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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 10 C4 41128
)	
JORGE GONZALEZ,)	
)	The Honorable
Defendant-Appellant.)	Noreen Valeria-Love,
)	Judge Presiding.
)	

PRESIDING JUSTICE PUCINSKI delivered the judgment of the court.
Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to find that defendant unlawfully possessed a bludgeon, when he possessed a crowbar; defendant's conviction of unlawful use or possession of a weapon by a felon affirmed; and mittimus corrected.

¶ 2 After a bench trial, defendant Jorge Gonzalez was convicted of three counts of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)) and sentenced to six years in prison. Defendant appeals his conviction on the grounds that the crowbar he possessed did not constitute a bludgeon for purposes of section 24-1(a)(1) of the Criminal Code

of 2010 (Criminal Code) (720 ILCS 5/24-1(a)(1) (West 2010)). He also requests that the mittimus be amended to reflect the correct name of the offense of which he was convicted.

¶ 3 Defendant was charged with violation of section 24-1.1(a), unlawful use or possession of a weapon by a felon, and the information specified that the item that defendant possessed was a bludgeon. The evidence at trial was uncontroverted that defendant possessed a crowbar at the time of his arrest.

¶ 4 At trial, Officer Frank Savaglio testified that he was alerted to a disturbance on the 5600 block of Cermak Road around 8:32 p.m. on October 15, 2010. Upon arriving, he observed defendant and an unidentified man chasing after a third person while yelling gang slogans. Savaglio knew that defendant and the person he was chasing were members of rival gangs. He was also aware that defendant was a convicted felon because he assisted in the prosecution of a previous case involving defendant. Defendant was carrying a metal object in his right hand during the chase, and as he neared the person he was chasing, raised the object as if he was preparing to strike him. Once Savaglio announced his presence, defendant and the unidentified man ran away from him and in the direction of a waiting car. Defendant entered the car on the front passenger side, and Savaglio observed him conceal something under the seat. As the car started to pull away, Savaglio immediately pulled his squad vehicle behind the car and it stopped. Savaglio then exited his vehicle, detained the passengers, and proceeded to search the car. He recovered the object defendant had been holding during the chase under the front passenger seat, and placed defendant under arrest. After defendant was arrested, without being prompted, he stated, "Why would I use my fist if I could just beat his ass with this tire iron?"

¶ 5 Officer Savaglio admitted that he mistakenly referred to the object he recovered from defendant as a tire iron at the preliminary hearing; however, he described the object as a crowbar,

made of metal and approximately 18 inches in length, weighing about five to seven pounds, and curved at one end with a pointed blunt edge at the other end. Officer Jose Rodriguez testified that he was the inventory officer who retrieved the object from the evidence locker where Officer Savaglio had placed it for safekeeping.

¶ 6 For purposes of establishing defendant's status as a felon, the State presented three certified copies of conviction for aggravated unlawful use of a weapon, aggravated intimidation, and aggravated fleeing and eluding.

¶ 7 The court found that the object defendant was carrying was a two-pound metal crowbar, approximately 18 inches in length with a "point on one end of [it] and a hook on the other end" and that "the curved end is heavier." The court stated that defendant intended to use the crowbar as a bludgeon because he was chasing a rival gang member and raised the object as he got closer to the person. The court found defendant guilty on all three counts of unlawful use or possession of a weapon by a felon, merged the offenses into a single count, and sentenced him to six years in prison.

¶ 8 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt of unlawful use or possession of a weapon by a felon because he possessed a crowbar, rather than a bludgeon within the intendment of section 24-1(a)(1) (720 ILCS 5/24-1(a)(1) (West 2010)) of the Criminal Code. Defendant does not dispute that he is a convicted felon, or that he possessed a crowbar at the time of his arrest. Rather, he argues that the legislature did not intend to include any club-like item that could be used as a bludgeon, and where the indictment specifically charged him with possession of a bludgeon and the evidence adduced at trial showed only that he possessed a crowbar, the State failed to prove his guilt beyond a reasonable doubt. The State responds that the trial court properly determined that the

crowbar was a bludgeon under the circumstances of this case where the officer observed defendant with a raised crowbar chasing an individual.

¶ 9 Our review of this issue involves a two-part inquiry. First, we must determine the meaning of the term "bludgeon"; second, we must determine whether the State met its burden of proof in light of that definition. *People v. Davison*, 233 Ill. 2d 30, 40 (2009).

¶ 10 The first part of our inquiry is one of statutory interpretation, which we review *de novo*. *People v. Koen*, 2014 IL App (1st) 113082, ¶ 30. The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Davison*, 233 Ill. 2d at 40. The best indication of legislative intent is the plain and ordinary meaning of the statutory language, and we will apply the statute without resort to further aids of statutory construction where the language is clear and unambiguous. *Davison*, 233 Ill. 2d at 40. However, where the statute contains undefined terms, it is appropriate to use a dictionary to ascertain the plain and ordinary meaning of those terms (*Davison*, 233 Ill. 2d at 40), and we will assume that the undefined terms were intended to have their ordinary and popularly understood meanings, unless doing so would defeat the perceived legislative intent (*People v. Fink*, 91 Ill. 2d 237, 240 (1982)). Additionally, we read and interpret the statute as a whole so that no part is rendered meaningless or superfluous. *People v. Lloyd*, 2013 IL 113510, ¶ 25. We may also consider the consequences of construing the statutory language one way, rather than another, and, in doing so, we presume the legislature did not intend the statute to have absurd, inconvenient, or unjust consequences. *Koen*, 2014 IL App (1st) 113082, ¶ 30.

¶ 11 Section 24-1.1 of the Criminal Code reads in pertinent part:

"Unlawful Use or Possession of Weapons by Felons ***.

(a) It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode or fixed place of business any weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction." 720 ILCS 5/24-1.1(a) (West 2010).

¶ 12 Incorporated therein, section 24-1 of the Criminal Code reads in pertinent part:

"Unlawful Use of Weapons.

(a) A person commits the offense of unlawful use of weapons when he knowingly:

(1) Sells, manufactures, purchases, possesses or carries any bludgeon, black-jack, slung-shot, sand-club, sand-bag, metal knuckles or other knuckle weapon regardless of its composition, throwing star, or any knife, commonly referred to as a switchblade knife, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or a ballistic knife, which is a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material or compressed gas; or

(2) Carries or possesses with intent to use the same unlawfully against another, a dagger, dirk, billy, dangerous knife, razor, stiletto, broken bottle or other piece of glass, stun gun or taser or any other dangerous or deadly weapon or instrument of like character[.]" 720 ILCS 5/24-1(a)(1), (2) (West 2010)).

¶ 13 The legislature does not define the term "bludgeon" and courts have been reluctant to develop a broad definition of the term. *People v. Kohl*, 364 Ill. App. 3d 495, 502 (2006); accord *People v. Perry*, 397 Ill. App. 3d 358, 361-362 (2010). "Webster's Third New International Dictionary 240 (1971) defines 'bludgeon' as 'a short stick used as a weapon usu. having one

thick, heavy or loaded end: billy.' " *Fink*, 91 Ill. 2d at 240. Black's Law Dictionary defines "bludgeon" generally as "[a] heavy club or stick used as a weapon, commonly weighted in one end by metal." *Perry*, 397 Ill. App. 3d at 361 (quoting Black's Law Dictionary 157 (5th Ed. 1979)). The absence of specific reference to a "bludgeon" in section 24-1(a)(2) makes it necessary to determine whether section 24-1(a)(1) can be broadly construed so as to include the crowbar that defendant was observed wielding while chasing an individual. *Cf. Fink*, 91 Ill. 2d at 240 ("The specific reference to a 'billy' (or a nightstick) in section 24-1(a)(2) makes it unnecessary to determine whether section 24-1(a)(1) can be broadly construed so as to include a nightstick").

¶ 14 We acknowledge defendant's position that the legislature did not intend to include any bludgeon-like or club-like weapon. See, e.g., *People v. Vue*, 353 Ill. App. 3d 774, 780 (2004). However, we cannot accept defendant's reasoning that a crowbar, "while sharing characteristics with a bludgeon, and being capable of being (*sic*) used as one, is not commonly identified or used as one," and that like the nightstick, karate sticks, and metal flashlight in the cases upon which he relies, *i.e.*, *People v. Fink*, 94 Ill. App. 3d 816 (1981), *affirmed by Fink*, 91 Ill. 2d 237, *People v. Tate*, 68 Ill. App. 3d 881 (1979), and *People v. Vue*, 353 Ill. App. 3d 774, "the crowbar here was not physically modified in any way to make it appear more 'bludgeon-like.'" As will be discussed, we do not rely on these cases as support for our conclusion that section 24-1(a)(1) can be broadly construed to include defendant's crowbar, but merely acknowledge that our conclusion is consistent with them. See, e.g., *People v. McKown*, 236 Ill. 2d 278, 304 (2010). As will also be discussed, a strict reading of the term "bludgeon" to encompass only those objects that are commonly identified or used as bludgeons and which are otherwise modified to appear more bludgeon-like, would defeat the legislative intent behind the unlawful use of

weapons statute to regulate the possession and use of weapons for the safety and good order of society (*People v. Pulley*, 345 Ill. App. 3d 916, 923-24 (2004)).

¶ 15 In *Fink*, 94 Ill. App. 3d at 819, the appellate court expressly rejected the State's suggestion that "bludgeon" be broadly construed to include any club-like weapon in concluding that the legislature did not intend to prohibit the mere possession of a nightstick. However, the appellate court further explained, "We believe such a construction would invite undue abuse. Each case must be decided on its own particular facts." We agree with the court in *Fink* that broadly construing the term "bludgeon" to include any club-like weapon would invite undue abuse and that each case must be decided on its own unique facts.

¶ 16 In *Tate*, 68 Ill. App. 3d 881, 882 (1979), the appellate court stated that it could not conclude that karate sticks fell within the statutory term "bludgeon" where nothing in the record indicated that one end of the karate sticks was loaded or thicker than the other end. However, the *Tate* court then relied on the reasoning in *People v. Malik*, 70 Mich. App. 133 (1976), where the Michigan court held that karate sticks were clearly not a bludgeon by applying various dictionary definitions of a bludgeon to karate sticks, further noting that the Michigan unlawful use of weapons statute expressly listed the items illegal to possess and, under those circumstances, the specific mention of one thing implies the exclusion of other similar things. *Tate*, 68 Ill. App. 3d at 883. In applying the reasoning in *Malik*, the *Tate* court concluded that the karate sticks at issue were not a bludgeon such that possession thereof was not proscribed by the Illinois unlawful use of weapons statute, *i.e.*, section 24-1(a)(1) of the Criminal Code. *Tate*, 68 Ill. App. 3d at 883.

¶ 17 Although the appellate court in *Tate* relied on the rule of statutory construction, that the specific mention of one thing implies the exclusion of other similar things, in concluding that the

karate sticks were not a bludgeon, we decline to read the specific mention of a bludgeon in section 24-1(a)(1), to imply the exclusion of defendant's crowbar from the ambit of the term "bludgeon." The expression of one thing in a statute can be construed to mean the exclusion of unexpressed things, but this principle of statutory construction is subordinate to the legislative intent. *People v. Roberts*, 214 Ill. 2d 106, 117 (2005), cited in *People v. Lee*, 397 Ill. App. 3d 1067, 1071 (2010). This principle does not apply here, as it applies only where it appears to point to the intent of the legislature and not to defeat the ascertained legislative intent. *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 152-54 (1997).

¶ 18 The legislative intent of the unlawful use of weapons statute (720 ILCS 5/24-1 (West 2010)), is to protect the police and the public from dangerous weapons. *Pulley*, 345 Ill. App. 3d at 923-24. The legislative intent of the unlawful use or possession of weapons by felons statute (720 ILCS 5/24-1.1 (West 2010)), is " 'to keep dangerous weapons, including but not limited to firearms, out of the hands of convicted felons in any situation whether it be in the privacy of their own home or in a public place.' " *People v. Nowells*, 2013 IL App (1st) 113209, ¶ 22 (quoting *People v. Kelly*, 347 Ill. App. 3d 163, 167 (2004)). Strictly construing the term "bludgeon" to exclude defendant's crowbar would be contrary to the purposes for which the unlawful use of weapons statute was enacted and lead to an absurd result. *People v. Smith*, 2013 IL App (2d) 121164, ¶ 9; accord *People v. Trzeciak*, 2013 IL 114491, ¶ 40.

¶ 19 Defendant nonetheless supports his argument that his crowbar was not a bludgeon with *People v. Vue*, 353 Ill. App. 3d 774 (2004). In *Vue*, the appellate court considered whether an unmodified metal flashlight constituted a bludgeon under the armed violence statute, and found that it did not. *Vue*, 353 Ill. App. 3d at 780-81. The State argues, and we agree, that *Vue* is inapplicable and distinguishable because it was interpreting a different statute, *i.e.*, section 33A-1

of the Criminal Code (720 ILCS 5/33A-1 (West 2004)), which defines "armed with a dangerous weapon" and three categories of weapons, including a bludgeon. We agree with the State and note that the armed violence statute (720 ILCS 5/33A-1 (West 2010)) expressly sets forth the legislature's intent to "deter the *use of firearms* in the commission of a felony offense" by punishing the *discharge of firearms* and the great bodily harm inflicted thereby, "more severely during commission of a felony offense than when those elements stand alone as the act of the offender." [Emphasis added.] In other words, we find defendant's reliance on *Vue* unavailing because the legislative intents of the statutes at bar concern the circumstances of defendant's *possession* of a crowbar, whereas the legislative intent of the armed violence statute concerns the circumstances of a defendant's *use* or *discharge* of a *firearm* during the commission of a felony. Additionally, because the concern here is whether the term "bludgeon" can be broadly construed so as to include defendant's crowbar, we are unpersuaded by *Vue*'s application of the doctrine of *ejusdem generis*, which provides that when a statutory clause specifically describes several classes of objects and then includes "other objects," the word "other" means "other such like," and the last antecedent rule, which provides that qualifying words or phrases in a statute only modify the immediately preceding words or phrases (*Vue*, 353 Ill. App. 3d at 778). See *Perry*, 397 Ill. App. 3d at 361 (to convict defendant under the unlawful use of weapons statute, the padlock in a sock must actually be a bludgeon, not merely something bludgeon-like or a "dangerous weapon of like character").

¶ 20 Here, defendant was convicted of the offense of unlawful use or possession of a weapon by a felon under section 24-1.1 of the Criminal Code and incorporated therein is the unlawful use of weapons statute (720 ILCS 5/24-1 (West 2010)), which "is not intended to make the possession of every tool, implement, or sporting device, which has the potential to inflict serious

bodily harm an unlawful weapon." *City of Pekin v. Shindledecker*, 99 Ill. App. 3d 571, 574 (1981). In *Shindledecker*, the issue was whether a device, *i.e.*, num-chucks or karate sticks, not specifically listed in section 24-1 was a dangerous weapon, and the appellate court stated:

"Common sense must be the guide. Such approach acknowledges the character of the device and its potential for harm, while not being oblivious to the article's everyday use, the circumstances of its discovery, and in certain cases, the person's explanation as to its presence or possession. If it were otherwise, a baseball bat, rolling pin, and perhaps a golf club could qualify as bludgeons if a strict definition of that word is employed (see, Webster's Third New International Dictionary, 240 (unabridged ed., 1976). This would lead to obviously absurd results." *Shindledecker*, 99 Ill. App. 3d at 574, *cited in People v. Olsen*, 302 Ill. App. 3d 512, 518 (1998).

¶ 21 Guided by common sense, we acknowledge the character of the crowbar and its potential for harm, while not being oblivious to the crowbar's everyday use as a lever or hand tool, the discovery of the crowbar concealed underneath the front passenger seat of the vehicle that defendant fled into when Officer Savaglio announced his presence, and defendant's explanation to the officer, "Why would I use my fist if I could just beat his ass with this tire iron?" *Shindledecker*, 99 Ill. App. 3d at 574. Based on this common-sense approach, we conclude that the term "bludgeon" includes defendant's crowbar. The prohibited devices enumerated by the unlawful use of weapons statute is not a complete compendium of every potential deadly weapon. *Shindledecker*, 99 Ill. App. 3d at 573. "Such an index, if it ever could be composed, might prove counter-productive to the legitimate aims of law enforcement. It is through interpretation of the statute's various terms that the flexibility necessary to assure the proper result, depending on the facts of the cause, occurs." *Shindledecker*, 99 Ill. App. 3d at 573. We

are mindful that statutory interpretation cannot always be reduced to "the mechanical application of the dictionary definitions of the individual words and phrases involved," and we observe that a statute "must receive a sensible construction, even though such construction qualifies the universality of its language." [Citations.] *People v. Smith*, 2013 IL App (2d) 121164, ¶ 9. Our conclusion that defendant's crowbar falls within the dictionary definitions of "bludgeon" is consistent with a reasonable construction of the unlawful use of weapons statute and its legislative intent.

¶ 22 We believe it is highly unlikely that the legislature intended to limit the term "bludgeon" to the devices enumerated in the unlawful use of weapons statute, nor any more likely the legislature intended to exclude the possession of every tool, implement, or sporting device, which has the potential to cause serious bodily harm. In our society, many ordinary objects are characterized as bludgeons based on the surrounding circumstances. Cases in which our courts have characterized everyday objects used to commit a murder as bludgeons are illustrative on this point. See, e.g., *People v. Harris*, 2012 IL App (1st) 100678 (murder victim was bludgeoned with a clothes iron); *Perry*, 397 Ill. App. 3d 358 (a padlock contained inside a sock considered a bludgeon for purposes of statute governing unlawful use or possession of weapons); *People v. Minniti*, 373 Ill. App. 3d 55 (2007) (murder victim was bludgeoned with a crowbar), *abrogated on other grounds by People v. Bailey*, 2014 IL 115459; *People v. Workman*, 368 Ill. App. 3d 778 (2006) (murder victim was bludgeoned with a baseball bat); *People v. Moore*, 301 Ill. App. 3d 728 (1998) (murder victim was bludgeoned with a baseball bat); *People v. Cruz*, 162 Ill. 2d 314 (1994) (murder victim was bludgeoned with a baseball bat); *People v. Fair*, 159 Ill. 2d 51 (1994) (murder victim was struck with a "bludgeoning weapon, such as a baseball bat"); *People v. Bailey*, 141 Ill. App. 3d 1090 (1986) (murder victim was bludgeoned with a tire iron or

jack); and *People v. Schultz*, 99 Ill. App. 3d 762 (1981) (murder victim was bludgeoned with a tree limb or similar object). We infer from these cases that any number of everyday objects with legitimate purposes may be sensibly characterized as bludgeons based on the surrounding circumstances, considering the legislature did not intend the term "bludgeon" to include any bludgeon-like or club-like *weapon* (*Vue*, 353 Ill. App. 3d at 780). That a crowbar, tire iron, and baseball bat have been characterized as bludgeons in the context of murder leads us to note that the plain language of the unlawful use of weapons statute (720 ILCS 5/24-1 (a)(1) (West 2010)) requires that the item must be a *weapon*; otherwise, one could be in violation of the statute for merely possessing such items regardless of the surrounding circumstances. Put another way, whether or not an object such as a crowbar is commonly identified or used as a bludgeon and whether or not defendant's crowbar was physically modified in any way to appear more bludgeon-like are entirely irrelevant to statutory construction. See *Village of Glenview v. Ramaker*, 282 Ill. App. 3d 368, 371 (1996) (considering whether the defendant's pet pig fell under the meaning of "swine" in the village ordinance prohibiting residents from keeping any swine within the village; "Whatever pejorative (or friendly) nuance one detects in either term is colloquial—and irrelevant to statutory construction").

¶ 23 We are persuaded by the State's reliance on *People v. Hutchins*, 127 Ill. App. 2d 296 (1970), for the proposition that the trial court properly considered the circumstances of defendant's arrest when determining whether defendant's crowbar constituted a bludgeon within the meaning of section 24-1. In *Hutchins*, 127 Ill. App. 2d at 304, the appellate court found no merit to the defendant's contention that the trial court erred in admitting into evidence his statement, when he was arrested at a high school where he was not a student that he was there because his friend, a purported gang member, may need some help. The appellate court noted

that the defendant's explanation for his presence at the school was admissible as part of a direct narrative of the surrounding circumstances and concluded that although the object may have had some legitimate use as a cane, "realistically, it took its character from the posture in which the police officer found it in the possession of defendant, and the evidence here was sufficient to support the [trial] court's finding that the object was a 'bludgeon' within the meaning of the [unlawful use of weapons] statute." *Hutchins*, 127 Ill. App. 2d at 303-304.

¶ 24 Having concluded that a sensible and realistic reading of the term "bludgeon" includes defendant's crowbar, the next question is whether the State proved defendant's guilt beyond a reasonable doubt, and our standard of review on this question is far more deferential (*Davison*, 233 Ill. 2d at 43). When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). The trier of fact determines the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). A conviction will only be overturned where the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8.

¶ 25 Here, uncontradicted testimony established that defendant was chasing another man while yelling gang slogans and wielding a raised crowbar. The crowbar necessarily has more metal, and is therefore heavier, at the bent and often forked end that functions as a lever. When Officer Savaglio announced his presence, defendant fled into the front passenger side of a waiting car and concealed something under the seat. Officer Savaglio stopped the car and

recovered a crowbar underneath defendant's seat, at which time defendant stated, "Why would I use my fist if I could just beat his ass with this tire iron?" Here, as in *Hutchins*, 127 Ill. App. 2d at 303-04, defendant's statement at the time of his arrest was part of a direct narrative of the surrounding circumstances, and although defendant's crowbar may have had some legitimate use as a tool, realistically, it took its character from the posture in which the officer found it in defendant's possession. In light of the uncontested evidence, we have no difficulty concluding that a rational trier of fact easily could have found beyond a reasonable doubt that defendant possessed a "bludgeon" for purposes section 24-1(a)(1) of the Criminal Code. See *Davison*, 233 Ill. 2d at 45 ("In fact, it is difficult to imagine how any *other* conclusion could have been possible"). Ultimately, we conclude that the possession of a tool, herein a crowbar, does not violate section 24-1.1(a) of the Criminal Code (unlawful use or possession of a weapon by a felon), but when a felon uses or threatens to use the tool as a bludgeon, possession violates that statute.

¶ 26 Defendant also requests that his mittimus be amended to reflect the correct name of the offense of which he was convicted, unlawful use or possession of a bludgeon by a felon, not unlawful use or possession of a *firearm* by a felon. The State agrees, and under Illinois Supreme Court Rule 615(b)(1) (eff. May 1, 2007), we order the clerk of the circuit court to make the necessary correction (*People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)).

¶ 27 For the reasons stated, we affirm defendant's conviction and direct the clerk of the circuit court to amend defendant's mittimus as indicated.

¶ 28 Affirmed; mittimus corrected.