

2019 IL App (1st) 170022-U

No. 1-17-0022

Order filed May 24, 2019

Fifth Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 16 CR 2714
)	
FRANK JOHNSON,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence presented at trial was sufficient to sustain defendant's conviction for unlawful use of a weapon by a felon.

¶ 2 Following a bench trial, defendant Frank Johnson was convicted of unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2016)) and was sentenced to three years in prison. On appeal, defendant contends that the State failed to prove the element of

intent, where there was no evidence that he brought his work knife to a store for the purpose of using the knife unlawfully against another. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the events of February 4, 2016. After his arrest, defendant was charged with one count of UUWF and one count of aggravated assault. The count of UUWF alleged that, on the date in question, defendant "knowingly possessed on or about his person *** a dangerous knife, with intent to use the same unlawfully against another," after having been previously convicted of a felony. The count of aggravated assault alleged, as relevant here, that defendant threatened Charlie Riley and brandished a knife at him, and that the knife constituted a "category II weapon" because its blade was at least three inches in length.

¶ 4 At trial, Mr. Riley testified that, on the date in question, he was working at a Chicago Walgreens store (the "Walgreens"), where he was contracted through a separate security company to provide loss prevention services. Around 3 p.m., Mr. Riley went into the store's bathroom to use the facilities. While he was in a stall, a man entered the bathroom and complained about the smell. At first, Riley said nothing back because he was not feeling well. The man became "more and more belligerent" and made comments about how bad the bathroom smelled, using vulgar language. Mr. Riley told the man, "Well, if you don't like the smell in the bathroom, you should wait outside, it's a small bathroom, and wait until I'm finished."

¶ 5 When Mr. Riley came out of the stall, the man, whom he identified in court as defendant, was still in the bathroom. Mr. Riley told defendant, "You don't know who you're talking to. I'm loss prevention for the store." Defendant answered, "I don't give a f*** who you are. I'll beat your *** in the store." Mr. Riley retorted, "You've got me all wrong. You don't know who

you're dealing with." Mr. Riley then squeezed past defendant to get out of the bathroom and defendant followed.

¶ 6 As the two men walked out of the bathroom and into the store, defendant "continued to be violent and to make threats." Thinking that things "might go bad," Mr. Riley put his jacket and bag behind the counter and said to defendant, "[I]f you have a problem with me, step outside of the store." Riley explained that he was trying to get defendant to leave the store because defendant's actions would not be tolerated by store management.

¶ 7 When Mr. Riley and defendant were about four feet apart from each other, between the beauty counter and the front entrance, defendant reached into his right rear pocket, pulled out a black tactical folding knife, and opened it. Mr. Riley stood back, turned to the side, pulled his own tactical knife out of his right front pocket, and "cuffed it" behind his arm. At this point, a store manager asked defendant to leave and told Mr. Riley he did not want "this action" in the store. Defendant did not leave the store immediately, but rather, walked toward the pharmacy department in the back of the store. Then, accompanied by a woman, defendant left the store and walked across the parking lot. Mr. Riley, who was on the phone with 911, gave the operator a description of defendant's clothing and direction of travel. Within a few minutes, police arrived at the store and Mr. Riley told them what happened. Shortly thereafter, the police returned and showed Mr. Riley a knife, which he identified "as the one that was being displayed against me." Mr. Riley subsequently identified defendant inside a police car.

¶ 8 On cross-examination, Mr. Riley stated that, prior to entering the bathroom, he had noticed defendant and a woman going into the pharmacy area of the store. Mr. Riley also clarified that after he and defendant exited the bathroom, defendant initially went over to the

woman near the pharmacy. Within minutes, defendant left the pharmacy area, approached Mr. Riley near the beauty counter, and argued with him. Mr. Riley admitted that he raised his voice and yelled during this interaction with defendant. He stated that defendant made “verbal threats to hurt me” both inside and outside the bathroom. Mr. Riley was not wearing any clothing that indicated his employment, as there was “no uniform for loss prevention.”

¶ 9 Chicago police officer Mike Mayhew testified that he responded to a call of an assault at the Walgreens. He and his partner spoke to Mr. Riley at the store, received a description of an offender, and then drove in the direction Mr. Riley indicated. As they drove, Officer Mayhew saw defendant, who matched the description, walking on the sidewalk with a woman. The officers exited their vehicle and approached on foot. Officer Mayhew confronted defendant about the incident at the Walgreens and asked defendant if he was in possession of “any weapons.” Defendant said he had a pocketknife with him and lifted his shirt. Officer Mayhew noticed a knife in defendant’s right front pants pocket and recovered it. The knife was a black pocketknife with a stainless steel blade. Officer Mayhew placed defendant in custody and brought him back to the Walgreens. There, Mr. Riley made a positive identification of both defendant and the knife.

¶ 10 On cross-examination, Officer Mayhew testified that he learned that the woman with whom defendant was walking was his wife, and that they had been at the Walgreens so that she could pick up a prescription. Officer Mayhew indicated that when he approached defendant, defendant was cooperative and answered his questions. When defense counsel asked, “And you were looking for a knife; correct?” Officer Mayhew answered, “That’s correct.”

¶ 11 The State presented a certified copy of conviction indicating that defendant had been convicted of armed robbery in 1994, which was admitted into evidence. The knife recovered from defendant was also admitted.

¶ 12 Defendant moved for a directed finding. The trial court denied the motion with regard to the charge of UUWF, but granted the motion with regard to the charge of aggravated assault, finding that no evidence had been received at trial regarding the length of the knife.

¶ 13 Defendant's wife, Renee Johnson, testified that about 2:30 or 2:45 p.m. on the date in question, she and defendant went to the Walgreens so that she could pick up a prescription. They were informed the prescription would not be ready for about 30 minutes, so defendant went to use the bathroom and she went to browse clearance items. At some point, Ms. Johnson saw defendant come out of the bathroom "after some guy." Defendant came up to her and started telling her about a conversation he and the other man had had in the bathroom about the smell. As Ms. Johnson and defendant were laughing about the conversation, the man approached and told defendant he had to leave the store. Laughing, Ms. Johnson asked defendant, "Who was he talking to?" and defendant answered, "I don't know." The man came back and repeated that defendant had to leave the store. Defendant stated that he was not going anywhere until they got Ms. Johnson's medicine. Ms. Johnson did not know the man worked at the Walgreens, and because the man was very aggressive, she was "kind of" scared.

¶ 14 Ms. Johnson was able to get her prescription. When she and defendant were headed out of the store, the man was at the sliding doors. The man asked defendant what he wanted to do, which to Ms. Johnson indicated trouble. Once they were all in the parking lot, the man started hollering and "talking crazy" and then reached behind his back. She thought the man had a gun.

Terrified, she pushed defendant, told him the man had a gun, and urged him to go. Defendant reached down to his pocket, but Ms. Johnson did not let him do anything beyond that. She and defendant left the parking lot. Ms. Johnson stated that defendant never threatened the man and never pulled out a knife. She explained that, on the day in question, defendant was carrying a black knife, which was a “work knife” that he used for his construction and rehabbing job.

¶ 15 On cross-examination, Ms. Johnson acknowledged that the man identified himself as being security for the Walgreens, but stated that he only did so after aggressively telling her and defendant to leave the store “a few times.” She reiterated that defendant never took out his knife, either inside or outside the Walgreens. When the police approached her and defendant about a block from the store, the police said defendant had a gun.

¶ 16 The trial court found defendant guilty of UUWF. In announcing its decision, the court stated as follows:

“The court has heard the evidence. There was a very avoidable argument over a call of nature that shouldn’t have happened between two strangers. But a knife got pulled, because otherwise, the police never would have known to be looking for a knife. And he’s got an old conviction that has come back to haunt him. Finding of guilty.”

¶ 17 Defendant filed a motion for a new trial, which the trial court denied. The court subsequently sentenced defendant to three years in prison, and denied his motion to reconsider sentence.

¶ 18 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction for UUWF. Specifically, he argues that the State failed to prove the requisite mental state that

would transform the possession of an ordinary pocketknife into a criminal act. He asserts there was no evidence that he brought his work knife to the Walgreens for the purpose of using it unlawfully against another. Rather, he asserts that both when he put the knife in his pocket and when he entered the store, he had no way of knowing he would get into an unforeseeable argument with Mr. Riley over the smell in the store's bathroom. Defendant argues that the evidence showed he "did not possess the knife with the intent to use it unlawfully, only that he already had the knife on him when he happened to get into an argument at the Walgreens which resulted in him pulling the knife."

¶ 19 When reviewing the sufficiency of the evidence, the relevant inquiry is 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). Reversal is justified where the evidence is so unsatisfactory as to justify a reasonable doubt of the defendant's guilt or where proof of an element of the crime is wholly lacking. *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 11.

¶ 20 As noted above, defendant was charged with UUWF based on an allegation that he "knowingly possessed on or about his person *** a dangerous knife, with intent to use the same unlawfully against another." The statute defining UUWF provides that it is unlawful for a person who has been convicted of a felony to knowingly possess on or about his person any weapon prohibited under the statute defining the crime of unlawful use of weapons (UW). 720 ILCS 5/24-1.1(a) (West 2016). The statute defining UW provides, in relevant part, that a person commits UW when he knowingly "[c]arries or possesses with intent to use the same unlawfully against another, a *** dangerous knife[.]" 720 ILCS 5/24-1(a)(2) (West 2016).

¶ 21 Because mere possession of a common knife is not a crime, the intent to use such a knife unlawfully against another is an essential element of UUW when the charge involves a knife that is otherwise lawful to possess. See *People v. Sullivan*, 46 Ill. 2d 399, 402-03 (1970) (hunting knives); *In re Marquita M.*, 2012 IL App (4th) 110011, ¶ 29 (steak knife). It follows that such intent is also an essential element of UUWF based on possession of, as charged here, a “dangerous knife” prohibited under the UUW statute. Intent to use an instrument unlawfully against another may be reasonably inferred from circumstantial factors. *Marquita M.*, 2012 IL App (4th) 110011, ¶ 29; *Sullivan*, 46 Ill. 2d at 402-03.

¶ 22 After reviewing the record in the light most favorable to the prosecution, as we must, we find the evidence was sufficient to prove defendant possessed the knife with intent to use it unlawfully against another. Mr. Riley testified that while he and defendant were in the bathroom, defendant told him, “I’ll beat your *** in the store.” Then, as defendant followed Riley out of the bathroom and into the store, defendant “continued to be violent and to make threats.” Though defendant briefly walked away, he re-approached Mr. Riley shortly thereafter. During the ensuing argument, while the two men were about four feet from each other, defendant pulled a folding knife from his pocket and opened it, exposing the blade. We find that defendant’s verbal threats, in combination with his proximity to Mr. Riley at the time he pulled out his knife and opened it, sufficiently establish an intent to use the knife unlawfully against Mr. Riley. See *People v. Gill*, 304 Ill. App. 3d 23, 31 (1999) (considering threats and proximity in finding existence of intent).

¶ 23 Defendant would have us consider his intent not at the moment he produced and opened his knife, but rather, at the moment he originally put the knife in his pocket or at the moment he

entered the Walgreens. At these times, according to defendant's argument, he was carrying the knife so that he could use it for work purposes, not so that he could use it unlawfully against another person. He maintains that where there was no evidence he was carrying his knife in anticipation of a conflict, much less a conflict with Mr. Riley, whom he did not know, his conviction cannot stand. Defendant concludes, "Lawful possession does not become unlawful due to a chance encounter where the use of the weapon was limited to responding to a threat of force."

¶ 24 Defendant has cited no authority for the proposition that the intent to use an instrument unlawfully against another must exist at the time a defendant initially picks up that instrument or at the time a defendant enters a location where the eventual potential victim of the unlawful use is present. In our view, the logical moment to evaluate intent in this case is at the moment defendant produced and displayed the knife. We agree with the State that defendant's possession of his knife for work purposes does not allow him to use it unlawfully against another while running errands. Even if defendant did not originally possess the knife with the intent to use it unlawfully against another, that intent changed when defendant made the conscious decision to follow up an argument with Mr. Riley by removing his folding knife from his pocket and opening it. At that point, defendant possessed the knife in violation of the law defining UUW. Defendant's arguments fail.

¶ 25 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 26 Affirmed.