphy*, 145 Ill.App.3d at 815. Therefore, contrary to the State's claim, the *Murphy* court's understanding of the phrase was necessary to the resolution to the issues presented.

Relatedly, the State's contention that "to the extent that *Murphy* can be read to suggest that the court understood 'a public place of accommodation' to be limited to places open to the public where goods or services are sold, it would

be inconsistent with other appellate court decisions to have addressed the issue" is incorrect. (St. Br., p. 18) Notably, the State fails to mention one case where a non-business was deemed to be a public place of *accommodation or amusement*. *See People v. Ward*, 95 Ill.App.3d 283 (2d Dist. 1981) (holding that a Holiday Inn parking lot was a public place of accommodation); *People v. Lee*, 158 Ill.App.3d 1032 (4th Dist. 1987) (parking lot to convenience store was public place of accommodation); *People v. Logston*, 196 Ill.App.3d 96 (4th Dist. 1990) (tavern was public place of accommodation); *People v. Pergeson*, 347 Ill.App.3d 991 (2d Dist. 2004) (50 feet in front of a shopping mall entrance was a public place of accommodation); *People v. Foster*, 2022 IL App (2d) 200098 (business office inside a gas station and convenience store that had the door propped open during business hours so customers could access it to seek assistance was public place of accommodation). Indeed, every location in the aforementioned cases were both (1) open to the public at large, and (2) the public was being invited to partake in some accommodation or amusement. As such, rather than support the State's over-broad application of the phrase, the locations Illinois courts have held to be public places of accommodation are consistent with the understanding expressed in *Murphy* that a public place of accommodation must not only be accessible to the public, but also be inviting the public to partake in something that is being offered therein.

Finally, this Court should reject the State's assertion that affording the phrase "public place of accommodation" its popularly understood meaning would be in direct conflict with the legislature's intent in more severely punishing batteries that occur on or about public places of accommodation. (St. Br., p. 26) As discussed in Mr. Whitehead's opening brief, the reason certain batteries are considered

aggravated batteries is that they are committed in "circumstances under which 'great harm might and usually does result.'" *People v. Clark*, 70 Ill.App.3d 698,700 (5th Dist. 1979) (quoting the S.H.A. Committee Comments); (Def. Op. Br., p. 18) "[T]he intent of the legislature in defining the presence upon a public way as an aggravated circumstance was to protect an innocent member of the public who might also be situated upon the public way and thus be endangered by a battery committed in close proximity to his person." *Clark*, 70 Ill.App.3d at 700. This subsection was "designed to deter the possibility of harm to the public." *People v. Handley*, 117 Ill.App.3d 949, 952 (4th Dist. 1983).

Thus, where the legislative objective is to prevent batteries from occurring in areas where innocent members of the public might frequent, defining a "public place of accommodation" as being any place accessible to the public wherein the public is invited to partake in something being offered is consistent with the legislative intent behind enacting the statute. To hold that every battery occurring in a location that is accessible to the public, where members of the public could potentially inject themselves into the altercation, is an aggravated battery under the statute as the State suggests would "broaden the implications of the statute to situations clearly not intended to be encompassed within it." *People v. Johnson*, 87 Ill.App.3d 306, 309 (1st Dist. 1980). As such, affording the phrase "public place of accommodation" its popularly and historically understood meaning is consistent with the legislative objective.

Alternatively, even assuming, *arguendo*, that State is correct in asserting that "public place of accommodation" is "any place that is made available to the public to provide its members with convenience or otherwise satisfy their needs," it is evident that the stoop immediately in front of the door to one's apartment

does not comport to such a definition. The State maintains that the stoop at the front door of the complainant's residence was a "public place of accommodation" because the stoop "was made available to the public to provide the public access to the front doors of the apartments for all the various purposes that members of the public might want or need to access them." (St. Br., p. 11-12) Specifically, the State contends that the stoop is made available for visiting friends or family, trick-or-treating, delivering goods or mail, providing emergency services, selling girl scout cookies, or anything else. (St. Br., p. 12)

However, the State fails to recognize that to the extent that the stoop immediately in front of the door to a residence is created for convenience or to satisfy a need, rather than be created for the convenience of the general *public*, the stoop at the threshold of one's apartment is provided for the convenience of the *individual* living inside of the residence. For example, even where the stoop allows particular members of the public to approach the door of an individual's home, such access is created for the convenience of the homeowner, and to satisfy the homeowner's needs opposed to the needs of the public. Indeed, even the State's examples of how the stoop at one's door can be publicly accessed, demonstrates that this access to an individual's front door is allowed in order to satisfy the resident's needs, whether that be to get a package delivered, have friends or family visit, or have emergency services provided. As such, even under the State's more expansive definition of the phrase, where mere accessibility is not all that is required, the stoop at the threshold of one's apartment door still does not fall within any common-sense understanding of "public place of accommodation."

Moreover, to the extent the public has any "access" to the stoop at the threshold of one's apartment door, such access is extremely limited, regardless

of whether there is "unobstructed" access to the apartment stoop as the State points out. (St. Br., p. 12) Because, as the State acknowledges, mere accessibility is not enough to transform a location into a "public place of accommodation," the nature and extent of the public's "access" to a location should play a decisive factor in determining whether a particular location is a "public place of accommodation or amusement." Indeed, the legislature presumably recognized as much, as the plain meaning of "public place" is "A place to which the general public has a right to resort. . . a place which is in point of fact public rather than private." Black's Law Dictionary (abridged 6th ed. 1991).

To this point, the Second District's holding in *People v. Dexter* is instructive. In *People v. Dexter*, the appellate court distinguished between an area open to the public and the general public's limited access to the front porch of an apartment building. 328 Ill.App.3d 583, 591-592 (2nd Dist. 2002). The limited access to the front porch is not 'open to the public' but is merely "permissive[], not as of right," particularly in light of the fact that the apartment was otherwise privately owned and maintained. *Dexter*, 328 Ill.App.3d at 591-592. Under such circumstances, the State failed to prove that the incident occurred on or about a public way. *Dexter*, 328 Ill.App.3d at 591-592. Similarly, here, the limited right of the public to access the stoop at the threshold of one's apartment, for the benefit of the resident, does not make the stoop a "public place" for purposes of the statute.

The State's remaining arguments are unpersuasive largely for the reasons provided in Mr. Whitehead's opening brief. The State's assertion that one has no privacy expectation on the stoop in front of one's apartment door is contrary to this Court's previous holdings that the area in front of one's apartment door is within the curtilage of the home. (St. Br., p. 24-25); *See People v. Bonilla*, 2018

IL 122484, ¶¶ 25-27 (finding that the common area hallway immediately outside the door of the suspect's apartment, located in an *unlocked* apartment building, fell within the curtilage of the home); *People v. Burns*, 2016 IL 118973, ¶¶ 37, 44. (finding that the third-floor landing outside defendant's apartment door within locked apartment building was within "curtilage" of defendant's residence). Thus, as Mr. Whitehead argued in his opening brief, to afford the term "public place of accommodation" such an expansive definition so that the curtilage of one's home is so accessible to the public that it is a public place of accommodation under the aggravated battery statute, and then conversely is an area where privacy expectations are most amplified under Fourth Amendment jurisprudence, would be an absurd result. *See Illinois State Treasurer v. Illinois Workers' Compensation Com'n*, 2015 IL 117418, ¶ 39 ("courts do have an obligation to construe statutes in a way that will avoid absurd, unreasonable, or unjust results").

Further, the State misconstrues Mr. Whitehead's due process and proportionate penalties argument. (St. Br., p. 25-26) Mr. Whitehead does not argue that the General Assembly does not have the power to criminalize battery. Rather, he maintains that to the extent that location-based felony battery continues to swallow misdemeanor battery, it increasingly undermines its constitutionality under the due process and proportionate penalty clauses of the Illinois Constitution. The Illinois proportionate penalties clause "bars the imposition of unreasonable sentences," (*People v. Patterson*, 2014 IL 115102, ¶101), and mandates that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. The justification for the aggravated battery enhancement is that it involves a battery committed under circumstances which constitutes a more serious

threat to the community than a simple battery. Ill. Ann. Stat., ch. 38, par. 12-4, Committee Comments, at 465 (Smith-Hurd 1972). However, if every battery essentially involves "a more serious threat to the community than a simple battery" because almost every possible locale of a battery will occur in an area accessible to the public, then the justification for the increased penalty does not withstand constitutional scrutiny. *See People v. Steppan*, 105 Ill.2d 310, 319 (1985) (noting that this Court "has interpreted the due process guarantee of section 2 to require that penalty provisions be reasonably designed to remedy the particular evil which the legislature has selected for treatment under the statute in question"); *People v. Bradley*, 79 Ill.2d 410, 417 (1980) (requiring that the penalty prescribed for the particular crime to be "reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety and general welfare").

In sum, the stoop immediately in front of the door to one's residence is not a "public place of accommodation or amusement" unless the definition of "public" and "accommodation" are stretched to such an extent that any location outside of one's own residence can be a public place of accommodation. Not only is the stoop at the threshold of one's residence not a "public place," but the stoop at the threshold of one's residence also does not invite the public in to partake in some good, service, or accommodation being offered. Thus, this Court should find that a stoop at the threshold of an individual apartment door is not a place of public accommodation under the aggravated battery statute. As such, Mr. Whitehead's convictions must be reduced from aggravated battery to misdemeanor battery.

CONCLUSION

For the foregoing reasons and those in his opening brief, Vonzell Whitehead, defendant-appellant, respectfully requests that this Court reverse his convictions.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages contained in the Rule 341(d) cover and the certificate of service, is 14 pages.

/s/Zachary Wallace
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NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 27, 2022, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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