

NOTICE  
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2019 IL App (5th) 150510-U

NO. 5-15-0510

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 14-CF-540
	)	
COREY A. ALBERSON,	)	Honorable
	)	Jan V. Fiss,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE WELCH delivered the judgment of the court.  
Justices Chapman and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* The defendant, Corey A. Alberson, was not deprived of his due process rights when the trial court found him guilty of the lesser-included charge of aggravated assault. Additionally, the evidence was sufficient to support a conviction of aggravated assault.

¶ 2 On September 14, 2015, a bench trial was held, and the defendant, Corey A. Alberson, was found guilty of aggravated assault and was later sentenced to one year of court supervision. The issue raised on appeal is whether, based on the indictment, aggravated assault was a lesser-included offense of aggravated battery. For the reasons that follow, we affirm.

¶ 3

## BACKGROUND

¶ 4 On January 24, 2013, at approximately 11 p.m., the defendant, who was an Illinois State Police trooper, executed a traffic stop and a roadside strip search of Anthony Campbell at the intersection of Ninth Street and Lake Street in East St. Louis. The stop was predicated on a tip received from an informal informant. The discovery of evidence of the strip search from dash camera surveillance video led to the defendant's indictment for aggravated battery.

¶ 5 On September 3, 2015, the trial court held a bench trial on the charge of aggravated battery. We will reiterate only that evidence presented at trial necessary for this appeal.

¶ 6 Anthony Campbell testified that he was pulled over while on his way to purchase alcohol at a nearby gas station. His original intention was to purchase alcohol at Haymore's Liquor Store, but as he approached the store, it appeared closed, and he continued driving. After passing Haymore's, Campbell was stopped by officers Christopher Currier and the defendant. The defendant approached Campbell's vehicle, knocked on the window, and questioned Campbell. The defendant then directed Campbell to step out of the vehicle. The defendant directed Campbell to empty his pockets, which he did. Campbell was patted down by one of the officers and then returned to his vehicle. After returning to his vehicle, Campbell was again instructed to get out of his vehicle. Campbell then gave the officers permission to search his vehicle and trunk, which they did. Following the search of the vehicle, the defendant instructed Campbell to unbuckle his pants. The defendant flashed his flashlight down the front of

Campbell's pants. He then walked around to Campbell's backside, instructed him to hold up his sweatshirt, and pulled down Campbell's pants, exposing his buttocks. He shined his flashlight around and under Campbell's buttocks and down his pants. He then pulled Campbell's pants back up and continued his search. After approximately 20 minutes total, Campbell was allowed to leave.<sup>1</sup> Campbell testified that the defendant's actions left him feeling insulted and degraded.

¶ 7 Major Christopher Trame testified that he discovered the video of the traffic stop and subsequent strip search on March 14, 2013, while conducting a supervisory review of one of the defendant's VHS tapes from his squad car. In his review of the tapes, he observed the defendant conducting a strip search on the side of the road. After seeing the contents of the tape, then-Lieutenant Trame brought the video to his captain. The next day, a "complaint against member" form was completed and sent to the Division of Internal Investigations Illinois State Police.

¶ 8 Officer Christopher Currier, the other officer present during the search, testified that prior to the strip search, he patted down Campbell's person, including shaking his pant legs, and found no evidence of weapons or other contraband. He further testified that the defendant's search of Campbell's vehicle revealed no evidence of weapons, drugs, or other contraband. During the first search of Campbell's vehicle and his person, Officer Currier described Campbell as calm, friendly, and cooperative. After the initial searches of Campbell and his vehicle were unsuccessful in finding any evidence of criminal

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<sup>1</sup>The entirety of this traffic stop, including the strip search, was captured on video by the defendant's dash camera on his police vehicle and was reviewed by this court. We note, however, that the video had no sound as the defendant failed to turn on the audio from his belt.

activity, the defendant told Officer Currier that he was going to "do a better search basically or more of an actual search." He further testified that it was standard protocol to use a flashlight during a search at night for better visibility and that "in the Academy they teach you as you're searching, you shake their pants." Both the strip search and the additional search of the vehicle revealed no weapons, drugs, or other contraband, which frustrated the officers. According to Officer Currier, once they released Campbell and allowed him to leave, they spent an additional 20 minutes backtracking and searching the area Campbell had driven prior to being pulled over to search and determine whether he had "pitched anything out the window." However, they found no evidence of illegal activity.

¶ 9 The defendant testified that on the night in question, he exchanged several phone calls with Keith Lauderdale, an informal police informant. Lauderdale initiated contact with the defendant at approximately 4:49 p.m. There were more calls back and forth throughout the day, with the final call from the defendant to Lauderdale placed at 11:21 p.m., during the traffic stop. During one of the earlier calls, Lauderdale informed the defendant that he had spoken with Willie Butler, a known drug dealer, and that Butler told him he was going to "re-up" that night at Haymore's liquor store and would be receiving a large delivery of either crack or heroin. The drugs would be coming in from north St. Louis and were going to be delivered by a man named "Tony" in an older model white vehicle between approximately 11 p.m. and 12 a.m. Lauderdale described "Tony" as a heavysset black male, presumably carrying a weapon. At approximately 11 p.m., the defendant picked up Officer Currier from the Caseyville police department and they

proceeded to the area of 15th Street and Lynch Street in order to be in the area before the delivery of the drugs. The defendant and Officer Currier parked at the corner of 13th Street and Lynch Street, facing Haymore's, and turned the car's lights completely off so that the vehicle was "blacked out." After approximately 20 or 30 minutes, the defendant observed a vehicle traveling down Lake Avenue, away from Haymore's. When the vehicle reached the corner of Lake Street and 13th Street, the defendant observed an older model white vehicle matching Lauderdale's description. The defendant turned onto Lake Street and followed the vehicle from 13th down to 9th Street, at which point he activated his emergency lights. Once the white vehicle pulled over, the defendant exited his vehicle immediately, without calling in the stop or turning on the audio carrier on his belt. The defendant knocked on Campbell's window, asked him for his driver's license, and began questioning him. He then asked Campbell to step out of the vehicle. Once Campbell was outside of the vehicle, Officer Currier conducted a pat-down search of Campbell while the defendant looked into Campbell's vehicle using his flashlight. The defendant then ran a check on Campbell's driver's license. Finding no criminal record, the defendant attempted to make contact with Lauderdale, but he did not answer the phone call. The defendant then reapproached Campbell's vehicle and continued questioning him. Campbell then exited the vehicle a second time, at which point the defendant conducted a more thorough search of the vehicle, including the trunk. After searching the vehicle, the defendant searched Campbell's person, including pulling down the back of his pants and looking down the seam with his flashlight. After finding no contraband on Campbell's person, the defendant searched the engine compartment of his

car. Finding nothing in the engine compartment, the defendant once more searched the driver's side cab of Campbell's vehicle. Again finding nothing, the defendant told Campbell he was free to leave. Once Campbell left, the defendant walked the route Campbell had driven prior to being pulled over, approximately four to five blocks, searching for any contraband that had potentially been thrown out of the passenger window by Campbell. After finding nothing, the defendant and Officer Currier left the area. The defendant admitted that he neither called in the stop nor filed an e-stop for this incident.

¶ 10 On September 14, 2015, the trial court issued a written order finding the defendant guilty of the lesser-included charge of aggravated assault. As to the first element of aggravated assault, the court found that:

"the [State's] Exhibit 1A captures this search of Mr. Campbell by [the] defendant. There is no speculation or supposition as to what occurred. The incident is memorialized in a video recording that clearly depicts [the] defendant beginning to lower the back of Mr. Campbell's pants while illuminating said area with a flashlight, then pulling up Mr. Campbell's clothing and having Mr. Campbell hold up his clothing so it no longer obstructs [the] Defendant's search, finally pulling down Mr. Campbell's pants fully exposing Mr. Campbell's buttocks as [the] Defendant continues to inspect said area with his flashlight.

Specifically, the Court finds that when the defendant had Mr. Campbell hold up his clothing, and then [the] defendant pulled down Mr. Campbell's pants exposing Mr. Campbell's entire intergluteal cleft to the horizontal gluteal crease while inspecting same with a flashlight, the Defendant *at a minimum* placed Mr. Campbell in reasonable apprehension of a battery."

¶ 11 The trial court went on to find that the defendant lacked authority to conduct the strip search pursuant to statute because Campbell was not under arrest. See 725 ILCS 5/103-1(c)-(f) (West 2014). The court found that no officer safety exigency existed to

warrant the defendant's actions. Additionally, based on the testimony of Campbell and the court's review of the video, particularly the defendant's commanding gestures, it found that the search of Campbell was conducted without his consent.

¶ 12 Therefore, "[t]he Court [found that the] Defendant's search constituted knowing conduct without lawful authority that placed Mr. Campbell in reasonable apprehension of receiving physical contact of an insulting or provoking nature."<sup>2</sup>

¶ 13 ARGUMENT

¶ 14 The defendant argues that he was denied due process in that he was not given notice of the charges brought against him where the trial court *sua sponte* found him guilty of the lesser-included offense of aggravated assault. Specifically, the defendant argues that the element of placing a person in reasonable apprehension of receiving a battery cannot be reasonably inferred from the language of his indictment.

¶ 15 A defendant subject to criminal prosecution has a fundamental due process right to notice of the charges brought against him. *People v. Kennebrew*, 2013 IL 113998, ¶ 27. Though a defendant cannot be convicted of a crime for which he was not charged, a defendant may "be convicted of an uncharged offense if it is a lesser-included offense of a crime expressly charged in the charging instrument [citation], and the evidence adduced at trial rationally supports a conviction on the lesser-included offense and an acquittal on the greater offense [citation]." (Internal quotation marks omitted.) *Id.*; see also *People v.*

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<sup>2</sup>It is undisputed that the search occurred on a public way and was therefore aggravated. 720 ILCS 5/12-2(a) (West 2014).

*Novak*, 163 Ill. 2d 93, 105 (1994). Whether an offense is a lesser-included charge is a matter of law that is reviewed *de novo*. *Kennebrew*, 2013 IL 113998, ¶ 18.

¶ 16 In Illinois, in order to determine whether a charge is a lesser-included offense, we must use the charging instrument approach. *People v. Clark*, 2016 IL 118845, ¶ 31. Under this approach, "the lesser offense need not be a 'necessary' part of the greater offense, but the facts alleged in the charging instrument must contain a 'broad foundation' or 'main outline' of the lesser offense. [Citations.]" *Kennebrew*, 2013 IL 113998, ¶ 30. "The indictment need not explicitly state all of the elements of the lesser offense as long as any missing element can be reasonably inferred from the indictment allegations." *People v. Miller*, 238 Ill. 2d 161, 166-67 (2010).

¶ 17 The charging instrument approach requires the court to employ a two-step test. *Kennebrew*, 2013 IL 113998, ¶ 30. First, we must determine whether the crime for which the defendant was ultimately convicted was a lesser-included offense of the crime charged in the indictment. *Id.* Second, we must examine the evidence presented at trial to determine whether the evidence was sufficient to uphold a conviction of the lesser offense. *Id.* This test must be applied on a case-by-case basis "using the factual description of the charged offense in the indictment." *People v. Kolton*, 219 Ill. 2d 353, 367 (2006).

¶ 18 In *Clark*, the Illinois Supreme Court applied this test, finding in that case that the offenses of vehicular hijacking with a dangerous weapon other than a firearm and armed robbery with a dangerous weapon other than a firearm were not lesser-included offenses of aggravated vehicular hijacking and robbery with a firearm. *Clark*, 2016 IL 118845,



¶ 38. The court reasoned that the plain language of the statutes defining the offenses was mutually exclusive of one another and therefore the elements of the uncharged offenses were not explicitly stated in the indictment. *Id.* Furthermore, the charging instrument read "possession of a firearm during the commission of the offenses," and therefore could not be construed so broadly as to include possession of something other than a firearm. *Id.*

¶ 19 In applying the above two-part test to the case at bar, we must look to the statutory language of the offense of aggravated assault to determine whether every element necessary to establish the crime of aggravated assault was alleged in the indictment, and if not, whether any element not explicitly set forth can be reasonably inferred. A person commits the offense of assault<sup>3</sup> "when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery." 720 ILCS 5/12-1(a) (West 2014).

¶ 20 Here, the indictment alleges:

"while standing on a public way, \*\*\* the defendant knowingly made physical contact of an insulting or provoking nature with Anthony Campbell in that the defendant pulled down the pants of Anthony Campbell without his consent exposing his buttocks and visually examined with a flashlight the naked buttocks of Anthony Campbell while holding his pants down."

¶ 21 Assault can be broken down into two general elements. First, the defendant must have knowingly engaged in the conduct. Second, the defendant's conduct must have placed another in reasonable apprehension of receiving a battery. The first element of

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<sup>3</sup>As previously noted, it is uncontroverted that the incident occurred on a public way and therefore the aggravated element is satisfied. See 720 ILCS 5/12-2(a) (West 2014).

assault is explicitly stated in the words of the indictment in that it reads "the defendant knowingly made physical contact \*\*\*."

¶ 22 As for the second element, the indictment states that "the defendant pulled down the pants of Anthony Campbell without his consent exposing his buttocks and visually examined with a flashlight the naked buttocks of Anthony Campbell while holding his pants down." It is reasonable to infer that this conduct by the defendant would place a person in reasonable apprehension of receiving a battery.

¶ 23 Here, the language "exposing his buttocks and visually examined with a flashlight the naked buttocks of Anthony Campbell while holding his pants down" reasonably implies the second element of assault for the same reason. It would be reasonable for a person to be in apprehension of receiving a battery in this situation because of the potential that the defendant will take further liberties with Illinois State Police policies. It is reasonable to be in fear of receiving a battery while one's pants are being held down exposing one's buttocks on the side of a public roadway. Furthermore, it is reasonable to believe that an officer willing to, without legal justification, expose a man's buttocks on the side of the road and hold his pants down, would further violate both the law and/or police protocol in conducting a search.<sup>4</sup> Therefore, the first step of the charging instrument approach is satisfied in that the words of the indictment either explicitly or reasonably implied all of the elements of the charge of aggravated assault.

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<sup>4</sup>To that point, we find the defendant's argument that this conduct was instead an alleged battery and therefore Campbell could not be in further fear of receiving another battery to be unpersuasive.

¶ 24 As to the second prong of the test, whether the evidence presented at trial was sufficient to uphold a conviction of the lesser offense, we find this step is also satisfied. It is clear from this court's review of the record, and especially the footage of the stop, that the defendant acted knowingly, and furthermore, that Campbell was placed in reasonable apprehension of receiving a battery where his pants were pulled down and his buttocks exposed on the side of the road after he had fully cooperated with the officers, emptied his pockets, consented to a search of his vehicle, and was subjected to a pat-down search. Accordingly, we find that the two-part charging instrument test has been satisfied.

¶ 25

#### CONCLUSION

¶ 26 Therefore, the defendant's conviction for aggravated assault is affirmed as he was not denied due process.

¶ 27 Affirmed.