

No. 118728, People v. Cherry.

This case involves Illinois' armed violence statute (720 ILCS 5/33A-2). The armed violence statute provides more severe penalties for a defendant who personally discharges a firearm while committing any felony defined by Illinois law except "any offense that makes the possession or use of a dangerous weapon either an element of the base offense, [or] an aggravated or enhanced version of the offense[.]" (720 ILCS 5/33A-2(b)).

In this case, the defendant's armed violence conviction was predicated on aggravated battery. The appellate court found that the offense of aggravated battery with a firearm is an enhanced version of aggravated battery, and therefore aggravated battery is an offense that makes the use of a dangerous weapon an enhanced version of aggravated battery. Therefore, the appellate court vacated defendant's conviction for armed violence.

The State noted that defendant's predicate aggravated battery was based on his battery causing "great bodily harm" as the aggravating factor, not the use of a weapon. (720 ILCS 5/12-4(a)(West 2010)). To that end, the State cited cases finding that section 12-4(a) is a proper predicate felony for armed violence, as the presence or use of a weapon is not an element of aggravated battery causing great bodily harm. The appellate court rejected this argument, noting that these cases predate certain amendments to the armed violence statute. The appellate court found that the plain language of the armed violence statute prohibits predicating armed violence on any part of the aggravated battery statute.

The State is appealing this ruling to the Illinois Supreme Court.