

No. 1-13-2739

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 2736
	)	
TENESHIA TIDWELL,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Judgment entered on defendant's conviction for aggravated battery affirmed over her claim that the evidence was insufficient to prove that she used a deadly weapon; fines and fees order modified.

¶ 2 Following a bench trial, defendant Teneshia Tidwell was found guilty of aggravated battery and sentenced to two years' probation. On appeal, defendant contends that the evidence was insufficient to prove beyond a reasonable doubt that she used a deadly weapon while committing a battery; and, accordingly, that her conviction for aggravated battery should be

reduced to simple battery. She also contests the propriety of certain fines and fees assessed against her.

¶ 3 The record shows that defendant, her husband, Willie Tidwell, and her son, Jaymie Madge, were tried jointly on charges of aggravated battery and unlawful restraint. The charges were made in connection with an incident that took place the evening of December 7, 2011, in the apartment building in which they lived on the south side of Chicago.

¶ 4 At trial, Jennifer Smith testified that she and her family lived on the second floor of the apartment building at 7925 South Trumbull Avenue, and defendant lived on the third floor with her family. That evening, she went to the laundry room in the basement of the building to do her laundry, where there were three washers and three dryers. Only one of the dryers worked, however, and after waiting for that dryer to finish, she removed the clothes that were inside, placed them in a nearby laundry basket, and put her clothes in the dryer. She returned to her apartment on the second floor, and several minutes later heard defendant walk by her door speaking to someone else while walking down to the basement. Shortly thereafter, she heard defendant come back upstairs laughing.

¶ 5 Smith returned to the laundry room and discovered that the clothes she had put in the dryer had been thrown on the floor, and other clothes had been put into the working dryer. When Smith started to remove those clothes from the dryer, she was hit twice on her back, turned, and saw defendant standing there holding a wooden, black, adult-sized baseball bat, and defendant's husband and son standing with her. Defendant repeatedly hit her with the bat on the left side of her body and left arm, and Smith picked up a laundry basket to protect herself. Defendant broke a large hole in the bottom of the basket by hitting it with the bat, and Smith grabbed defendant's arm and shirt to prevent her from swinging the bat. Defendant then shouted "get her" and Madge

jumped on Smith's back and started punching her. Defendant, Madge, and Willie then held Smith down and punched her before retreating upstairs.

¶ 6 Smith returned to her apartment where she called police and was eventually taken to the hospital. An X-ray at the hospital showed that her ring finger was broken. She also had several contusions and bruises on her back, shoulders, and left arm, and was prescribed Vicodin for pain. On December 9, 2011, she spoke to Chicago police detective Brian Lutzow and identified defendant in a photo array and a lineup. On cross-examination, Smith stated that defendant was using an "adult-sized bat" and "taking full baseball swings" while hitting her. She also stated that she did not get along with defendant or her family.

¶ 7 Detective Lutzow testified that when he met with Smith on December 9, 2011, she showed him her injuries which consisted of bruises on her back, shoulders, and arms, and she was wearing a splint on one of her fingers. On January 20, 2012, he and his partner, Detective Minelli, met with defendant who told them that when she went into the laundry room on December 7, 2011, she saw that her clothes had been pulled out of the dryer and thrown around the room. Defendant further told them that Smith came at her with a laundry basket and that she grabbed a metal pipe that was on the basement floor and struck Smith twice with it. She also told the detectives that she wanted to fight, and that she did not suffer any injuries. Assistant State's Attorney Kwilos then joined the detectives and defendant, and after further interrogation defendant stated, "I hit her with the baseball bat. I beat her ass." On cross-examination, Detective Lutzow stated that during the second interview with defendant, for which ASA Kwilos was present, he told her that her story had "inconsistencies," and defendant became agitated.

¶ 8 The parties stipulated that, if called, William P. Walsh would testify that he is a physician employed at Little Company of Mary Hospital, and that he treated Smith on December 8, 2011.

He would further testify that he examined her and noted swelling and tenderness on her left shoulder and elbow, pain during movement, and a spiral fracture to her left ring finger. He also noted a large "ecchymotic area" on Smith's lower back that was "consistent with a mark that could be left by a bat" and prescribed her Vicodin for pain.

¶ 9 The court granted the joint defense motion for a directed finding on the aggravated unlawful restraint count, but denied it as to the counts of aggravated battery.

¶ 10 Madge testified that he did not learn what happened between defendant and Smith until after the fact. He left the apartment with his father when they heard a commotion downstairs. On their way to the laundry room, they met defendant who ushered them back upstairs into the apartment where defendant called police. On cross-examination, Madge stated that defendant did not tell him or Willie what happened before she called police. He also stated that police arrived about an hour after defendant called and knocked on the door to their apartment, but he did not see anyone open the door or speak to police.

¶ 11 Defendant testified that on December 7, 2011, she put her clothes in the working dryer and when she returned 15 minutes later, she discovered that the clothes had been scattered around the floor. She took Smith's clothes out of the dryer, threw them around the room, and put her clothes back inside the dryer, before returning to her apartment. When she returned 15 minutes later, she saw Smith, who tried to hit her with a laundry basket. The two women started "tussling," and defendant knocked the basket from Smith's hands, picked up a plastic pipe from the basement floor, and hit Smith with it two or three times. Smith fell back against the washing machine, defendant kicked her, and then started going back up stairs where she saw Madge and Willie. She ushered them back into the apartment and called police. Officers arrived 45 minutes later and she spoke to them while Willie was present.

¶ 12 She further testified that on December 11, 2011, Willie told her there was a warrant out for her arrest, so she went to the police station, and was released, then appeared in court on January 20, 2012, and was told that her case was dismissed. Defendant and her family left the courthouse, but were re-arrested. She was then interviewed by Detective Lutzow who told her she was a liar.

¶ 13 On cross-examination, defendant stated that during the scuffle, Smith attempted to pick up a large, plastic basin, but was unable to do so before defendant hit her with the pipe. She also stated that when police arrived, she let them in immediately after they knocked, and that she and Madge both spoke to the officers. They told her that Smith had to go to the hospital, and that she should not open the door for any other officers. She further stated that when she spoke with Detective Lutzow, he called her a liar and she became "irate," but she denied telling him that she "beat her ass," or that she used a bat. She also denied telling Detective Lutzow that she used a metal pipe instead of a plastic pipe, but acknowledged that she punched Smith during the fight.

¶ 14 Following closing arguments, the court found defendant guilty of aggravated battery, and found Willie and Madge not guilty of all charges. In reaching its conclusion, the court stated that it had no doubt that a bat was a deadly weapon as it was used in this case. The court further stated that Smith's testimony that defendant wielded a bat was corroborated by the photos of her injuries and the broken laundry basket, the stipulation of Doctor Walsh, and the defensive nature of Smith's injuries, which were consistent with someone who was protecting herself or fleeing, and not the aggressor. The court also found defendant's use of a bat to be corroborated by her outburst to Detective Lutzow, wherein she stated that she used a bat to beat Smith. After considering the factors in mitigation and aggravation, the court sentenced defendant to two years' probation.

¶ 15 In this appeal from that judgment, defendant contends that the evidence was insufficient to prove that she used a deadly weapon beyond a reasonable doubt. She maintains that the object she used to hit Smith was never recovered, and the State failed to present adequate evidence that the object used was likely to cause death or great bodily injury.

¶ 16 Where defendant challenges the sufficiency of the evidence to sustain her conviction, the reviewing court must consider whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Jordan*, 218 Ill. 2d 255, 270 (2006). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to give their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 17 To sustain defendant's conviction for aggravated battery in this case, the State was required to prove that defendant, while committing a battery, used a deadly weapon. 720 ILCS 5/12-3.05(f)(1) (West 2012). Defendant does not challenge the proof to establish her guilt of battery, but claims that the evidence was insufficient to prove that she used a deadly weapon.

¶ 18 A deadly weapon is an instrument that is capable of producing death (*People v. Blanks*, 361 Ill. App. 3d 400, 411 (2005)) or great bodily injury (*People v. Stanley*, 369 Ill. App. 3d 441, 445 (2006)). An instrument that is not considered *per se* deadly may become a deadly weapon depending on the manner in which it is used. *Blanks*, 361 Ill. App. 3d at 411. "When the

character of the weapon is doubtful or the question depends on the manner of its use, it is a question for the jury to determine from a description of the weapon, from the manner of its use, and the circumstances of the case." *People v. Dwyer*, 324 Ill. 363, 365 (1927).

¶ 19 Viewed in a light most favorable to the prosecution, the evidence presented in this case shows that there was an altercation between Smith and defendant in the laundry room of their apartment building. Smith was struck twice on the back, then repeatedly struck on the left side of her body by defendant who was taking "full baseball swings" with an object Smith described as a wooden, black, adult-sized baseball bat. Plaintiff attempted to use a plastic laundry basket to protect herself, and when defendant struck the basket with the bat, it broke. Smith was eventually able to grab defendant's arm to prevent her from swinging the bat, and defendant ultimately fled from the laundry room. Smith called police, was taken to the hospital, and the treating physician described her injuries to her lower back as "consistent with a mark that could be left by a bat." The evidence of the bat, the manner of its use, and the resulting injuries, were sufficient to allow a reasonable trier of fact to find that defendant used a deadly weapon while committing a battery. *Dwyer*, 324 Ill. at 365.

¶ 20 Defendant contends, however, that there was no objective evidence of what the weapon actually was, or its weight and hardness, because the object was never recovered. Defendant also maintains that Smith's injuries are such that they would not have been caused by an object capable of causing death or serious bodily injury.

¶ 21 We note, initially, that it is not necessary that more severe injuries be shown where the court has determined that the weapon used was a deadly weapon. *Blanks*, 361 Ill. App. 3d at 412. Defendant argues, nonetheless, that the finding in *Blanks* is not applicable here because the reviewing court in that case grounded its reasoning on the fact that it had already determined that

the weapon used in that case was a deadly weapon. Defendant maintains that there can be no such finding in this case because the object was never entered into evidence, and there is insufficient objective evidence of its character. We disagree. In *Blanks*, the court also found that even though the weapon was never entered into evidence, there was sufficient evidence from which a reasonable trier of fact could conclude that the object was a deadly weapon based on the victim's description of the object, and the manner in which defendant used it. *Id.*

¶ 22 Here the victim testified that defendant used a baseball bat to strike her. Although a baseball bat is not *per se* a deadly weapon, it may become one based on how it is used. *People v. Lee*, 46 Ill. App. 3d 343, 347-48 (1977). In this case, Smith testified that defendant was taking "full baseball swings" at her with the "adult-sized baseball bat," which supports the court's finding that it was being used as a deadly weapon. Although defendant contends that Smith's testimony was unbelievable given the nature of her injuries, the trial court found, in the circumstances presented, that Smith's testimony regarding defendant's use of a bat was corroborated by the doctor's statement regarding the injuries she sustained, defendant's outburst to Detective Lutzow, and the condition of the laundry basket. In light of this evidence, we find that the court could reasonably conclude that defendant used a baseball bat as a deadly weapon against Smith (*Lee*, 46 Ill. App. 3d at 347-48) and there is no basis for disturbing that finding.

¶ 23 Defendant further contends that Smith's testimony is incredible given the fact that the trial court did not find Willie and Madge guilty despite Smith's testimony that they contributed to her injuries. It is well-settled, however, that the trial court may believe portions of the defendant's case and portions of the State's case, and since Smith's testimony supports the ruling made by the trial court, we will not speculate that the court did not believe the totality of her testimony. *People v. Reed*, 80 Ill. App. 3d 771, 781 (1980). However, as noted, the trial court



was charged with making the credibility determinations and resolving any inconsistencies in the testimony. *Sutherland*, 223 Ill. 2d at 242. Here, the trial court determined, on the evidence presented at trial, that the bat was a deadly weapon as used in this case by defendant. That conclusion finds support in the photographs of Smith's injuries, the broken laundry basket, the stipulated testimony of Doctor Walsh regarding her injuries, and Smith's testimony of the incident. It is not our prerogative to reweigh this evidence (*id.*); and we thus find that the evidence presented, and the reasonable inferences therefrom, were sufficient to allow a reasonable trier of fact to conclude that defendant used a deadly weapon and was proved guilty of aggravated battery beyond a reasonable doubt (*Blanks*, 361 Ill. App. 3d at 411).

¶ 24 Defendant next contends, the State concedes, and we agree, that the trial court erroneously assessed the \$5 Electronic Citation Fee and the \$2 Public Defender Fee. Defendant was not convicted of an offense that triggers the assessment of the \$5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2012)), and since defendant was represented by private counsel at trial, she is not liable for the \$2 Public Defender Fee (55 ILCS 5/3-4012 (West 2012)).

¶ 25 Accordingly, we order the clerk of the circuit court of Cook County to modify defendant's fines and fees order to reflect the vacation of the \$5 Electronic Citation Fee and the \$2 Public Defender Fee; and we affirm the judgment of the circuit court of Cook County in all other respects.

¶ 26 Affirmed, fines and fees order modified.