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2011 IL App (3d) 100121-U

Order filed October 18, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff-Appellee,

v.

RICHARD J. FIELDS,

Defendant-Appellant.

) Appeal from the Circuit Court
) of the 14th Judicial Circuit,
) Whiteside County, Illinois,
)
) Appeal No. 3-10-0121
) Circuit No. 07-CF-274
)
) Honorable
) Michael R. Albert,
) Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence established that defendant, a convicted felon, unlawfully possessed a bludgeon, being a modified souvenir baseball ball bat. Defendant's conviction unlawful possession of a weapon by a felon is affirmed.

¶ 2 Defendant, Richard J. Fields, was convicted of two counts of aggravated battery (720 ILCS 5/12-4(b)(1) (West 2006)) and one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2006)). Defendant appeals his conviction for unlawful possession of a weapon by a felon on the grounds that the modified souvenir baseball bat did not qualify as

a bludgeon pursuant to section 24-1 of the Criminal Code of 1961 (Code). 720 ILCS 5/24-1 (West 2006). We affirm.

¶ 3

FACTS

¶ 4 Defendant was arrested for striking Douglas and Dustin Knapp in the head with a modified souvenir baseball bat on the night of June 9, 2007. At trial, Erin Knapp testified that defendant, his girlfriend, Erin Knapp, and her boyfriend, Josh Denning, lived together in the same household. According to Knapp's testimony, she and Denning were engaged in an argument on June 9, 2007. Due to this disagreement, Denning telephoned Erin's parents to request them to come to the house to take Erin away from the house which she shared with defendant and Denning.

¶ 5 Erin's father, Douglas Knapp, testified that after receiving Denning's telephone call, Douglas picked up his son, Dustin, and both Douglas and Dustin traveled to defendant's house. Once at the home, Douglas saw defendant waiting outside on the porch. Douglas testified that defendant had a "wooden club" or what looked like a "policeman's nightstick" in his hand. Douglas asked defendant to get his daughter from inside the house. Defendant responded to this request by telling Douglas to leave the premises. However, Douglas explained that he stayed on the property because he was concerned about Erin.

¶ 6 Dustin testified to a similar version of these events. When Douglas asked defendant to get his daughter, Dustin heard defendant tell Douglas to get off his property. Dustin testified that he told defendant that he wanted to speak with his sister, Erin, and did not want to talk to defendant. Dustin also noticed that defendant had a "bat [or] a nightstick" in his hand which was shaped like a billy club, and defendant was hitting this object against his hand.

¶ 7 Erin testified that she heard defendant tell her father and brother that they should leave because he did not want any problems at his residence. According to Erin, when Douglas and Dustin turned to leave the property, defendant struck Dustin in the head with the souvenir baseball bat causing Dustin to fall to the ground. When Douglas was helping his injured son to the car, defendant walked towards Douglas and also struck Douglas in the head with the bat.

¶ 8 Erin described defendant's bat as being 12 inches long and wrapped in tape. She testified that she saw defendant use the bat when playing with his dog on previous occasions.

¶ 9 Denning, Erin's boyfriend and defendant's housemate, testified that the bat was a little Louisville Slugger bat. According to Denning, the bat was approximately 10 to 14 inches in length, with one end smaller than the other.

¶ 10 Patrolman Charles Bowman testified that on June 9, 2007, he spoke with Douglas and Dustin at the emergency room. The officer photographed their injuries. The photographs were admitted into evidence. These photographs depicted lacerations on the back of Douglas' head and documented that the left side of Dustin's forehead was swollen and discolored between his eyebrow and hairline.

¶ 11 Bowman also testified that he had previously observed defendant walking around town while carrying what he believed to be a "club and a pouch on [his] side" with a "baseball bat *** wrapped in electrical tape." However, Bowman testified that he did not arrest defendant for possession of this small bat.

¶ 12 Officer Amy Meyer testified that when she arrested defendant on June 11, 2007, for these offenses, she located a small, child-sized bat in a pouch attached to his belt. At the time of his arrest, defendant told Meyer that this bat was not the same bat that he used to strike Douglas and

Dustin. Defendant advised the officer that the bat he possessed at the time of his arrest was longer than the bat he used on June 9, 2007, but very similar to the other bat.

¶ 13 The State introduced a photograph of the miniature bat that Meyer confiscated from defendant on the date of his arrest. The photograph depicted a bat that was slightly less than 18 inches in length and was wrapped with electrical tape.

¶ 14 Defendant testified concerning the events on June 9, 2007. He stated that he was sitting on the porch when Douglas and Dustin approached him. Defendant asked them to "please get off my property" and to "go across the street with that." In spite of defendant's requests, Douglas allegedly lunged at him, and defendant hit Douglas with the bat in self-defense.

¶ 15 When asked why he possessed the small baseball bat, defendant offered several explanations. First, he claimed that his stepson and stepdaughter played with the bats and color-coded them. Defendant also testified that he personally played with the bats by throwing them around the yard for his dog to bite on. Lastly, defendant stated that the bat was wrapped in tape because it had a crack in it.

¶ 16 At the close of the case, the court noted that there was a discrepancy in the witnesses' stories and specifically found that defendant was not a credible witness. The court concluded that "it [was] clear that [defendant] was in possession of a weapon." Consequently, the court found defendant guilty of two counts of aggravated battery and one count of unlawful possession of a weapon by a felon. Defendant was sentenced to three concurrent terms of seven years in prison.

¶ 17 Defendant filed a timely notice of appeal.

¶ 18

ANALYSIS

¶ 19 It is unlawful for a person convicted of a felony to knowingly possess any weapon prohibited under section 24-1.1 of the Code. 720 ILCS 5/24-1.1(a) (West 2006). The list of unlawful weapons in section 24-1 includes a bludgeon. 720 ILCS 5/24-1 (West 2006). A bludgeon is a "stick with one end loaded or thicker or heavier than the other end." *People v. Tate*, 68 Ill. App. 3d 881, 882 (1979).

¶ 20 Defendant does not dispute that he was a convicted felon or possessed a souvenir baseball bat wrapped in electrical tape at the time of the aggravated batteries. At trial, defendant asserted he used the bat in self-defense. On appeal, defendant disputes whether the souvenir baseball bat is an unlawful weapon *per se* because the object he possessed in this case had a legitimate use as a child's or dog's toy before he was forced to use this legitimate object in self-defense. Thus, defendant argues that his conviction of unlawful possession of a weapon by a felon should be reversed.

¶ 21 The parties agree that whether a souvenir baseball bat wrapped in electrical tape qualifies as a bludgeon presents a question of law, which we review *de novo*. *People v. Kohl*, 364 Ill. App. 3d 495 (2006).

¶ 22 We are unpersuaded by defendant's legitimate use argument. It is true that any number of items that fit the description of a bludgeon, as stated in *Tate*, might have a peaceful use, such as a souvenir, or a dog's toy. However, in this case the trial court received testimony that this particular souvenir bat was completely wrapped in electrical tape, was larger on one end, and was in defendant's hand when Erin's father and brother arrived in response to Denning's

telephone call. The court also received testimony that defendant routinely carried other similar bats in a pouch on his belt when in public.

¶ 23 During trial, defendant did not claim that he either acquired or retained the object as a memento or souvenir from some special occasion. Here, the testimony of the witnesses established that the object was not in its original condition but was adapted for some other purpose with electrical tape. In fact, defendant testified that the electrical tape allowed the bat to serve as color-coded toys for his stepchildren. Defendant also explained the bat served as a bite stick for his dog. Obviously, the trial court found defendant's explanation to be less than credible and rejected the testimony that the modified souvenir bat had a legitimate purpose as a child's or dog's toy. Thus, the facts introduced to the trial court do not support the legitimate use argument.

¶ 24 After hearing the testimony of the witnesses describing the object and after viewing the photograph of a similar bat carried by defendant on the date of his arrest, the trial court concluded that the modified miniature bat fit the statutory definition of a *per se* bludgeon for purposes of the charge at issue. This finding is supported by the record. Therefore, we conclude that the court did not err by finding defendant guilty of unlawful possession of a weapon by a felon. 720 ILCS 5/24-1.1 (West 2006).

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of Whiteside County is affirmed.

¶ 27 Affirmed.