

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JEREMIAH B. THRIFT,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11888
Trial Court No. 3PA-12-3234 CR

MEMORANDUM OPINION

No. 6485 — June 21, 2017

Appeal from the District Court, Third Judicial District, Palmer,
David L. Zwink, Judge.

Appearances: Kelly Taylor, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Donald Soderstrom, Assistant Attorney General, Office of
Criminal Appeals, Anchorage, and Craig W. Richards, Attorney
General, Juneau, for the Appellee.

Before: Mannheim, Chief Judge, Allard, Judge, and Coats,
Senior Judge.*

Senior Judge COATS, writing for the Court.
Judge MANNHEIMER, concurring.

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

Jeremiah B. Thrift challenges his conviction for fourth-degree weapons misconduct for possessing metal knuckles.¹ The weapon Thrift was convicted of possessing was metal knuckles with a short blade attached. This weapon is depicted in the photograph appended to our opinion.

Thrift first argues that his weapon does not qualify as “metal knuckles” under the statute. Thrift also argues that his conviction for possessing this weapon violates his constitutional right to keep and bear arms. For the reasons explained in this opinion, we reject Thrift’s claims.

Thrift separately challenges the district court’s order that he forfeit a gun that was in his car when he was arrested. We vacate the court’s forfeiture order because Thrift was not given advance notice that the State would seek forfeiture of his gun.

Background facts and proceedings

On December 8, 2012, at 3:45 a.m., Alaska State Trooper Neal Miner witnessed a vehicle being driven by Thrift cross the center line and then the fog line. Miner initiated a traffic stop. As he approached the vehicle, he saw Thrift and the passenger moving around inside. Miner asked Thrift and his passenger if they had any firearms, and they said they did not. Miner could smell marijuana emanating from the vehicle.

Miner walked back to his police car to do an identification verification. He then returned and asked Thrift to step outside the vehicle to do field sobriety tests. As

¹ AS 11.61.210(a)(4) & AS 11.81.900(b)(37) (prohibiting possession of “metal knuckles,” meaning “a device that consists of finger rings or guards made of a hard substance and designed, made, or adopted for inflicting serious physical injury or death by striking a person”).

Thrift exited the vehicle he reached to roll up the driver's side door window. (This was at Miner's suggestion so Thrift's passenger would not get cold.) At that time, Miner noticed a gun in the driver's side door compartment, in close proximity to where Thrift was reaching. Thrift admitted the handgun was his, but he claimed that he had forgotten about it.

Thrift was arrested and his vehicle was searched. Miner found the knife with metal knuckles that is the subject of this appeal in the same door compartment where the gun was located. Miner also found slightly less than an ounce of marijuana in a bag in the back seat. Field sobriety tests did not show that Thrift was impaired.

Thrift was charged with fourth-degree weapons misconduct for possessing metal knuckles² and sixth-degree misconduct involving a controlled substance for possessing marijuana.³

Thrift moved to dismiss the fourth-degree weapons misconduct charge for possessing metal knuckles, arguing that (a) his weapon was not included within the statutory definition of "metal knuckles," and (b) the statute violated his constitutional right to bear arms. District Court Judge David L. Zwink denied Thrift's motions.

At Thrift's trial, the weapon was admitted into evidence. Trooper Miner testified that the purpose of metal knuckles is to "tenderize the body" and "break bones." Miner explained that a weapon like Thrift's is used by wearing the knuckles with the blade pointed down so that the wearer can punch a person with the knuckles and then rake the knife across the person.

The jury instruction on metal knuckles was as follows:

² AS 11.61.210(a)(4).

³ Former AS 11.71.060(a) (2012).

“Metal knuckles” means a device that consists of finger rings or guards made of a hard substance and designed, made, or adopted for inflicting serious physical injury or death by striking a person.

Attaching a knife to metal knuckles, as defined above, does not cause the metal knuckles to become legal.

The first paragraph of this instruction is identical to the statutory definition of “metal knuckles” in AS 11.81.900(b)(37).

The prosecutor argued to the jury in closing that Thrift’s weapon was a multipurpose weapon — a knife and metal knuckles — that was designed to cause serious physical injury by punching a person, and thus, the weapon met the definition of metal knuckles.

The jury convicted Thrift of both offenses — possessing metal knuckles and possessing marijuana.

Thrift’s claim that his weapon is not “metal knuckles” under the statute

Thrift argues that the Court should hold that metal knuckles with a short blade attached is not included in the statutory definition of “metal knuckles.”

Alaska law prohibits the possession of “metal knuckles.”⁴ “Metal knuckles” means “a device that consists of finger rings or guards made of a hard substance and designed, made, or adopted for inflicting serious physical injury or death by striking a person.”⁵ This statutory definition was repeated verbatim in the jury instructions in Thrift’s case.

⁴ AS 11.61.210(a)(4).

⁵ AS 11.81.900(b)(37).

Thrift argues that the statute requires the weapon to consist *exclusively* of finger rings or guards and cannot include finger rings or guards with a knife blade attached. He has a related argument that the statute “indicates [that] the finger rings or guards cannot serve another primary purpose, such as protecting the fingers or reducing the chance the bearer would unintentionally drop an item.” But the statute does not contain the words “exclusively” or “primary purpose,” and we do not agree that these restrictive readings can be taken from the statute. Under Thrift’s interpretation of the statute, the addition of a knife blade to an illegal weapon — a change that makes the illegal weapon even more dangerous — would render the formerly illegal weapon into a legal one. This is illogical. For example, a prohibited short-barreled shotgun would not become legal or cease to be a shotgun simply because a bayonet was attached.

See Thompson v. United States, 59 A.3d 961, 962-64 (D.C. App. 2013) (the addition of a blade to metal knuckles simply made the weapon more versatile and more lethal; exempting it from the statute “would have the perverse effect of prohibiting possession of only the least dangerous versions of knuckles”).

At trial, the jury saw Thrift’s weapon. The jury heard testimony from Trooper Miner that the purpose of metal knuckles is to “tenderize the body” and “break bones.” Miner explained that a weapon like Thrift’s is used by wearing the knuckles with the knife pointed down so that the wearer can punch a person with the knuckles and then rake the knife across the person. This evidence was sufficient for the jury to reasonably conclude that Thrift’s weapon met the definition of metal knuckles.

For these reasons, we reject Thrift’s argument that his weapon was not prohibited by the statute.

Thrift's claim that his weapon is a constitutionally protected "arm"

Thrift also argues that the State's prosecution of him for possession of this weapon violated his individual constitutional right to keep and bear arms under the United States and Alaska Constitutions.

Thrift's argument hinges on this Court viewing his weapon as a knife, not as metal knuckles. He implicitly concedes that possession of metal knuckles alone (without a blade) may be constitutionally prohibited.

Both the Alaska and federal constitutions protect the individual right to keep and bear arms.⁶ The United States Supreme Court has never addressed whether knives are constitutionally protected under the Second Amendment. Nor have Alaska's appellate courts weighed in on this issue.⁷

In 1994, Alaskans amended their constitution to clarify that the right to keep and bear arms is an individual right.

According to some language in the pamphlet presented to voters on the amendment, knives would be protected. The "Statement in Support" of the ballot measure described unprotected and protected "arms" as follows: "Weapons not commonly kept by the people, such as instruments of mass destruction (bombs and

⁶ Alaska Const. art. I, § 19 ("[t]he individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State"); *Dist. Of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

⁷ This Court has upheld a ban on gravity knives against a challenge that the statute was unconstitutionally vague and violated the right to privacy, but that case did not involve a challenge under the right to bear arms. *State v. Weaver*, 736 P.2d 781 (Alaska App 1987).

rockets), are not covered by this amendment. Constitutionally protected arms include rifles, shotguns, revolvers, pistols, and knives.”⁸

Courts in other jurisdictions have reached varying conclusions on whether certain types of knives (different from the weapon that Thrift possessed) are protected “arms” under the constitution.⁹ While there are arguments as to why at least some knives are protected by the Second Amendment and/or Article I, § 19 of the Alaska Constitution, we conclude that we do not have to decide that question in Thrift’s case.

Thrift’s weapon is not just a knife; it is a blade attached to metal knuckles. Thrift has cited no case that addresses the protected status of metal knuckles, nor has he asserted that metal knuckles are protected arms. We note that when our legislature prohibited possession of metal knuckles, it specifically found that:

[s]uch weapons have little or no legitimate function, are unnecessary for protection[,] and are not commonly used for commercial or recreational purposes. Substantial risk of harm to others and the furtherance of crime result from private possession of such weapons.¹⁰

⁸ Statement in Support, Ballot Measure No. 1, Right to Keep and Bear Arms, Senate Joint Resolution 39, *available at* <http://www.elections.alaska.gov/doc/oep/1994/1994-Ballot-Measures.pdf> (last visited May 3, 2017).

⁹ *See State v. DeCiccio*, 105 A.3d 165, 197 & n.34 (Conn. 2014) (holding that a dirk knife — a “long straight bladed dagger or short sword” — qualified as a protected “arm” under *Heller*’s interpretation of the Second Amendment, but emphasizing that it was not deciding whether the Second Amendment “embraces knives generally”). *Compare State v. Delgado*, 692 P.2d 610, 614 (Or. 1984) (en banc) (holding, prior to the *Heller* decision, that switchblade knives were protected under the Oregon constitution) *with Lacy v. State*, 903 N.E.2d 486, 492 (Ind. App. 2009) (switchblade knives are not protected under the Indiana Constitution).

¹⁰ Commentary on the Alaska Revised Criminal Code (Ch. 166, SLA 1978) at 101 (July (continued...))

Even if we were to agree that at least some knives are protected arms under the constitution, we could not conclude that metal knuckles become a protected arm when a short knife blade is attached to them. We conclude that Thrift's weapon is not a constitutionally protected arm under either the federal or Alaska constitutions.

The district court's order that Thrift forfeit his gun

At Thrift's sentencing, toward the end of the prosecutor's sentencing remarks, the prosecutor requested that the court order the forfeiture of all items seized from Thrift, including the gun Thrift had in his vehicle when he was pulled over.

The district court granted the State's forfeiture request and ordered that "for both counts that all evidence seized, and that includes the firearm, be forfeit, because the combination, I think is really what the community dreads the most." The court said nothing else about forfeiture in imposing sentence.

We vacate the court's forfeiture of the gun because Thrift was not given advance notice that the State would seek forfeiture of his gun. In *Badoino v. State*,¹¹ we set out the requirements for forfeiture in a criminal case:

[D]ue process requires that a criminal defendant be given advance notice of the specific property which the state seeks to have forfeited. Where the property is not contraband, the defendant should be informed of the connection the state will attempt to prove between the property to be forfeited and illegal activity. The defendant is also entitled to know in

¹⁰ (...continued)
1978), regarding "prohibited weapons" defined in AS 11.61.200(e)(1), Ch. 166, § 7 SLA 1978. At subsection (e)(1)(C), "Metal Knuckles" are listed as a "prohibited weapon." See also *Weaver*, 736 P.2d at 783 (legislature could reasonably conclude that gravity knives "have no legitimate purpose and are too dangerous to be casually possessed").

¹¹ 785 P.2d 39, 44 (Alaska App.1990) (footnote omitted).

advance the steps he or she must take in order to contest forfeiture, who will have the burden of proof, and what the burden will be. Finally, a reasonable opportunity must be afforded the defendant to resist forfeiture. The court should make findings of fact regarding contested issues and set out its conclusions of law.

The State’s forfeiture request — made for the first time toward the end of its sentencing remarks — did not give Thrift the advance notice required under *Badoino*.¹² Nor did the district court make explicit findings justifying the forfeiture. For these reasons, we vacate the court’s forfeiture of Thrift’s gun.¹³ On remand, if the State wants to renew its request for forfeiture, it must give Thrift notice and an opportunity to contest under *Badoino*.

Because we agree with Thrift that a remand is necessary, we do not reach his claim that the facts of his case did not support the factual predicate for forfeiture.

Finally, Thrift makes a separate argument that he was entitled to a jury determination that the State proved the factual predicate for forfeiting his gun, citing *Apprendi v. New Jersey*.¹⁴ If the State chooses to pursue forfeiture of the gun on remand, Thrift should have the opportunity to renew this argument.

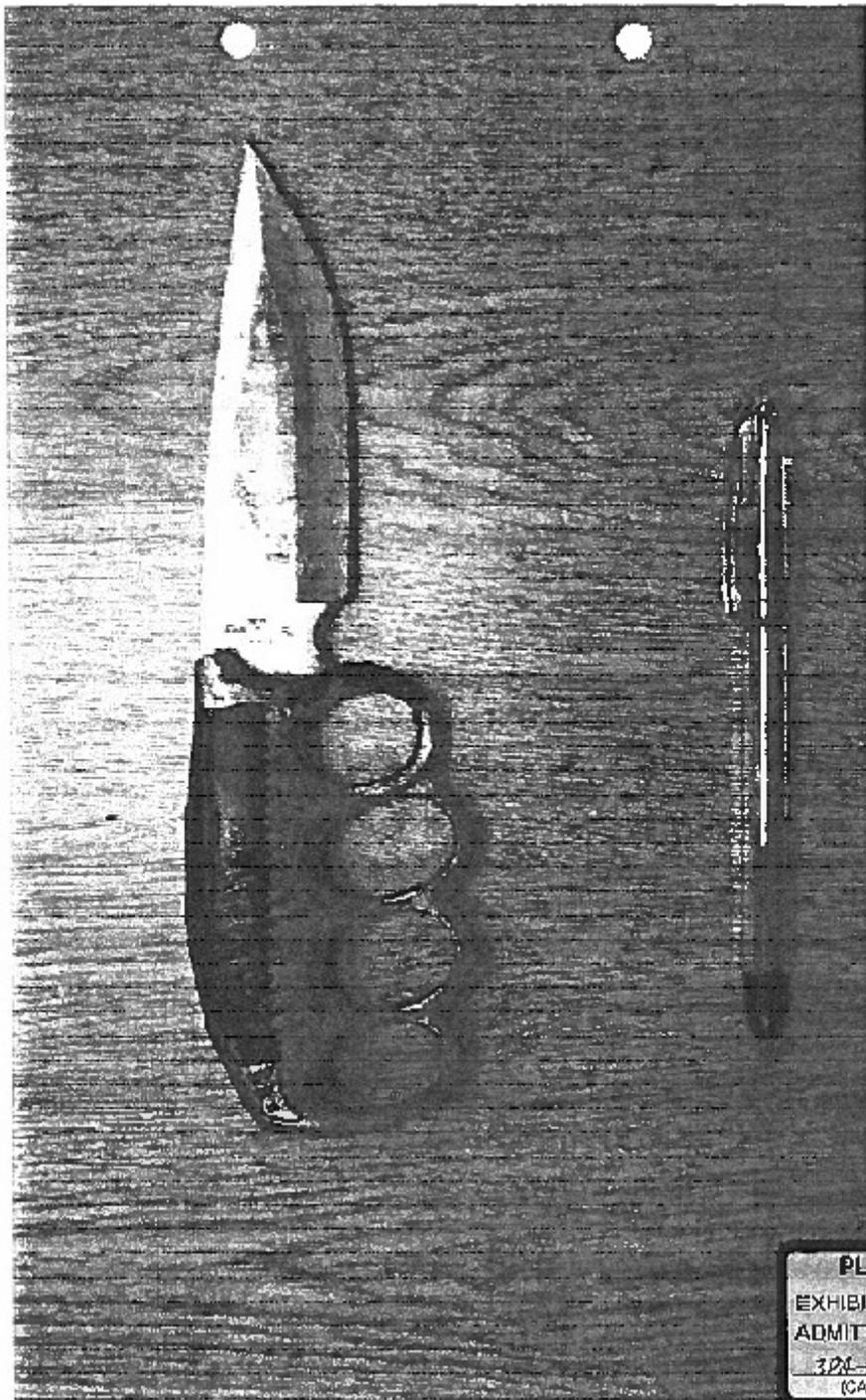
¹² The State has not shown anywhere in the record where Thrift was given advance notice that the State would seek forfeiture at sentencing.

¹³ See *Badoino*, 785 P.2d at 44. See also *Sims v. State*, 1995 WL 17220783, at *2 (Alaska App. Apr. 12, 1995) (unpublished) (vacating forfeiture of defendant’s vehicle where the trial court did not make factual findings supporting forfeiture).

¹⁴ 530 U.S. 466, 490 (2000) (“any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt”).

Conclusion

Thrift's conviction is AFFIRMED. The district court's forfeiture of Thrift's gun is VACATED and the case is REMANDED for proceedings consistent with this opinion.



Judge MANNHEIMER, concurring.

At first blush, the issue raised in this case might seem frivolous: whether metal knuckles cease being metal knuckles if a short blade is affixed to them. But as Thrift points out in his brief, there is a dagger-like weapon — the “trench knife” — whose grip resembles metal knuckles. Relying on this fact, Thrift argues that the weapon he possessed in this case should be categorized as a “knife” rather than as “metal knuckles”.

The trench knife (as its name implies) was designed during World War I for close combat in the trenches on the Western Front. It was a dagger-like weapon designed for stabbing, not for slashing.¹ Many early trench knives were made with traditional knife grips; but in modern versions of the weapon, the grip is often fashioned with ring-like slots for a soldier’s fingers.²

Because of these slots, the grip of a trench knife gives the appearance of metal knuckles. But generally, the length of the blade makes a trench knife ungainly if someone were to use the grip as metal knuckles. The grip was designed with finger slots so that the weapon could not easily be dislodged from a soldier’s hand, even if the soldier was knocked down or stunned.³

If the weapon in the present case had been designed like a trench knife with a long, dagger-like blade, I think it would have been a closer question whether the weapon should be classified as “metal knuckles”. But the weapon in this case had a short blade — approximately the same length as the width of the knuckles themselves — and

¹ See https://en.wikipedia.org/wiki/Trench_knife.

² *Id.*

³ *Id.*

the blade was sharpened only on its outer edge. According to the testimony at trial, this short blade was designed to be used in conjunction with the metal knuckles, allowing the user to both punch and slash in a continuous motion.

I therefore agree with my colleagues that this weapon should be placed within the category of metal knuckles.