IN THE COURT OF APPEALS OF IOWA

No 4-581 / 94-0205

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

KEITH BRAINERED CAREY, SR.,

Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Walter R. Rothschild, District Associate Judge.

Keith Carey appeals from his conviction following a bench trial, of carrying a concealed weapon, in violation of Iowa Code section 724.4(3)(b). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Angelina M. Smith, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Karen Thalacker, Assistant County Attorney, for appellee.

Considered by Hayden, P.J., and Sackett and Huitink, JJ.

SACKETT, J.

Defendant-appellant Keith Brainerd Carey appeals his conviction of carrying a concealed weapon in violation of Iowa Code section 724.4(3)(b) (1993). We affirm.

Defendant was carrying a kitchen butcher knife with an eight-inch blade in his pants when arrested. He was charged with carrying a concealed weapon in violation of Iowa Code section 724.4(3), which provides:

> 3 A person who goes armed with a knife concealed on or about the person, if the person does not use the knife in the commission of a crime:
>
> > b If the knife has a blade exceeding five inches but not exceeding eight inches in length, commits a serious misdemeanor

Defendant elected to be tried to the court. He contended he was using the knife in lawful fishing. Section 724.4(h) provides:

> 4 Subsections 1 and 3 do not apply to any of the following:
>
> > h. A person who carries a knife used in hunting and fishing, while actually engaged in lawful hunting or fishing.

The facts show defendant returned home telling his girlfriend he had been fishing. He and his girlfriend had a fight. She threatened to call her father. Defendant said he would be ready, took the butcher knife from the kitchen drawer, put it in his pants and left. Defendant's girlfriend called the police and he was picked up a short distance from his house.

At trial, defendant testified he had thirty pounds of catfish on a stringer in the river and he had walked home to get the knife to clean them. He and his girlfriend both testified he cleans his fish at the river bank. She testified he had told her he was fishing.

The issue of whether defendant was carrying the knife during lawfully fishing came into the case when defendant raised it as a fact question. We conclude the defendant's testimony he was taking the knife to the river to clean his fish was sufficient evidence to generate a fact question on whether he was using the knife in lawful fishing. When defendant raised it as a fact question, it placed the burden on the State to prove beyond a reasonable

doubt as one of the elements of the charge he was not carrying the knife while engaged in lawful fishing. See State v. Erickson, 362 N.W 2d 528, 531-32 (Iowa 1985); State v. Bowdry, 337 N.W 2d 216, 218-19 (Iowa 1983).

The trial court found, while there were facts in the record to support defendant's fishing story, it did not believe them

The trial court found defendant said he was going to get someone when he put his knife under his shirt. When stopped, defendant told the officer he was going to see someone and get him. The trial court also found defendant had been seen without fishing equipment earlier in the day.

Here, the trial court found the State had met its burden. The factual findings of the trial court will be upheld if there is substantial evidence in the record to support the findings. See State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990) The evidence is viewed in a light most favorable to the State. State v. Hamilton, 309 N.W 2d 471, 479 (Iowa 1981). This court considers the entire record and accepts all legitimate inferences therefrom to support the conviction. State v. Breitbach, 488 N.W 2d 444, 446 (Iowa 1992).

There was substantial evidence to prove beyond a reasonable doubt that defendant was carrying a knife with a blade eight inches in length for a purpose other than lawful fishing.

We affirm.

AFFIRMED.