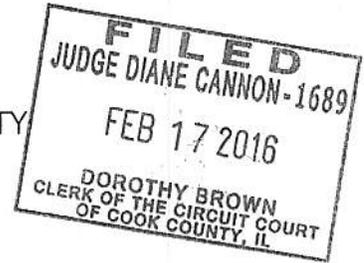


STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

IN THE CIRCUIT COURT OF COOK COUNTY  
CRIMINAL DIVISION



PEOPLE OF THE STATE OF ILLINOIS )  
 )  
 v. ) 12CR-22504  
 )  
LINDA SHELTON )

**PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO DECLARE THE ILLINOIS BATTERY AND AGGRAVATED BATTERY STATUTE UNCONSTITUTIONAL OR IN THE ALTERNATIVE TO CLARIFY QUESTION FOR REVIEW BY ILLINOIS APPELLATE COURT UNDER ISCR 308**

NOW COME THE PEOPLE OF THE STATE OF ILLINOIS by and through their Attorney Anita Alvarez, through her assistant, Lorraine Murphy, and respond to the Defendant's Motion to Declare the Statute Unconstitutional as follows:

1. The Defendant seeks to declare the statute unconstitutional in the above captioned case based on (a) discriminatory and a violation of the Americans with Disabilities Act, (b) overbreadth/innocent contact criminal, (c) vague, (d) denies equal protection, and (e) due process violation.  
(Def. Brief pg1)
2. A statute is presumed constitutional, and the party challenging the statute bears the burden of demonstrating its invalidity. People v. Graves, 207 Ill. 2d 478, 482 (2003).

3. Defendant is charged with Aggravated Battery under the section of the aggravated battery statute that is based on the status of the victim:

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

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

(i) performing his or her official duties. (720 ILCS 5/12-3.05(d)(4)(i))

4. The defendant's first argues that the Statute violates the ADA, therefore the statute is void. The defendant relies on Tennessee v. Lane 541 U.S. 509 (2004).

5. In Tennessee v. Lane, two paraplegics filed action against the state of Tennessee for equitable damages because they were denied physical access to the second floor of the courthouse. The Lane court held that Title II of the Americans with Disabilities, requiring states to provide access to buildings because access to the building was necessary in support of the fundamental right of access to the courts. The Lane case further upheld Congressional power to abrogate state sovereign immunity under Title II of the Americans with Disabilities Act with respect to access to the courts. 541 U.S. 509, 518 & 531, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004).

6. The Lane case has absolutely nothing to do with whether or not a statute is constitutional and there are no factual similarities to the present case.

Therefore the defendant's first argument that the aggravated battery statute is

unconstitutional for violating the ADA has no merit and should be stricken.

7. The defendant's second and third arguments are that the statute is unconstitutional because it is overbreadth, thereby making innocent contact criminal, and that the statute is vague, subjecting it to misuse and impossible to determine if an act is innocent or criminal.

8. The defendant makes factual analogies and examples to argue both whether the statute is overbreadth and vague. These entire arguments are for a trier of fact after hearing the specific facts of a case. Again, the defendant's arguments on these issues have nothing to do with whether or not the statute is unconstitutional on its face. These two arguments are without merit.

9. The defendant's fourth and fifth arguments allege the statute denies equal protection and denies due process violating the Proportionate Penalties Clause of the Illinois Constitution.

10. The Constitution of Illinois provides that "no person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws, (Ill. Const. 1970, art. I, & II.), and that "all penalties shall be determined both according to the seriousness of the offense with the objective of restoring the citizen to useful citizenship. (Ill. Const. 1970, art. I, & 2). A defendant can raise a proportionate penalties challenge on the basis that the penalty for a particular offense is too severe under the "cruel and degrading" standard or that the penalty is harsher than the penalty for a different offense that contains identical elements. People v. Sharpe, 216 Ill. 2d 481, 521 (2005).

11. Interference with legislative judgment is justified only where the designated punishment is cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community. Because courts recognize that the legislature is institutionally more capable of determining the seriousness of the offense, they are reluctant to invalidate penalties prescribed by the legislature. People v. Powell, 299 Ill. App. 3d 92, 96-97, citing People v. Lee, 167 Ill. 2d 140, 145, 656 N.E2d 1065, 212 Ill. Dec. 231 (1995).

12. In this case the defendant argues that the Aggravated Battery statute is cruel, degrading and so outrageously disproportionate as to shock the moral sense of the community. (Def. Brief pg 12)

12. Equal protection challenges to the Aggravated Battery statute have been dealt with and rejected by Illinois courts. See, People v. Watson, 118 Ill. 2d 62, (1987); People v. Lowe, 202 Ill. App. 3d 648 (4<sup>th</sup> Dist. 1990); People v. Cole, 47 Ill. App. 3d 775 (4<sup>th</sup> Dist. 1977). The Illinois Supreme Court and the Appellate Court noted that "[t]o meet constitutional scrutiny, classification under the statute must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons in similar circumstances shall be treated alike." Lowe, 202 Ill. App. 3d at 656, citing, Watson, 118 Ill. 2d at 62. "[G]overnments may recognize and act upon factual differences which exist between individuals, classes and events [citations omitted], and \*\*\* the police power may be broadly exercised by the legislature to preserve public health, morals, welfare and safety." Cole, 47

Ill. App 3d at 779-80.

13. In the present case, the defendant is charged with Aggravated Battery to a Peace Officer which is a class 2 felony for which the penalty is probation or imprisonment from 3 to 5 years. 730 ILCS 5/5-8-1 (West 1994). The Defendant acknowledges her previous convictions make her extendable to a maximum of 14 years imprisonment. (Def. Brief pg12).

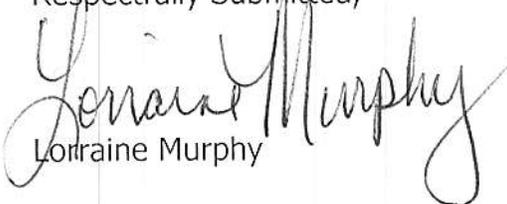
14. The defendant supports her due process and equal protection arguments with her version of the facts surrounding her 2005 and her 2007 battery convictions. Those convictions and the facts in those cases have nothing to do with whether or not the Aggravated Battery statute is unconstitutional.

15. The defendant further argues that because of her previous convictions the present statute violates the proportionate penalties protection under the Illinois Constitution. (Def. Brief pg 9-11). The Aggravated Battery statute section that the defendant is charged with in the present case has absolutely nothing to do with her prior convictions and there is no previous conviction element in the statute.

15. The range of punishment for the offense of Aggravated Battery to a Peace Officer in the present case is not unconstitutionally disproportionate so as to justify an interference with the legislatures judgment. Furthermore, the aggravated battery statute is in no way is cruel or degrading. The statute withstands defendant's equal protection challenge, and the defendant's fourth and fifth arguments are without merit.

WHEREFORE, for these reasons the People respectfully request that  
this Honorable Court deny the defendant's motion.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Lorraine Murphy". The signature is written in black ink and is positioned above the printed name.

Lorraine Murphy

Assistant State's Attorney