2026 IL App (2d) 240457
No. 2-24-0457
Opinion filed November 6, 2026

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

PEDRO A. VILCHIS, Defendant-Appellant.

Appeal from the Circuit Court of Kane County.
Honorable David P. Kliment, Judge, Presiding.
No. 22-CF-1459

JUSTICE McLAREN delivered the judgment of the court, with opinion.
Justice Hutchinson concurred in the judgment and opinion.
Justice Birkett concurred in part and dissented in part, with opinion.

OPINION

¶ 1 After a bench trial, defendant, Pedro A. Vilchis, was convicted of one count of attempt (first degree murder) (720 ILCS 5/8-4(a), 5/9-1(a)(1) (West 2020)), two counts of criminal damage to government-supported property (*id.* § 21-1.01(a)(1)), two counts of aggravated assault (*id.* § 12-2(c)(7)), and one count of aggravated fleeing and eluding a peace officer (625 ILCS 5/11-204.1(a)(4) (West 2020)). Defendant was then sentenced to a term of imprisonment of nine years on the attempt (first degree murder) conviction and concurrent two-year terms on each of the other convictions. In addition, he was ordered to pay $13,245 in restitution to Kane County. Defendant now appeals from his convictions of criminal damage to government-supported property and attempt (first degree murder) and one conviction of aggravated assault. We affirm in part, vacate in part, and reverse in part.

¶ 2 I. BACKGROUND

¶ 3 We first note that the State requests this court to strike portions of defendant's brief pursuant to Illinois Supreme Court Rule 341(h)(6) (eff. Oct. 1, 2020), contending that the statement of facts is "selective and misleading" and fails to "accurately and objectively reflect the full factual record." However, our review of the record and defendant's brief do not reveal such omissions as would require the striking of any portion of defendant's brief. We deny the State's request.

¶ 4 The charges against defendant arose out of an almost 15-minute high-speed car chase that wended its way through Kane County starting at about 1:30 a.m. on August 12, 2022. Defendant committed numerous traffic violations as he raced down rural roads and through residential neighborhoods at speeds reaching 104 miles per hour (mph). Multiple law enforcement officers were involved; a total of five officers from two jurisdictions were called to testify at trial. The chase ended only when a Kane County deputy slammed his squad car into the driver's side of defendant's car.

¶ 5 Sergeant Ryan Rojkowski of the Kane County Sheriff's Office testified that, on August 12, 2022, he was a patrol deputy. At about 1:30 a.m., while traveling northbound on Orchard Road just north of Prairie Street in Aurora, he saw a dark-colored sedan traveling 95 mph southbound on Orchard Road, in a 45 mph zone. Rojkowski performed a U-turn to follow the vehicle. He saw the car "weave in out of lanes between cars." The car also turned off its lights. When the car disobeyed a red light, Rojkowski activated his emergency lights and siren. He was "a distance behind" the car, and the car accelerated when Rojkowski activated his lights. He never saw the car slow down "in an attempt to yield to" his emergency lights. He was able to "pace" the vehicle (maintaining an equal distance from the vehicle while observing his own speed) at the intersection of Gordon

and Baseline Roads, which had a posted speed limit of 55 mph. At that time, defendant's car was traveling 100 mph and still without lights.

¶ 6 The car continued driving at high rates of speed, going 70 mph in a 35 mph zone and 55 mph in a 30 mph zone. Rojkowski radioed in to dispatch that he had a "vehicle that was taking off from me." He testified as to the route that the car followed, including many turns and even U-turns. He also testified to a multitude of traffic infractions, including further speeding, disobeying traffic control devices, and driving in the wrong lane of traffic. Eventually, other deputies, including Detective Patrick Knudtson and Deputy Alfred Vidrio, along with officers from the Montgomery Police Department, responded to his radio message and were seen in the area.

¶ 7 At one point, while following defendant eastbound on Baseline Road, which is a two-lane road divided by yellow lane markings, he paced defendant driving at 100 mph in a 55 mph zone. He saw Knudtson's squad car, with emergency oscillating lights on, traveling westbound. Defendant's car, still traveling eastbound, fully entered the westbound lane. Defendant continued in the westbound lane without swerving. Knudtson drove off the road "into the ditch to avoid him." Rojkowski described the ditch as "a short gravel shoulder, and then it turns into grass." When asked how much of Knudtson's squad car had to go into the ditch to avoid defendant, he stated that he was "pretty sure he at least was all the way into the gravel." Defendant appeared to come within "a couple feet" of striking Knudtson's squad car. There was nothing in the roadway that would have caused defendant to leave the eastbound lane, and defendant had previously driven over that same stretch of roadway earlier in the chase.

¶ 8 Traveling further on Baseline Road, Rojkowski saw Vidrio's squad car stationery in the westbound lane with its emergency lights activated. The squad car was parked in the lane at a slight angle, with the front of the car pointing toward the center of the road. Defendant, still driving 100

mph, crossed the yellow lines separating the two lanes of traffic, with "[a]t least the left side of his tires" in the westbound lane. Defendant came "[w]ithin a foot or two" of striking Vidrio's squad car, moving back into his own lane "[a]t the last second." As he passed the squad car, Rojkowski noticed that the driver's side front door was open and Vidrio was not in the squad car; he was standing "[s]omewhere near the front left driver's door area." (On cross-examination, Rojkowski testified that he did not see Vidrio and did not know if he was inside or outside of the car.) A Montgomery squad car with lights activated was slowly approaching Vidrio's squad car in the westbound lane; defendant's "whole car" went back into the westbound lane before returning to the eastbound lane.

¶ 9 Rojkowski radioed Sergeant Hoffmann, requesting permission "to take [defendant's] vehicle out based on his deadly force actions to our other deputies." Permission was granted.

¶ 10 After viewing continued traffic infractions, Rojkowski attempted a "precision immobilization technique" (PIT) to disable defendant's vehicle. As described by Rojkowski, "You either go up on the left or the right rear quarter panel of the suspect's vehicle using your squad to turn it 180 degrees." He agreed that it was "fair to say that you were trying to use your squad vehicle to hit into or bump into the suspect's vehicle." Rojkowski explained: "With newer vehicles, there is a fuel shut-off that's in them, and when they spin out, normally it sensors it to turn off the fuel pump, thus making the engine not running any longer." The PIT attempt was unsuccessful; defendant "was able to turn through it" and continue driving. Rojkowski's squad car sustained damage "on the front right side of the bumper and then the push bar," which is "a big piece of metal that's on the front of a squad car, police car, that you can use to push vehicles out of the way, or protects the front end."

¶ 11 After following defendant into residential areas and observing numerous traffic violations, Rojkowski attempted another PIT maneuver. He did so because officers could not "get any squads in front to put out any spike strips, and due to [defendant's] actions, I didn't want anyone outside of their squad cars, and that was our only option left." The PIT maneuver was again unsuccessful, and his squad car sustained damage on the left front side of the bumper.

¶ 12 The chase continued through residential areas, with three or four other deputies and officers from the Aurora Police Department assisting. As he followed defendant on Wilder Street in Aurora, Rojkowski saw Detective Lionel Arredondo's squad car at the Cedar Street intersection ; the squad car was fully marked, and its emergency lights were activated. Defendant failed to yield at the posted "Yield" sign at the intersection, and he and Arredondo collided, with Arredondo striking the driver's side of defendant's car. Defendant and a front seat passenger were removed from the car and taken into custody. A small, clear plastic bag of marijuana was subsequently found in the car.

¶ 13 Rojkowski testified that both his and Arredondo's squad cars were owned by the Kane County Sheriff's Office and both cars had been damaged during the chase. Photos of front-end damage on Arredondo's squad car and alleged damage ("scratching and damage on the push bar") to Rojkowski's squad car were admitted into evidence. Rojkowski testified that he had replaced a push bar on his squad car before, and the value of the bar was "over $1,000." His in-squad camera recording of the entire chase was then entered into evidence.

¶ 14 According to Rojkowski, there were multiple instances during the chase through residential areas in which police officers attempted to block the direction in which defendant was driving; each time, defendant sought to find another way around. It appeared to Rojkowski that defendant was going to strike both Knudtson's and Vidrio's cars. He saw defendant go "head on" only at

police vehicles; defendant did not exit his lane of traffic to do that to anything other than a police car.

¶ 15 Detective Knudtson of the Kane County Sherrif's Office testified that he was working as a patrol deputy at about 1:30 a.m. on August 12, 2022. He heard on his squad radio that Rojkowski was attempting to make a traffic stop but that the driver was not stopping and was attempting to flee. Knudtson drove to the area of the chase and attempted to place spike strips on Baseline Road to stop the fleeing vehicle. He pulled his squad car, fully marked with all of his emergency lights activated, onto the shoulder. Rojkowski told him on the radio that the fleeing vehicle was too close to Knudtson's location and that he did not have time to set up the spike strips. Knudtson put his squad car into drive, pulled back onto the road, and proceeded 20 to 30 feet westbound. He saw headlights coming toward him, and it appeared the vehicle was coming into his lane. The car was originally in the eastbound lane, but it moved through the turn lane and the center median and fully into his lane a couple of hundred yards ahead of him. Knudtson saw nothing in the eastbound lane that would have caused the car to swerve into the westbound lane. As the car continued toward him, he swerved off the road, driving over the two-foot-wide pavement and gravel shoulder and fully into the grass off the roadway. The oncoming car did not swerve and continued eastbound in the westbound lane passing within two feet of Knudtson's squad car. Knudtson believed that he was going to be hit by the car and feared for his life. A one-minute video from Knudtson's squad car camera was introduced into evidence.

¶ 16 Deputy Vidrio testified that he was on patrol when he heard Rojkowski's radio message regarding a fleeing vehicle. He activated the emergency lights on his marked police pickup truck and drove to westbound Baseline Road near Orchard Road. He was aware that Rojkowski and the fleeing vehicle were headed eastbound on Baseline Road and that Detective Knudtson was ahead

of him on westbound Baseline Road. Vidrio parked in the westbound lane at a slight angle to try to cover the entire lane. He got out of his truck to deploy spike strips across the road; as he stood in the open doorway of his truck, he heard sirens and the exhaust of "a vehicle which sounded like it was traveling extremely fast." He could not recall if he saw anything, but he specifically testified that he did not see any headlights coming at him; he later clarified that he was not able to see the vehicle. He "got scared and *** ran away" to the back of his truck toward the embankment, fearing that he was going to get hit "[b]ecause the sound was getting extremely loud and heading towards" him. He then saw a Honda Civic without headlights and squad cars drive by. Based on his training and experience, he estimated that the car was going in excess of 80 mph, passing "inches" from his truck and "[a] couple feet" from where he stood. At about that time, he heard "some radio traffic talking about using deadly force;" However, that did not authorize him to use deadly force in stopping the vehicle, only "others." Videos from his squad car camera and his body camera were entered into evidence.

¶ 17 Vidrio testified that he was scared and fearful for his life when the Honda Civic was coming in his direction "[b]ecause he was coming straight at me, or felt like he was." He thought that he was going to be struck and killed. When asked why he looked "incredibly calm" in the videos, Vidrio stated that he had served in the military and deployed to a combat zone, "so I feel like I'm trained and better equipped to handle adrenaline than the average police officer."

¶ 18 Detective Arredondo of the Kane County Sheriff's Office testified that he was a patrol officer on August 12, 2022. At about 1:30 a.m., he heard over his squad car radio about a traffic stop that turned into a pursuit. He was not assigned to a particular location; he chose to proceed to the intersection of Baseline Road and Gordon Road to set up spike strips. However, by the time that he arrived, the chase had moved elsewhere. His next attempt to anticipate the route of the

chase and lay spike strips ended as the first had. He then heard a directive from Sergeant Hoffman over the radio "[t]o stop the vehicle any way possible."

¶ 19 Arredondo then proceeded to the intersection of Wilder Street and Cedar Street to lay spike strips. As he approached the intersection on Cedar Street, he "saw the vehicle with squad cars with lights and sirens behind it." He did not have time to deploy the spike strips; instead, as the vehicle went through the intersection on Wilder, Arredondo "hit the rear quarter panel of the suspect vehicle" and the driver's side door with the "front push bar/bumper" of his vehicle, stopping it. Defendant and a front seat passenger were taken into custody.

¶ 20 Arredondo's squad car was damaged in the collision. Arredondo related that "[t]he push bar was kind of hanging low, and there was damage to the bumper as well." He identified the damage in two photos already in evidence, stating that the damage shown did not exist prior to the collision with defendant's car and was caused by the collision. Arredondo agreed that, "based on the directions you got from your sergeant that you could use deadly force, you were the one that drove your vehicle into that vehicle." The vehicle never veered toward him; it veered away just before the collision. He admitted that, after the collision, he left his squad car in gear when he quickly got out and went to the passenger side of defendant's car. He agreed that his squad car "moved at some point and ended up against a telephone pole or something."

¶ 21 The parties stipulated that, if called to testify, Christine Davis, assistant director for human resources of Kane County (County), would testify that she reviews claims related to damage to County property and assists the County in filing cases with the County's third-party insurance administrator. She reviewed the claim for damages to Arredondo's squad car, which was valued at $13,425. The damage to the squad car was determined to be $9,757.77, and the squad car "was determined by the insurance adjustor to be a total loss and was totaled."

¶ 22 Officer Kelli Smith of the Montgomery Police Department testified that she was on patrol in a marked police car at about 1:30 a.m. on August 12, 2022, when she received a radio dispatch about a Kane County Sheriff's Office pursuit heading into a Montgomery neighborhood. As she was heading westbound on Baseline Road approaching the Lakewood Creek subdivision, she saw squad cars and the suspect vehicle coming toward her and one squad car about 500 yards ahead of her parked in the intersection. The motion of the oncoming car activated her in-squad radar, which read the car's speed as 92 mph in a posted 55 mph zone. Smith described the road at that location as "Two lanes of traffic, and then a painted, striped median that's about a length, the width of a lane, so about three lanes."

¶ 23 As the fleeing car proceeded eastbound, it "[s]tarted driving towards my squad car, entering the striped, painted median." There were no cars or other obstruction in the eastbound lane of travel to force the fleeing car to leave its lane. It appeared to her that she was going to be hit, and she had only a "few seconds" to react. She stopped her car; because of a ditch on the right-hand side of the road, she could not pull to the right to escape the oncoming vehicle. The car passed her "a couple inches" from striking her driver's side mirror, and her entire car shook. She then joined the pursuit until she was ordered to terminate her pursuit, as the chase had left her jurisdiction.

¶ 24 Smith's in-squad dash cam recorded the events that she testified to, and a video from that camera was entered into evidence. She explained that, as shown in the video, a large "hump or dome" on the hood of the squad car was the in-car radar. As the dash cam was located on the passenger side window, it did not capture the immediate front left area of the squad car, and the video did not "do justice" as to how close defendant's vehicle came to her squad car.

¶ 25 On cross-examination, Smith explained that, where she stopped her squad car on Baseline Road, there was an approximately three-foot-wide shoulder on the right side, beyond which was a

ditch. Almost half of her squad car could fit on the shoulder; however, as her squad car was a Ford Taurus, she could not pull further right of the shoulder because she would have gotten stuck in the ditch.

¶ 26 Smith agreed that, at her location on Baseline Road, the road was about three lanes wide, including the striped median section between the eastbound and westbound lanes. Watching the video again, she also agreed that, as defendant passed her, his tires never went across the double yellow lines of the median and "never actually [got] into the westbound lane."

¶ 27 The State rested, and defendant moved for a directed finding of not guilty but only made argument as to counts I and II, which charged him with the attempted murder of Knudtson (count I) and Vidrio (count II). The trial court denied the motion as to counts III through XIV. The court granted the motion as to count II, explaining that attempted murder is a specific intent crime and that such intent "must be inferred from the circumstantial evidence." Vidrio was outside of his vehicle when defendant drove toward it; however, "we don't know that [defendant] could even see that the deputy was outside the car."

> "If [defendant] had wanted to kill Deputy Vidrio, he could have hit the squad car. The squad car didn't move. He could have hit the passenger or driver's side door that was sticking out. It didn't move. So I think that the State has failed to show that [defendant] had the intent to kill Deputy Vidrio with respect to Count Two."

The court denied the motion as to count I, finding that:

> "[B]ut for evasive action taken by Knudtson, it appears likely that [defendant] would have struck that vehicle. It continued straight through where the vehicle had been, Knudtson's squad had been. It didn't veer back into the proper lane of travel, which would have been the eastbound lane. It continued through where Knudtson's vehicle had been in the

westbound lane. So I think the State has established for the purpose of this motion that [defendant] had the requisite mental state ***."

Defendant then rested without presenting any evidence.

¶ 28 The trial court found defendant guilty of all remaining counts, which included one count of attempt (first degree murder), two counts of criminal damage to government-supported property, two (lesser-included) counts of criminal damage to property, three counts of aggravated assault, and five counts of aggravated fleeing and eluding a peace officer. The trial court merged some of these counts before imposing a sentence. Defendant filed a motion for a new trial, which the trial court denied. After sentencing, this appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Defendant first contends that the State failed to prove beyond a reasonable doubt that he knowingly caused damage to government-supported property; therefore, his convictions of that offense should be reversed and the order of restitution should be vacated. In general, the question is whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). It is the responsibility of the trier of fact to determine the witnesses' credibility and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *Id.* We will not substitute our judgment for that of the trier of fact on these matters. *Id.* However, where the defendant's challenge to the sufficiency of the evidence against him does not question the credibility of the witnesses, but instead questions whether the uncontested facts were sufficient to prove the elements of the charge, our review is *de novo*. *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004). In this case, defendant does not

dispute the facts but "instead argues that the State's facts do not meet the statutory definition of criminal damage to property."

¶ 31 In reviewing a bench trial, we presume that the trial court knows the law and applies it properly. *People v. Hernandez*, 2012 IL App (1st) 092841, ¶ 41. However, when the record affirmatively shows that the trial court incorrectly applied the law, that presumption is rebutted. *Id.*

¶ 32 To prove defendant guilty of criminal damage to government-supported property as charged, the State had to prove beyond a reasonable doubt that defendant knowingly damaged any government-supported property without the consent of the State. 720 ILCS 5/21-1.01(a)(1) (West 2020); *People v. Little*, 2018 IL App (1st) 151954, ¶ 53.

¶ 33 "When construing a statute, this court's primary objective is to ascertain and give effect to the legislature's intent, keeping in mind that the best and most reliable indicator of that intent is the statutory language itself, given its plain and ordinary meaning." *People v. Rodriguez*, 2014 IL App (2d) 130148, ¶ 44. "To discern the plain meaning of statutory terms, it is appropriate for the reviewing court to consider the statute in its entirety, the subject it addresses, and the apparent intent of the legislature in enacting it." *Id.* This court should not resort to further aids of statutory construction unless the language of the statute is ambiguous, and it must apply the language as written. *Id.* "In the absence of a statutory definition indicating legislative intent, an undefined word must be given its ordinary and popularly understood meaning." *Ryan B.*, 212 Ill. 2d at 232.

¶ 34 Defendant first argues that the State failed to prove that he damaged any property. According to defendant, the two damaged squad cars were driven into his car by the deputies, who caused the damage themselves.

¶ 35 The statute does not define the verb "damage." We must give the language of a statute its plain and ordinary meaning and consider the statute as a whole. *People v. Smith*, 2016 IL 119659, ¶ 27. "Damage," as a verb, is defined as, "to do or cause damage to: HURT, INJURE, IMPAIR." Webster's Third New International Dictionary 571 (1993). Clearly, defendant did not "do or cause damage to" the squad cars of Rojkowski and Arredondo. Both deputies testified that they initiated the contact with defendant's car; Rojkowski agreed that it was "fair to say that you were *trying to use your squad vehicle to hit into or bump into the suspect's vehicle*," while Arredondo agreed that, "based on the directions you got from your sergeant that you could use deadly force, *you were the one that drove your vehicle into that [defendant's] vehicle*." (Emphases added.) Regarding Arredondo, he even testified that defendant veered away from him just before the collision. The damage to the squad cars was caused, not by defendant, but by the deputies. Further, this contact with defendant's car was authorized by Sergeant Hoffman, the deputies' superior at the Kane County Sheriff's Office. The statute requires that the damage be done "without the consent of the State." 720 ILCS 5/21-1.01(a)(1) (West 2020). Where state actors initiated damaging contact with defendant's vehicle pursuant to specific departmental authorization to "take [defendant's] vehicle out" and "stop the vehicle any way possible," we cannot conclude that defendant damaged the property.

¶ 36 The State contends that the damage to the squad cars "was a direct result of defendant's unlawful conduct." According to the State, "criminal liability can attach when a defendant sets in motion a chain of events that foreseeably results in the prohibited harm."

¶ 37 The State first argues that Illinois case law has "long recognized that causation in criminal cases encompasses both direct and proximate cause." It cites three supreme court cases (*People v. Lowery*, 178 Ill. 2d 462 (1997), *People v. Dekens*, 182 Ill. 2d 247 (1998), and *People v. Hudson*,

222 Ill. 2d 392 (2006)) for support. However, each of those cases involved murder convictions based on the theory of "felony murder."

¶ 38 In codifying the offense of first degree murder, the legislature has provided:

> "A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:
>
> (1) he or she either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
>
> (2) he or she knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
>
> (3) he or she, acting alone or with one or more participants, commits or attempts to commit a forcible felony other than second degree murder, and in the course of or in furtherance of such crime or flight therefrom, he or she *or another participant* causes the death of a person." (Emphasis added.) 720 ILCS 5/9-1(a) (West 2020).

¶ 39 In enacting subsection (a)(3) of the charge ("felony murder"), the legislature *specifically authorized* the concept of proximate cause in criminal liability for acts of another. Illinois's "continued adherence to a proximate cause approach is further exemplary of how broadly we seek to extend the reaches of criminal liability in the case of *felony murder*." (Emphasis added.) *People v. Dennis*, 181 Ill. 2d 87, 105 (1998). The cases relied upon by the State clearly speak to the limited reach of the "proximate cause approach" in criminal cases and cannot be read to apply this approach to criminal acts in general. See, *e.g.*, *Lowery*, 178 Ill. 2d at 467 ("It is equally consistent with reason and sound public policy to hold that when a felon's attempt to commit a *forcible felony* sets in motion a chain of events which were or should have been within his contemplation when the motion was initiated, he should be held responsible *for any death* which by direct and almost

inevitable sequence results from the initial criminal act." (Emphasis added.)); *Hudson*, 222 Ill. 2d at 401 ("In general, Illinois law provides that a defendant may be charged with murder pursuant to the 'proximate cause' theory of felony murder.").

¶ 40 Such liability is not the norm. "The law, after all, does not typically criminally punish one person for the actions of another." *People v. Barnes*, 2017 IL App (1st) 142886, ¶ 42. Indeed, subsection (a)(3) of the first degree murder statute would be superfluous if such liability could be found without specific authorization in the statute. A statute is to be viewed as a whole, and we must construe words and phrases in connection with other relevant statutory provisions rather than in isolation, while giving each word, clause, and sentence of a statute a reasonable meaning, if possible, and not rendering any term superfluous. *People v. Fair*, 2024 IL 128373, ¶ 61. The fact that the legislature has provided a specific statutory basis for criminal liability for the acts of another in the felony murder provisions of the Criminal Code demonstrates that such liability *does not apply in general*. The State's reliance on those cases is misplaced, as such liability does not apply here, where no such provision exists.

¶ 41 Along the same lines, the State also cites this court's recent decision in *People v. Barr*, 2025 IL App (2d) 240323-U, for the proposition that defendant's actions created a dangerous situation that made the officers' response foreseeable. *Barr* involved a defendant who was convicted of resisting or obstructing a peace officer causing injury, which required proof that the defendant, (1) knowing that one is a peace officer, (2) knowingly resists or obstructs, (3) the officer's performance of an authorized act, (4) *and proximately causes an injury to the officer*. 725 ILCS 5/31-1(a), (a-7) (West 2022). On appeal, the defendant argued that the State failed to establish that she, as opposed to her children—who kicked the officer as he struggled with and attempted to handcuff the defendant—was the proximate cause of the officer's injury. *Barr*, 2025

IL App (2d) 240323-U, ¶ 22. This court held that the evidence from videos and the officer's testimony "permitted a reasonable jury to conclude that defendant proximately caused the injuries." *Id.* ¶ 27.

> "The video evidence shows that defendant was forcibly removed from the vehicle after her repeated refusals to exit on her own, thrown to the ground, and physically resisted Katsuleas' attempts to handcuff her. It took Katsuleas one minute and seventeen seconds on the ground to handcuff defendant. It was foreseeable that an officer may be injured as a result of her refusal to exit the vehicle and subsequent physical resistance to being handcuffed while on the ground. Though the children may have also contributed to the injuries, it is clear from the video evidence that defendant's actions were a contributing cause of Katsuleas' injuries. Simply put, Katsuleas would not have been injured but for defendant's actions." *Id.*

¶ 42 However, as in the felony murder cases upon which the State relies, the statutory language at issue in *Barr specifically allowed* for criminal liability via proximate cause and did not require the defendant to be the cause in fact of the officer's injury. If criminal liability via proximate cause was possible under all criminal charges, the fourth element of the crime of resisting or obstructing a peace officer causing injury would be superfluous. The State's reliance on *Barr*, as is its reliance on the cases involving felony murder convictions, is inapt and unavailing.

¶ 43 At oral argument, there was discussion of defendant's accountability for the damage pursuant to section 5-2(a) of the Criminal Code of 2012 (Code), which provides that a person is legally accountable for the conduct of another when, "having a mental state described by the statute defining the offense, he or she causes another to perform the conduct, and the other person in fact or by reason of legal incapacity lacks such a mental state." 720 ILCS 5/5-2(a) (West 2020). We

note that accountability was never raised in the trial court. However, during defendant's argument, the question was raised regarding defendant's accountability for:

> "the actions of the police officers who were forced to use these maneuvers when the defendant knew, and, especially after the first PIT maneuver, he must have known that these maneuvers would be used again. *** Why would he not be accountable under section 5-2(a), which is what the judge found, Judge Kliment found that [defendant] was responsible, that he caused this to occur?"

Later, the State was asked:

> "Judge Kliment, in finding the defendant guilty, clearly knew that the police gave the order to use any means necessary, but he still found the defendant guilty based upon the result, that the defendant caused this conduct, or caused this result. Correct?"

¶ 44 However, the issue of foreseeability and accountability has no application in a factual situation in a case such as this. *People v. Cooper*, 194 Ill. 2d 419 (2000), involved a gang shootout. The defendants opened fire on members of the rival Black Disciples gang, wounding one; the rival gang returned fire, killing one of the defendants' compatriots, Derrick Henderson. *Id.* at 422. The trial court found that both defendants had fired at the rival gang, "that it was 'foreseeable' that the Black Disciples would return fire, and that Henderson was killed as a result of the return fire by the Black Disciples." *Id.* The trial court therefore found the defendants guilty of first degree murder and aggravated battery with a firearm. *Id.* The court later clarified that:

> "defendants were found guilty of first degree murder under accountability principles rather than felony-murder principles, because the State never charged felony murder in the indictment. The trial court further explained that it had found that defendants were the initial aggressors, that the Black Disciples had returned fire in self-defense, and that

> defendants were properly found guilty of the 'knowing murder of Derrick Henderson because they knew and it was foreseeable that when they fired *** death or great bodily harm could result and it was foreseeable that in firing at rival gang members that rival gang members may have weapons to return fire.' " *Id.* at 422-23.

¶ 45 The appellate court held that the defendants' first degree murder convictions could not be based upon a theory of accountability as set forth in section 5-2(c) of the Code. 720 ILCS 5/5-2(c) (West 1994).[1] The court affirmed the convictions of aggravated battery with a firearm but reversed the first degree murder convictions. The court then remanded the cause to the trial court for (1) a determination of whether the defendants were prejudiced in their defense by the State's failure to include a charge of felony murder and (2) potential further consideration of whether the State sufficiently proved the defendants guilty of felony murder. *Cooper*, 194 Ill. 2d at 421. The defendants appealed.

¶ 46 Our supreme court agreed that accountability pursuant to section 5-2(c) could not be the basis for the defendants' first degree murder convictions. However, the State argued that section 5-2(a) was applicable and should be employed to uphold the convictions. *Id.* at 424.

¶ 47 The supreme court described the section 5-2(a) basis of accountability as "the 'innocent agent' rule because it is most frequently encountered as liability based on inducing an 'innocent agent,' such as a child below the age of criminal capacity or an insane person, to commit an act."

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[1]Section 5-2(c) provides that, with some exceptions, a person is legally accountable for the conduct of another person when

> "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 1994).

Id. at 425. The principle set forth in section 5-2(a) "contemplates that the person to be held accountable procured, induced or intended the innocent agent's action." *Id.* at 426. The court was "unwilling to find that Illinois' accountability statute should apply to situations like the present one where the person to be held accountable neither intended the actor to perform as his agent nor sought the 'caused' result." *Id.* The court found the appellate court's reasoning as to the inapplicability of section 5-2(c) "equally appropriate" in a section 5-2(a) context, quoting:

> " 'The trial judge's comments indicate he believed Henderson's death was a reasonably foreseeable result of defendants' actions. Nevertheless, the concept of reasonable foreseeability (*i.e.* proximate cause), while essential to a felony murder inquiry, has no place in accountability analysis ***. *** Nos. 1-95-3211, 1-95-3212 cons. (unpublished order under Supreme Court Rule 23).' " (Emphasis added.) *Id.* at 426-27.

The court concluded that holding the defendants criminally culpable for a death resulting from an act of self-defense that they provoked was "irreconcilable with our accountability statute" and rejected "the State's contention that the trial court's verdict may be upheld based on section 5-2(a)." *Id.* at 427.

¶ 48 Further, under the "innocent agent" theory of accountability of section 5-2(a), the charge upon which the defendant is tried must allege some criminal action by the party for whom the defendant is allegedly accountable. For example, in *People v. Scott*, 271 Ill. App. 3d 307 (1994), the defendant dragged the victim into a store, twice punched her in the face, ripped her underwear off, and ordered her to place her finger into her vagina. After initially refusing, she did so. The defendant was convicted of aggravated criminal sexual assault, which required an act of sexual "penetration," defined in relevant part as "any intrusion, however slight, of any *** object into the sex organ or anus of another person." (Internal quotation marks omitted.) *Id.* at 312. The trial court

had instructed the jury on the "innocent agent" theory of accountability. *Id.* at 313. On appeal, the defendant asserted that, had the victim placed her finger into her vagina of her own volition, it would not be a crime. The appellate court agreed:

> "Indeed, the information upon which Scott was tried *did not allege any criminal action by [the victim] R.G., as is required when a defendant is tried under an accountability theory*. [Citation.] The only reason the action here was criminal was because Scott forced R.G. to do the act. Absent Scott's direct action, there is *no criminal act for which he could be held liable*. This is because under Illinois law, 'penetration' requires the action of one person upon another. R.G.'s act could not have constituted 'penetration,' as defined, absent Scott's action in forcing her to do it. Thus, Scott's guilt could only be established by his own action. Concomitantly, he cannot be accountable for penetration unless he was an accessory to another person acting upon R.G. Under our criminal sexual assault statutes, when only the defendant and the victim are involved in a sexual assault, the defendant cannot be held liable under an accountability theory." (Emphases added.) *Id.* at 313-14.

¶ 49 The same analysis and logic apply here. The charges of criminal damage to state-owned property did not allege any criminal action of another party for which defendant could be held liable. The actions of Rojkowski and Arredondo were authorized by the sheriff's department; no one contests the legality of the deputies using their squad cars to strike defendant's car. No third party was involved or injured by the State's actions. As defendant's guilt could only be established by his own actions, he cannot be criminally accountable for the legal actions that Rojkowski and Arredondo took against him. Accountability cannot be the basis here for finding defendant guilty of criminal damage to government-supported property.

¶ 50 Even if the theory of accountability were potentially applicable here, we would find that its requirements were unmet. To be found accountable for the actions of another under section 5-2(a) of the Code, the person performing the act must in fact or by reason of legal incapacity lack the mental state described by the statute defining the offense. See 720 ILCS 5/5-2(a) (West 2020). Section 21-1.01(a)(1) of the Code requires that a defendant "knowingly" damage government-supported property. See *id.* § 21-1.01(a)(1). Rojkowski and Arredondo were specifically authorized by their superiors to take out defendant's car, even to use deadly force. Both testified that they used their squad cars to initiate contact with defendant's car. In total, they struck his car three times. Rojkowski and Arredondo knew that they were using their squad cars, with legal authority, as battering rams in an attempt to stop a moving vehicle. The evidence clearly would not support a finding that Rojkowski and Arredondo lacked the mental state of knowledge.

¶ 51 The State also argues that, even before Rojkowski performed the first PIT maneuver, defendant "possessed actual knowledge that officers would employ increasingly drastic measures to prevent the continuing danger he posed to public safety." According to the State, "[a] reasonable person—and particularly defendant, who demonstrated tactical awareness throughout the chase ***—would understand that police would employ progressively more aggressive tactics to end his dangerous flight." Thus, presumably, defendant knew that deputies would use their squad cars to collide with his car and thereby damage the squad cars.

¶ 52 This is nothing more than rank speculation. There is no evidence that defendant had any knowledge of the tactics that would be used to stop his attempted escape from the authorities, least of all the PIT maneuver and the ramming of his car. It is clear from the evidence that these tactics are not common. Rojkowski and Arredondo both testified to specific authorization from their sergeant before they could employ such maneuvers. Further, this authorization was not general to

all deputies; Vidrio testified that the authorization "to take [defendant's] vehicle out" and "[t]o stop the vehicle any way possible" did not apply to him, only to "others." We will not speculate that defendant had such knowledge.

¶ 53 The State asserts that such knowledge "became unequivocal" when Rojkowski performed the first failed PIT maneuver such that defendant "had indisputable knowledge that officers were authorized and willing to make forceful contact to stop him." After the second failed PIT maneuver, defendant's decision to continue evading capture demonstrated "a conscious awareness that further vehicle contacts and resulting damage were not merely possible or probable, but practically certain to occur" such that, in the words of the trial court, the damage was "entirely foreseeable by the defendant."

¶ 54 Again, this argument is based on speculation. In addition, it is also an enthymeme; its unstated premise is that defendant would comprehend that the initial PIT maneuver was a legal and properly authorized use of force that could be repeatedly inflicted. There is no evidence that defendant knew that the PIT maneuvers were anything beyond accidental contact in the course of a high-speed chase. Certainly, defendant was not aware that specific authorization "to take [defendant's] vehicle out" had been requested and authorized.

¶ 55 Further:

> "When an offense is defined in terms of a particular result, as in these charged instances of criminal damage to property, an individual acts knowingly when he is consciously aware that his conduct is *practically certain to cause the result*. 720 ILCS 5/4-5(b) (West 2010) (a person acts with knowledge of the result of his or her conduct, described by the statute defining the offense, when he is consciously aware that that result is *practically certain to*

be caused by his conduct); [Citation.]." (Emphases added.) *Rodriguez*, 2014 IL App (2d) 130148, ¶ 33.

¶ 56 Damage to two squad cars was not "practically certain to be caused by" defendant trying to elude police. Police chases are called off. Spike strips stop fleeing cars. Fleeing cars elude police, run out of gas, or crash. Any number of different outcomes were possible in this dangerous, law-breaking situation. Deputies damaging their squad cars by slamming them into defendant's car was not practically certain to occur.

¶ 57 Extending the State's contentions here to their logical conclusion, a defendant would also be held liable for criminal damage to property for damage caused by any number of attenuated events set in motion by the commission of a crime. This would include, for example, any damage caused by an officer while speeding to the location of a crime. Such an outcome is, obviously, absurd.

¶ 58 Defendant's attempts to elude the police, while dangerous and illegal, did not inevitably lead to damage to the squad cars. The Kane County Sheriff's Office authorized deputies Rojkowski and Arredondo to use their squad cars as battering rams to stop defendant's car, and both squad cars were used for that purpose. It was that authorized and knowing use of the squad cars that damaged them, not any action by defendant. Even alleged "knowledge" that officers were attempting to collide with him would not overcome the fact that the officers damaged their squad cars by initiating contact with defendant's vehicle. Defendant's convictions of criminal damage to state-supported property must be reversed, and the order of restitution for that damage vacated.[2]

[2]We also note that there was no evidence regarding the value of the damage to Rojkowski's squad car. Rojkowski testified that he had replaced a push bar on his squad car before, and the value of the bar was "over $1,000." However, he never testified that he had to replace the push bar after his collisions with

¶ 59 Defendant next contends that he was not proven guilty beyond a reasonable doubt of attempted first degree murder. Again, the question is whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Ortiz*, 196 Ill. 2d at 259. It is the responsibility of the trier of fact to determine the witnesses' credibility and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *Id.* We will not substitute our judgment for that of the trier of fact on these matters. *Id.*

¶ 60 To support a conviction of this charge, the State must establish beyond a reasonable doubt that (1) the defendant performed an act constituting a "substantial step" toward the commission of murder, and (2) the defendant possessed the criminal intent to kill the victim. *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 39. Our supreme court has recently clarified the second requirement, holding:

> "our precedent on attempted offenses makes clear that a defendant must specifically intend to commit the underlying offense and not merely intend the result of the underlying offense. First degree murder can only be committed if the killing is done 'without lawful justification.' [Citation.] ('[a] person who kills an individual without lawful justification commits first degree murder'). Therefore, we hold that, to commit attempted first degree

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defendant. He only described "scratching and damage on the push bar." Further, People's exhibit 8, showing the "damage" to Rojkowski's squad car, is dark, shadowy, and indistinguishable. Even if we did not reverse defendant's convictions on the grounds stated, we would vacate the Class 3 felony conviction for damage to Rojkowski's squad car, which required damage that "exceeds $500 but does not exceed $10,000," and reduce it to a Class 4 felony conviction, which requires damages of $500 or less. See 720 ILCS 5/21-1.01(c) (West 2020).

murder, the defendant must have the intent to kill without lawful justification." *People v. Guy*, 2025 IL 129967, ¶ 53.

¶ 61 Pursuant to section 4-4 of the Code, "[a] person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct." 720 ILCS 5/4-4 (West 2020). Regarding attempted first degree murder, "Knowledge that the consequences of an accused's act may result in death (or grave bodily injury), or intent to do bodily harm, is not enough; specific intent to kill is required." (Emphasis omitted.) *People v. Jones*, 81 Ill. 2d 1, 8-9 (1979). "The question of a defendant's intent is one of fact, to be determined by the trier of fact, and can be inferred from the surrounding circumstances, such as the character of the attack, the use of a deadly weapon, and the severity of injury." *People v. Jaimes*, 2014 IL App (2d) 121368, ¶ 27. "Such intent may be inferred when it has been demonstrated that the defendant voluntarily and willingly committed an act, the natural tendency of which is to destroy another's life." *People v. Winters*, 151 Ill. App. 3d 402, 405 (1986). However, a fact cannot be inferred when a contrary fact could be inferred with equal certainty from the same evidence. *People v. Steading*, 308 Ill. App. 3d 934, 940 (1999).

¶ 62 Knudtson testified that he pulled his squad car, fully marked and with all of his emergency lights activated, from a stopped position on the shoulder back onto Baseline Road and proceeded 20 to 30 feet westbound. He saw headlights coming toward him, and it appeared the vehicle was coming into his lane. The vehicle was originally in the eastbound lane, but it moved through the turn lane and the center median and fully into his lane a couple of hundred yards ahead of him. Knudtson saw nothing in the eastbound lane that would have caused the vehicle to swerve into the westbound lane. As the vehicle continued toward him, he swerved off the road, driving over the

two-foot-wide pavement and gravel shoulder and fully into the grass off the roadway. The oncoming vehicle did not swerve and continued eastbound in the westbound lane, passing within two feet of his squad car.

¶ 63 People's exhibit 3, the 1 minute, 11 second, video from Knudtson's squad car, shows Knudtson pulling from the road onto the shoulder at 0:19. After a short radio discussion, he begins moving forward and back into the westbound lane at 0:23, being fully in the lane at 0:26. He utters an expletive and begins exiting the lane back onto the shoulder at 0:28, being fully on the shoulder at 0:29 as defendant, still heading eastbound in the westbound lane, speeds past him. Knudtson drives into the grass and returns to the shoulder at 0:32 before heading eastbound on the chase.

¶ 64 Rojkowski testified that, as he paced defendant driving at 100 mph, he saw Knudtson's squad car, with emergency oscillating lights on, traveling westbound on Baseline Road. Defendant, traveling eastbound, fully entered the westbound lane and continued in the lane without swerving. Knudtson drove off the road and "into the ditch to avoid" defendant, who appeared to come within "a couple feet" of striking Knudtson's squad car. Rojkowski described the ditch as "a short gravel shoulder, and then it turns into grass." When asked how much of Knudtson's squad car had to go into the ditch to avoid defendant, Rojkowski stated that he was "pretty sure he at least was all the way into the gravel."

¶ 65 People's exhibit 4, the 15 minute, and 33 second, dashcam video from Rojkowski's squad car, shows the entire chase from behind defendant's car. At approximately 5:49, defendant, who is driving westbound on Baseline Road, pulls a U-turn and proceeds eastbound. At 6:04, a car in the westbound lane passes as defendant continues in the eastbound lane. At 6:13, defendant begins to cross the double yellow line; he enters the westbound left-turn lane at 6:14 and, following the double yellow line (on his right) to the left, enters the westbound lane at 6:15. By 6:16, Knudtson

can be seen angling right, out of the westbound lane; at 6:17, he is fully off the road. At the 6:19 mark, defendant is fully in the eastbound lane again.

¶ 66 In giving its oral ruling, the trial court stated:

> "The difference between [the directed finding in defendant's favor on count II, alleging attempt murder of Vidrio] and Detective Knudtson is that Knudtson is the one that took the evasive action, and but for that evasive action, it's very likely that the Defendant would have struck his vehicle. And when you look at the [*People v. Ryan*, 2023 IL App (2d) 220414] case, that the Defendant committed a potentially—committed potentially lethal acts with total disregard for human life sufficient to establish the intent element of the offense of attempt first degree murder, that's exactly what happened here, with Deputy—with Detective Knudtson, so he is found guilty of Count One as well."

¶ 67 Our review of the testimony and the videos leads us to conclude that the State failed to prove that defendant acted with the intent to kill Knudtson and that his conviction of attempted murder must be reversed. Even viewed in the light most favorable to the State, defendant's wildly reckless and dangerous conduct, in the context of his actions throughout the chase, does not allow a rational trier of fact to find beyond a reasonable doubt that defendant acted with the required intent to kill.

¶ 68 Defendant's intent throughout the 15-minute chase was clearly to evade the police, either through speed or evasive actions. He sped, violated traffic control devices, and made improper turns, including U-turns, multiple times. No fewer than 19 times, defendant drove in the wrong lane, whether on the wrong side of an unmarked residential street, on both sides of a double-yellow line simultaneously, in the wrong lane of a double-yellow lined street (sometimes passing traffic ahead of him in his lane), and even on the wrong side of a grassy median separating the directions

of traffic. For long stretches of the People's exhibit 4 video, defendant's car is so far ahead of the squad car that it is impossible to determine defendant's position on the roads. He often passes oncoming traffic, both civilian and law enforcement, at high speeds, never once veering toward the vehicles he passed. He also passes police vehicles parked on the side of the road without veering into them or attempting to crash into them. Defendant passes close to both Vidrio and Smith in the wrong lane as their squad cars were on the shoulder without veering at them or striking them. Defendant tries to avoid the police to the very end of the chase. As Arredondo testified, defendant never veered toward him as Arredondo used his squad car to collide with him; defendant veered away just before the collision. Defendant's actions throughout the incident clearly evinced an intent to get away from the police, not to violently meet up with them.

¶ 69 In the incident in question, Knudtson was parked on the shoulder of the road, slowly advancing into the westbound lane before he swerved back onto the shoulder and into the grass; he was in the westbound traffic lane for only two seconds before he swerved back onto the shoulder.[3] At the same time, defendant did not pass directly from his eastbound lane into the westbound traffic lane. As People's exhibit 4 shows, defendant crosses the double yellow line into a westbound left turn lane; defendant follows the double yellow line toward his left and into the westbound traffic lane. At the time that defendant begins to cross the double yellow line, Knudtson is parked on the shoulder; thus, he and Knudtson are separated by two westbound lanes—the left turn lane and the westbound through lane. It would not have appeared that they were entering into a potential head-on situation; defendant is fully in the westbound through lane for one second

[3]We note that, at oral argument, the State incorrectly asserted that Knudtson was "driving for 20 to 30 seconds." (Oral argument audio at approximately 26:38). This assertion is not supported by Knudtson's dash camera video or his own testimony that he proceeded 20 to 30 feet before swerving off the road.

before Knudtson begins angling toward the shoulder. One second later, Knudtson is fully off the road. Two seconds after that, defendant is fully in the eastbound lane again.

¶ 70 The trial court found dispositive the fact "that Knudtson is the one that took evasive action, and but for that evasive action, it's very likely that the Defendant would have struck his vehicle." However, the court did not address the fact that defendant did not drive at Knudtson when Knudtson left the road; defendant continued driving straight and re-entered the eastbound lane within two seconds. This fact, which is plainly apparent from the videos and the testimony, is substantial evidence that defendant *did not* have the specific intent to kill Knudtson. While abandonment of the intent to kill, once the elements of attempted murder have been completed, is no defense to the crime of attempted murder (see *People v. Mitchell*, 105 Ill. 2d 1, 10 (1984)), a defendant's conduct after an alleged attempted murder is *not* irrelevant; such conduct after a purported attempt "is among the surrounding circumstances that one may look to in trying to determine if there was intent to kill at the time of the substantial step." *People v. Parker*, 311 Ill. App. 3d 80, 90 (1999).

¶ 71 In *Mitchell*, the defendant was convicted of two counts of attempted murder and two counts of aggravated battery of a child in the beating of her 16-month-old child. *Mitchell*, 105 Ill. 2d at 6. She had struck her daughter several times with her hand, fist, and a belt on one day, then struck her with an open hand "a few" times the next day; shortly thereafter, the child "apparently had a seizure and passed out." (Internal quotation marks omitted.) *Id.* at 7-8. The defendant placed a cool cloth on the child's head for approximately 15 minutes. *Id.* at 8. When the child remained unconscious, the defendant took her to the hospital. *Id.* The defendant explained to police that she wanted to give the child away, that the child reminded her of its father, whom the defendant hated, and that the defendant was taking her anger out on the child. *Id.*

¶ 72 The appellate court vacated the two attempted-murder convictions "based upon its conclusion that the State had failed to prove beyond a reasonable doubt that the defendant intended to kill" her daughter. *Id.* at 9. The supreme court affirmed the appellate court, reasoning that, while the defendant "undoubtedly repeatedly struck her child, we do not believe that the circumstances of this striking, without more, are sufficient to establish the required intent, particularly in view of defendant's explanations for her behavior." *Id.* at 9-10.

> "*There was ample opportunity for her to complete her crime if, in fact, she intended to kill* the child. Further, following Shannon's loss of consciousness, defendant applied a cool cloth and ultimately took her to the hospital for emergency medical attention, actions which are not consistent with an intent to murder. This court has previously acknowledged that abandonment of the intent to kill, once the elements of attempted murder are complete, is no defense to the crime. [Citation.] Here, however, considering all of the circumstances, the proof is, in our judgment, simply insufficient to establish beyond a reasonable doubt that defendant possessed the requisite intent to kill." (Emphasis added.) *Id.* at 10.

¶ 73 Similarly here, defendant's avoidance of Knudtson's squad car as it veered only a few feet off the road, leads only to the inference that defendant *did not intend* to strike and kill Knudtson. See *Jaimes*, 2014 IL App (2d) 121368, ¶ 27 ("The question of a defendant's intent is one of fact *** and can be inferred from the surrounding circumstances, such as the character of the attack, the use of a deadly weapon, and the severity of injury."). Defendant had ample opportunity to complete the crime by following Knudtson off the road and smashing into his squad car; this he did not do.

¶ 74 The State finds *People v. Smith*, 402 Ill. App. 3d 538 (2010), "highly instructive." In *Smith*, as the defendant returned to his car, police boxed the car in its parking spot. *Id.* at 540. Marked

squad cars, with lights and sirens activated, and unmarked cars surrounded the car. *Id.* One officer stood on the sidewalk about 20 feet in front of the defendant's car, holding out his badge and identifying himself as a police officer. *Id.* The defendant drove his car onto the sidewalk, hitting the officer as the officer dove out of the way. *Id.* The officer was treated at a hospital for a contusion to his head, but he had no broken bones and lost no time from work. *Id.* At trial, the officer testified that the defendant "looked down at the floor in his car,[4] and then the defendant stared at [the officer] before the defendant gunned the engine and drove straight at [him]." *Id.* Other officers estimated that, after they had identified themselves, the defendant sat in his car for about 15 seconds before driving his car onto the sidewalk. *Id.*

¶ 75 The defendant appealed his conviction, after a jury trial, of attempted murder. In concluding that the evidence sufficiently supported the jury's finding that the defendant attempted to murder the officer, the appellate court specifically noted that the defendant

> "looked at Officer Johnson for 15 seconds, then pressed the gas pedal and drove his car, a deadly weapon [citation], in Officer Johnson's direction. The car headed straight at Officer Johnson. Defendant did not slow down or swerve. The natural consequence of the defendant's act would have been to cause Officer Johnson harm or to destroy Officer Johnson's life had he not dived out of the way." *Id.* at 547.[5]

¶ 76 The State argues that, applying *Smith*'s reasoning to this case, "the evidence of defendant's intent to kill Officer [*sic*] Knudtson is equally, if not more, compelling." We disagree. The

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[4]A gun was subsequently found on the floor of the car. *Smith*, 402 Ill. App. 3d at 544.

[5]Interestingly, the court reversed the attempted murder conviction and remanded it for a new trial, directing the trial court "to instruct the jury on the lesser-included offense of reckless conduct." *Smith*, 402 Ill. App. 3d at 548.

defendant in *Smith* sat for 15 seconds, contemplating his future actions. He stared at the officer before gunning the engine and driving straight at him. The time to contemplate and plan his actions, and the deliberate staring at the officer before driving straight at him, are evidence that the defendant thought about his actions and intended, by driving straight at the unprotected officer only 20 feet in front of him, to kill that officer.

¶ 77 Other cases involving convictions of attempted first degree murder wherein the defendant used a vehicle as the potential deadly weapon are similar. In *People v. Desantiago*, 365 Ill. App. 3d 855 (2006), the defendant and another man, both identified as Latin King gang members, were traveling in a van when they were involved in a verbal altercation with three members of a rival gang. *Id.* at 857. After the men exchanged gang signs and gang slogans, the defendant briefly exited the van and confronted the three rival gang members while holding a metal object in his hands. *Id.* Following this brief verbal altercation, the defendant reentered the van and drove it onto the sidewalk where the three gang members were walking. *Id.* A witness "confirmed that the white van was traveling on the sidewalk at a rate of approximately 30 to 40 miles per hour." *Id.* at 858. Two of the men were able to run into the street and avoid being struck, but one was struck and driven over by the van and subsequently died. The defendant later provided a written statement in which he stated that "he had chased the three males onto the sidewalk because he 'wanted to teach them a lesson.' " *Id.* at 860. After a jury trial, the defendant was convicted of one count of first degree murder and two counts of attempted first degree murder of the men who ran into the street. *Id.* at 857.[6]

¶ 78 In *People v. DeRose*, 2021 IL App (1st) 182038-U, the victim walked up to the defendant's car, which was in the victim's driveway, and asked the defendant why she was there. The defendant

[6]Whether the evidence supported convictions for attempted murder was not at issue in the appeal.

looked at the victim "with a deep look in her eye," pointed at him, and said, "I'm here to kill you." (Internal quotation marks omitted.) *Id.* ¶ 7. She backed up her car, then drove forward, attempting to run over the victim. *Id.* She chased him up the driveway and then crashed into his truck, moving it three feet. *Id.* The defendant continued chasing the victim between homes and through backyards at speeds of up to 35 mph before crashing into a retaining wall and eventually being apprehended by police. *Id.* ¶¶ 8-9. The appellate court affirmed the defendant's conviction of attempted murder, concluding that a rational trier of fact could find that the defendant acted with the intent to kill where not only did the defendant tell the victim that she was there to kill him, but

> "had [the victim] not dodged around his truck and fled, the natural consequence of defendant's driving straight at him would have been to harm or kill him. This is particularly so where defendant struck [the victim's] truck hard enough to move it, and as depicted in the footage, chased him between the houses while driving faster than he ran." *Id.* ¶ 42.

¶ 79 Each case is, of course, *sui generis*; there is no bright line delineating intent to kill. However, the defendants' actions in *Smith*, *Desantiago*, and *DeRose* all demonstrated evidence of intent to kill far beyond that in the case before us. The defendant in *Smith* stared at the officer for 15 seconds, ample time to contemplate his actions before gunning his engine and driving at the unprotected officer only 20 feet in front of him. The defendant in *Desantiago* was already in the midst of a confrontation with rival gang members when he not only drove from the street onto the sidewalk to chase the rivals but also *hit and killed* one of the three men he drove toward. The defendant in *DeRose* told the victim that she was there to kill him, drove toward the unprotected victim with such force that she hit and moved a parked car three feet, and then continued to chase him, driving between houses and through back yards. Much of the evidence of intent is found in

the actions of the defendants both prior to and after the physical actions constituting the "substantial step" toward the commission of murder.

¶ 80 Here, as we have discussed, defendant's actions were taken during a high-speed chase. Time for contemplation and planning was minimal. Unlike the defendant in *Smith*, defendant did not stare at Knudtson before driving at him. As we noted above, when defendant began moving over the double yellow line, he and Knudtson were separated by two westbound lanes. Defendant then returned to the proper lane of traffic and never veered toward Knudtson as Knudtson left the road. Significantly, the entire encounter lasted no more than six seconds. The actions of the *Smith*, *Desantiago*, and *DeRose* defendants were singular; they were aimed at identifiable individuals or, as in *Desantiago*, a particular group of people with whom the defendant had been arguing. Here, defendant passed multiple cars, civilian and law enforcement, parked and in motion, without making any attempt to collide with them. The evidence in these cases make the evidence of intent to kill in this case less compelling.

¶ 81 None of this goes to minimize the incredible danger that defendant created with his actions. As the trial court noted, but for Knudtson's evasive action, it was very likely that defendant would have struck his vehicle, and certainly severe injury or death would have resulted. However, looking at the totality of the evidence from this chase, we cannot conclude that the evidence can support a finding that defendant intended to kill Detective Knudtson. Therefore, we must reverse the conviction for attempted murder on count I.

¶ 82 Defendant next contends that his conviction of aggravated assault against Deputy Vidrio must be reversed, as the State failed to prove beyond a reasonable doubt that Vidrio had a reasonable apprehension of an immediate or imminent battery. A defendant never forfeits the right to challenge the sufficiency of the evidence on appeal. *People v. Spencer*, 347 Ill. App. 3d 483,

487 (2004). However, "statements made by an attorney in closing argument may be the basis from which a trial court finds a judicial admission." *Lowe v. Kang*, 167 Ill. App. 3d 772, 777 (1988) (relied upon by *People v. Howery*, 178 Ill. 2d 1, 40-41 (1997)). To constitute a judicial admission, a statement must be deliberate, clear, and unequivocal, and made by a party about a concrete fact within that party's knowledge. *Elliott v. Industrial Comm'n*, 303 Ill. App. 3d 185, 187 (1999).

> "What constitutes a judicial admission must be decided under the circumstances in each case, and before a statement can be held to be such an admission, it must be given a meaning consistent with the context in which it is found. [Citation.] The power of a court to act upon facts conceded by counsel is as plain as its power to act upon evidence produced." *Lowe*, 167 Ill. App. 3d at 776.

The fact that a statement by an attorney "is made in opening or closing argument or on direct or cross-examination is relevant as to the context in which the statement is made and not determinative of whether or not the statement is a judicial admission." *Id.* at 777.

¶ 83 Here, defense counsel conceded defendant's guilt on this charge during closing argument, stating, "I believe the State has proven the assault charges." This is deliberate, clear, and unequivocal, and certainly made by a party with knowledge. Contextually, the statement was made when presenting argument on whether the State had proven defendant guilty beyond a reasonable doubt. Clearly, defense counsel's statement was a judicial admission as to this count.

¶ 84 We also note that defendant did not raise this issue in his motion for a new trial, nor did he argue it during the hearing on that motion. He cannot now contend, on direct appeal, that he was not proven guilty beyond a reasonable doubt when such proof was conceded to the trier of fact before it made its findings and never again raised in the trial court. While we do not find the issue

forfeited, we conclude that, with counsel's concession, coupled with the failure to raise this issue with the trial court, we can find no error here.

¶ 85 III. CONCLUSION

¶ 86 For these reasons, the judgment of the circuit court of Kane County is (1) reversed with prejudice as to counts III and IV (criminal damage to government-supported property) and the associated order of restitution is vacated, (2) reversed with prejudice as to count I (attempted first degree murder), and (3) affirmed as to count VIII (aggravated assault).

¶ 87 Affirmed in part, reversed in part, and vacated in part.

¶ 88 JUSTICE BIRKETT, concurring in part and dissenting in part:

¶ 89 I respectfully dissent from the majority's reversal of defendant's conviction of attempted first degree murder (count I) because the majority relies on a factual premise that is affirmatively rebutted by the record and reaches its holding through a reweighing of the evidence rather than a review for sufficiency. The majority states:

> "At the time that defendant begins to cross the double yellow line, Knudtson is parked on the shoulder ***. It would not have appeared that they were entering into a potential head-on situation; defendant is fully in the westbound through lane for one second before Knudtson begins angling toward the shoulder." *Supra* ¶ 69.

¶ 90 Based on the above, the majority implies that *Detective Knudtson*, and not defendant, created a potential head-on collision by entering a lane already occupied by defendant. However, the majority's characterization of Detective Knudtson's position when defendant began to cross the center line is contradicted by the synchronized dashcam recordings, the unrebutted testimony of Detective Knudtson and Sergeant Rojkowski, and the majority's own recitation of that testimony.

¶ 91 Detective Knudtson testified that, as the chase neared his position, he put his vehicle into drive, pulled from the shoulder back onto the road, was "entirely within [his] lane of traffic," and had traveled 20 to 30 feet before he observed headlights and saw that defendant's vehicle "was coming into [his] lane." Sergeant Rojkowski similarly testified that Knudtson was "fully within his own lane of traffic going westbound" when defendant's "whole vehicle" "enter[ed] Deputy Knudtson's lane of travel." The majority recounts Knudtson's testimony as follows:

> "Knudtson put his squad car into drive, pulled back onto the road, and proceeded 20 to 30 feet westbound. He saw headlights coming toward him, and it appeared the vehicle was coming into his lane. The car was originally in the eastbound lane, but it moved through the turn lane and the center median and fully into his lane a couple of hundred yards ahead of him." *Supra* ¶ 15.

The majority likewise recounts Rojkowski's testimony that he "saw Knudtson's squad car, with emergency oscillating lights on, traveling westbound. Defendant's car, still traveling eastbound, fully entered the westbound lane." *Supra* ¶ 7. Thus, the majority's own factual background describes Knudtson as having reentered the roadway and traveling westbound for a distance before defendant entered his lane.

¶ 92 The majority's factual conclusion is also at odds with the video evidence admitted at trial. People's exhibits 3 and 4 can be synchronized using Detective Knudtson's audible statement, "I'm at Prescott," which is heard on both recordings and provides a clear synchronization point. That statement concludes at 00:15 in exhibit 3 and 6:04 in exhibit 4. In exhibit 4, defendant's vehicle begins to cross the yellow line at 6:13, which corresponds directly to 00:24 in exhibit 3. At that moment, Detective Knudtson's dashcam shows that his vehicle is already in motion, angled toward the westbound lane, and has largely reentered that lane—it plainly is *not* parked on the shoulder,

and defendant does not argue otherwise. Nevertheless, the majority proceeds in its analysis from the contrary factual premise that Knudtson is "parked on the shoulder" when defendant begins to cross the yellow line and that defendant is already fully in the westbound lane before Knudtson begins angling toward the roadway. After defendant enters Knudtson's lane, Sergeant Rojkowski warns officers over the radio at 6:16 in exhibit 3 that defendant is "going head on at deputies," and he repeats the warning a moment later, as Knudtson swerves to avoid being hit by defendant. Additionally, the majority's conclusion that "[i]t would not have appeared that they were entering into a potential head-on situation" is inconsistent with the unrebutted testimony of Sergeant Rojkowski, who was behind defendant and who testified that, based on his unobstructed observations, it appeared defendant was going to strike Detective Knudtson's vehicle, and Detective Knudtson's testimony that he feared for his life because he believed defendant's vehicle was going to hit him head-on.

¶ 93 It is well settled that intent to kill may be inferred when a defendant voluntarily and willingly commits an act, the natural tendency of which is to destroy another's life. *Winters*, 151 Ill. App. 3d at 405. Here, the evidence showed that defendant was traveling 100 mph when he crossed into oncoming traffic barreling toward Knudtson's vehicle, and defendant came within two feet of striking it. The fact that defendant did not collide head-on with Detective Knudtson's cruiser was due solely to Knudtson's evasive action of pulling off the roadway and into the ditch, as defendant continued forward without ever veering to either side and passed through the same space that Knudtson's vehicle had just vacated. Collision, not evasion, was defendant's goal. Knudtson's split-second evasive maneuver prevented a head-on collision that almost certainly would have killed him, defendant, and defendant's passenger. Viewing the evidence in the light most favorable to the State, as we must (*Ortiz*, 196 Ill. 2d at 259), a rational trier of fact could have found the

essential elements of the crime beyond a reasonable doubt. I therefore would affirm defendant's conviction as to count I.

Decision Under Review:	Appeal from the Circuit Court of Kane County, No. 22-CF-1459; the Hon. David P. Kliment, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Christopher McCoy, and Annie Cebulski, of State Appellate Defender's Office, of Elgin, for appellant.
Attorneys for Appellee:	Jamie L. Mosser, State's Attorney, of St. Charles (Patrick Delfino, Edward R. Psenicka, and John G. Barrett, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.