

NOTICE
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2012 IL App (4th) 110507-U

NO. 4-11-0507

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 11, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
ERIC ENGLISH,)	No. 10CF238
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to prove defendant guilty of possession of a weapon by a person in custody of a Department of Corrections facility (720 ILCS 5/24-1.1(b) (West 2010)).

¶ 2 In September 2010, the State charged defendant, Eric English, by a two-count information alleging on June 10, 2010, he committed the offense of unlawful possession of a weapon by a person in custody of a Department of Corrections (DOC) facility (720 ILCS 5/24-1.1(b) (West 2010)), in that he possessed a homemade knife-like weapon, a dangerous weapon, while confined in the Pontiac Correctional Center (Pontiac). In January 2010, a jury found defendant guilty of both counts. In April 2011, the trial court sentenced defendant to concurrent terms of eight years' imprisonment on each count, to run consecutively to the sentence he was currently serving.

¶ 3 On appeal, defendant argues the State failed to present sufficient evidence to establish that two eyeglass earpieces were dangerous weapons. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In September 2010, the State charged defendant with two counts of unlawful possession of a weapon by a person in custody of a DOC facility (720 ILCS 5/24-1.1(b) (West 2010)), in that he possessed a homemade knife-like weapon, a dangerous weapon, while confined in Pontiac.

¶ 6 At the January 2011 jury trial, Adrian Corley, a correctional officer at Pontiac, testified on June 10, 2010, while he was walking through gallery one, he discovered a metal gusset from a bunk bed. A metal gusset is a piece of iron cut at a 45-degree angle that is welded onto the bed frame for extra bracing. Corley began inspecting gallery five, the gallery to which he was assigned, looking at the beds for a missing gusset. Corley observed a missing gusset on the bed frame in defendant's cell and began to search defendant's cell. Inside the cell, Corley found eyeglasses that had been disassembled with the lenses removed and the ends of the earpieces broken off, exposing sharp metal. The disassembled eyeglasses were in an eyeglass case. Defendant first admitted to Corley the eyeglasses were his but when Corley removed them from the case, defendant asserted the case was his but not the eyeglasses. Based on his experience as a corrections officer, Corley believed the disassembled eyeglasses could be used as a weapon. On re-direct examination, Corley testified other eyeglasses had been found that were made into weapons, and "it's just a known thing that [eyeglass earpieces] [can] be made into weapons."

¶ 7 Robert Snyder, a correctional officer at Pontiac, testified he interviewed defendant

on June 10, 2010, about the metal gusset and eyeglasses. In the interview, defendant told Snyder he did not know what happened to the missing metal gusset. Defendant admitted he exposed the metal on one of the eyeglasses' earpiece but did not know how the metal was exposed on the second earpiece.

¶ 8 Defendant did not present any evidence at trial. The jury found defendant guilty of both counts. In April 2011, the trial court sentenced defendant as stated.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the State failed to present sufficient evidence to show the two eyeglass earpieces were a "dangerous or deadly weapon or instrument of like character" pursuant to section 24-1(a)(2) of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/24-1(a)(2) (West 2010)). Specifically, defendant asserts section 24-1.1(b) of the Criminal Code (720 ILCS 5/24-1.1(b) (West 2010)) requires the earpieces be "inherently dangerous" weapons, and the items were more properly characterized as contraband under section 31A-1.1(b) of the Criminal Code (unlawful possession of contraband in a penal institution) (720 ILCS 5/31A-1.1(b) (West 2010)) because the eyeglasses merely "could be" used as a dangerous weapon. In his reply brief, defendant states his argument draws a distinction between section 24-1.1(a) and section 31A-1.1(b) because "the former requires that the object in question be a dangerous weapon, whereas the latter only requires that the object in question could be a dangerous weapon."

¶ 12 The State responds the evidence was sufficient to permit the jury to conclude the eyeglass earpieces were dangerous weapons because they were sharp metal designed by

modification to injure a person.

¶ 13 A. Standard of Review

¶ 14 When this court reviews a conviction for sufficiency of the evidence, it must determine whether, after viewing 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. *People v. Beauchamp*, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 322 (2011). "This means that we 'must allow all reasonable inferences from the record in favor of the prosecution.' " *Beauchamp*, 241 Ill. 2d at 8, 944 N.E.2d at 323 (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280, 818 N.E.2d 304, 308 (2004)). This court "will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Campbell*, 146 Ill. 2d 363, 375, 586 N.E.2d 1261, 1266 (1992).

¶ 15 As defendant's argument compares two statutes in an attempt to discern whether section 24-1.1(b) of the Criminal Code requires the weapon to be "inherently" dangerous, we review the basic canons of statutory construction. The "primary objective in construing a statute is to ascertain and give effect to the legislative intent, and the surest and most reliable indicator of that intent is the plain and ordinary meaning of the statutory language itself." *People v. Chapman*, 2012 IL 111896, ¶ 23, 965 N.E.2d 1119, 1126. Where the language is clear and unambiguous, courts of review will apply the statute without further aids of statutory construction. *Id.*

¶ 16 B. The Statutes At Issue

¶ 17 Section 24-1.1 of the Criminal Code provides:

"It is unlawful for any person confined in a penal

institution, which is a facility of the Illinois Department of Corrections, to possess any weapon prohibited under Section 24-1 of this Code or any firearm or firearm ammunition, regardless of the intent with which he possesses it." 720 ILCS 5/24-1.1(b) (West 2010).

¶ 18 Pursuant to section 24-1(a)(2) of the Criminal Code a "weapon" is defined, in relevant part, as:

"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)(2) (West 2010).

¶ 19 C. Defendant's Argument

¶ 20 Defendant does not argue whether the charging instrument informed defendant with sufficient specificity to prepare his defense, nor does he argue section 24-1(a) of the Criminal Code is ambiguous in defining a weapon. Defendant acknowledges Officer Corley testified it is a "known thing" eyeglass earpieces could be turned into weapons and concedes sufficient evidence was presented to establish the eyeglasses could be used as dangerous weapons as required for unlawful possession of contraband in a penal institution under section 31A-1.1(a) (720 ILCS 5/31A-1.1(a) (West 2010)). However, defendant contends Corley's testimony fails to establish the two eyeglass earpieces were dangerous weapons pursuant to section 24-1.1(b) of the Criminal Code as the "inherent nature" of the earpieces are not dangerous, and the fact the earpieces "were separated from the frames and the plastic ends were removed, is insufficient to

demonstrate that they were dangerous."

¶ 21 Defendant's argument section 24-1.1(b) of the Criminal Code requires a showing of the inherent dangerousness of the earpieces rests on the propositions (1) section 31A-1.1(a) of the Criminal Code requires the object merely "could be" used as a weapon, and (2) section 24-1(a) of the Criminal Code does not define a weapon as an object that "could be" used as a weapon. Defendant's argument suffers several fatal weaknesses: (1) section 31A-1.1(a) is a separate statute that does not address the requirements of section 24-1(a) or section 24-1.1(b), and (2) section 24-1(a) does not explicitly require the weapon to be "inherently" dangerous.

¶ 22 D. Section 24-1(a) and Section 24-1.1(b) As Applied In This Case

¶ 23 Section 31A-1.1(a) of the Criminal Code is a separate statute and has no relevance in determining the definition of "dangerous weapon" for the purposes of section 24-1.1(b) or section 24-1(a). Section 31A-1.1 of the Criminal Code has a broader application than section 24-1.1(b) of the Criminal Code which applies only to a "person confined in a penal institution." 720 ILCS 5/24-1.1(b) (West 2010). As the supreme court stated in *People v. Ryan*, 117 Ill. 2d 28, 32-33, 509 N.E.2d 1001, 1002 (1987), "the apparent purpose of [section 24-1.1(b)] is to prohibit even the innocent possession of items that are likely to be hazardous in the penal setting." Further, defendant himself acknowledges his reading of section 31A-1.1(a) is contrary to this court's holding in *People v. Gazelle*, 230 Ill. App. 3d 115, 118, 595 N.E.2d 214, 216 (1992). *Gazelle* held the phrase "which could be used as a dangerous weapon" in section 31A-1.1 of the Criminal Code is not a stand alone catch-all provision and only modifies the preceding phrase "other piece of glass." (Internal quotation marks omitted.) *Id.* As such, defendant is reading an additional requirement into section 31A-1.1 in his comparison to section 24-1(a).

¶ 24 Neither section 24-1.1(b) nor section 24-1(a) explicitly requires the dangerous weapon to be "inherently" dangerous as defendant suggests. Section 24-1(a) of the Criminal Code articulates various objects as weapons, including, as relevant here, a dangerous knife or "any other dangerous or deadly weapon or instrument of like character[.]" 720 ILCS 5/24-1(a)(2) (West 2010); see also *People v. Davis*, 199 Ill. 2d 130, 138-39, 766 N.E.2d 641, 646 (2002) (describing a knife as a blade-type weapon that is sharp and has the ability to cut or stab). Section 24-1(a) does not explicitly define "dangerous weapon." As far back as *People v. Dwyer*, 324 Ill. 363, 364, 155 N.E. 316, 317 (1927), the Illinois Supreme Court defined a deadly or dangerous weapon as "an instrument that is used or may be used for the purpose of offense or defense and capable of producing death." As this court pointed out in *People v. Morissette*, 225 Ill. App. 3d 1044, 1048, 589 N.E.2d 144, 147 (1992), "[d]angerous weapons are divided into two categories: weapons which are dangerous *per se* and those which become dangerous because of the way they are used." As an ordinarily mundane object can be dangerous depending on the way it is used or an otherwise dangerous object may not be necessarily dangerous, such as an unloaded gun, Illinois courts do not make a mandatory presumption an object is a dangerous weapon *per se*. Rather "the trier of fact may make an inference of dangerousness based upon the evidence." *People v. Ross*, 229 Ill. 2d 255, 276, 891 N.E.2d 865, 878 (2008); *People v. Skelton*, 83 Ill. 2d 58, 66, 414 N.E.2d 455, 458 (1980) (it is for the trier of fact to determine whether "the particular object [is] sufficiently susceptible to use in a manner likely to cause serious injury"). "It is only where the character of the object permits only one conclusion that the question becomes one of law for the court." *People v. McBride*, 2012 IL App (1st) 100375, ¶ 40, 972 N.E.2d 1173, 1184; see also *Dwyer*, 324 Ill. at 364-65, 155 N.E. at 317 (same). Illinois courts

have considered knives as dangerous *per se*. *McBride*, 2012 IL App (1st) 100375, ¶ 57, 972 N.E.2d at 1189 (quoting *People v. Ligon*, 365 Ill. App. 3d 109, 116, 847 N.E.2d 763, 771 (2006), quoting *People v. Thorne*, 352 Ill. App. 3d 1062, 1070-71, 817 N.E.2d 1163, 1170-71 (2004)).

¶ 25 We reject defendant's argument section 24-1.1(b) of the Criminal Code requires a showing the earpieces were inherently dangerous weapons as unpersuasive. Such a requirement would run afoul of the long-standing principle an instrument can be deadly or dangerous in the manner in which it is used. Further, requiring the State to prove the eyeglass earpieces are inherently dangerous would frustrate section 24-1.1(b)'s legislative intent as expressed in *Ryan*.

¶ 26 The disassembled condition of the eyeglass earpieces is sufficient to demonstrate they were dangerous. When viewing the evidence in the light most favorable to the prosecution, a reasonable jury could find defendant's eyeglass pieces were a dangerous weapon. Such a finding would be supported by Officer Corley's testimony (1) the lenses were removed from the eyeglass frames, (2) the earpieces had exposed sharp metal ends, and (3) it is a "known thing" eyeglass earpieces can be turned into weapons and others have been found that were turned into weapons. Based on their disassembled condition, it is a reasonable inference the earpieces were susceptible to use in a manner likely to cause serious injury. Simply, the eyeglasses were no longer being used for their lawful purpose—the lenses were removed and the eyeglasses could not be worn without the side earpieces—and had no legitimate use other than as a weapon.

¶ 27 III. CONCLUSION

¶ 28 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment as costs of this appeal.

¶ 29 Affirmed.