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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re RICARDO F., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO F.,

Defendant and Appellant.

A118201

(San Mateo County
Super. Ct. No. 76492)

Ricardo F., a minor, appeals orders continuing him as a ward of the court and ordering placement for a maximum term of confinement of four years two months, entered after the juvenile court sustained allegations the minor had violated Penal Code section 12020, subdivision (a),¹ by carrying concealed upon his person a dirk or dagger.

We reverse.

FACTS

The issue of jurisdiction was submitted to the juvenile court on an incident report from the Hillcrest Juvenile Hall. The report recites in full, “GSI Mr. Banks noticed that [J.] was yelling with clenched fists at his roommate [C.]. When questioned [J.] told Mr. Banks that [C.] had threatened to stab him. [C.] was asked to join [J.] in the program room to be counseled by Mr. Banks. As [C.] passed [T.]’s door, [T.] observed [C.] drop

¹ All statutory references are to the Penal Code.

an object that was subsequently picked up by youth helper [the minor] who placed it in his sock. Upon searching [the minor's] shoes and socks a plastic, blunt, unsharpened shank made from a black toothless comb was discovered. Both boys have been placed on a 48 DRR for having possession of a plastic, blunt, unsharpened, black toothless comb shank.” The device was not produced, but a photocopy of it was included in the report. It appears to be a seven-inch comb, with all but seven of its teeth broken off so that it has a jagged edge along most of its length on one side. The comb is rounded off on the end where the seven teeth create a kind of handle. The other end is slightly tapered, but neither pointed nor sharpened. The juvenile court, agreeing with the prosecutor that intent should play an important part in the court's analysis, sustained the petition, explaining, “I think the totality and constellation of facts surrounding the nature of the possession in this case is what tips the scales in the direction of this being a dirk or dagger. It was its intended use. It ceased to have even the possibility of being used for its intended purpose as a hair comb. [¶] Clearly it could inflict damage on a victim; not just at the eyes or ears, but it could inflict injury in other ways.”

DISCUSSION

Section 12020, subdivision (a)(4), makes it a misdemeanor for any person to carry “concealed upon his . . . person any dirk or dagger.” As relevant here, section 12020, subdivision (c)(24), defines “dirk” or “dagger” as “a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.” The minor contends the evidence does not support the finding that the altered comb was a dirk or a dagger.

We review claims of insufficient evidence under the substantial evidence standard, drawing all reasonable inferences from the evidence to support the findings and orders of the juvenile court. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Here, of course, the evidence before us is the same as the evidence that was before the juvenile court: the incident report including the photocopy of the altered comb. Nonetheless, even under the deferential standard of substantial evidence, we agree with the minor that the evidence does not support the court's finding the altered comb was a dirk or a dagger.

Prior to 1994, there was no statutory definition of “dirk or dagger.” “As a result, courts provided their own definition: ‘A dagger has been defined as any straight knife to be worn on the person which is capable of inflicting death except what is commonly known as a “pocket-knife.” Dirk and dagger are used synonymously and consist of any straight stabbing weapon, as a dirk, stiletto, etc. [Citation.] They may consist of any weapon fitted primarily for stabbing. The word dagger is a generic term covering the dirk, stiletto, poniard, etc.’ [Citations.]” (*People v. Rubalcava* (2000) 23 Cal.4th 322, 329 (*Rubalcava*)). In *People v. Forrest* (1967) 67 Cal.2d 478, 481 (*Forrest*), the court therefore held an oversized pocketknife having a blade that could be folded into the handle and could not be locked into place when opened was *not* a dirk or dagger. The instrument unquestionably was a knife, but the absence of a lock on the blade greatly limited its effectiveness as a stabbing instrument. (*Ibid.*) The court found, “[W]hen a knife which, like other pocketknives, has many possible uses, some of which are clearly innocent and utilitarian, also has a characteristic which in many situations will substantially limit the effectiveness of its use as a stabbing instrument, it cannot be held to be a weapon primarily designed for stabbing, and thus is not a dagger or dirk.” (*Ibid.*)

The court in *People v. Barrios* (1992) 7 Cal.App.4th 501 (*Barrios*), following *Forrest, supra*, 67 Cal.2d 478, held a blunted bread knife was not a dirk or dagger. The knife had no sharp edges and no stabbing point. It did not have a hand guard and its blade flexed noticeably when the point was applied to an object. The court, following *Forrest*, ruled the knife was not a dirk or a dagger as a matter of law because it had characteristics that substantially limited its effectiveness as a stabbing instrument. (*Barrios*, at p. 506.) On the other hand, a weapon fashioned by a prison inmate out of a bed spring was a dirk or dagger as a matter of law. The weapon was made of a rigid piece of wire somewhat thicker than a coat hanger, slightly less than eight and one-half inches in length. It had a shoelace wound around the top three and one-fourth inches so as to form a kind of handle. The sides of the instrument were rounded, but the exposed point had been sharpened. The reviewing court held, “We are satisfied that the weapon used in the present case was designed and could be used for one purpose only—to stab.

Thus, we hold that it was a dirk or dagger within the meaning of the statute, as a matter of law.” (*People v. Cabral* (1975) 51 Cal.App.3d 707, 711-712.)

As of 1992, then, the law recognized that it would be possible to fashion a stabbing instrument out of something not originally designed for that purpose, but a device, whether designed as a knife or fashioned from other materials, could not be a dirk or dagger when it had characteristics substantially limiting its effectiveness as a stabbing weapon. Moreover, the defendant’s actual intent to use the device for an improper purpose could not satisfy the requirement that it be capable of such use. In *Barrios*, for example, the defendant told police officers he carried the bread knife for protection and would kill anyone who tried to touch him, asserting he was “good with a knife.” (*Barrios, supra*, 7 Cal.App.4th at p. 502.)

Later cases and legislation grappled with a *different* aspect of the crime: the problem posed by an instrument unquestionably capable of use as a stabbing instrument, but also having an innocent use. In 1993, the Legislature enacted the first statutory definition of dirk or dagger, adopting section 12020, subdivision (c)(24) (effective 1994), which defined dirk or dagger as “ ‘a knife or other instrument with or without a handguard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death.’ ” (*Rubalcava, supra*, 23 Cal.4th at p. 330.) The Legislature later amended section 12020, subdivision (c)(24) out of concern prosecutors would have difficulty proving the primary purpose of instruments such as butcher knives, hunting knives or ice picks is to cause death or great bodily injury by stabbing. (*Ibid*; and see p. 337 (conc. opn of Werdeger, J.)) It therefore replaced the phrase “primarily designed, constructed, or altered to be a stabbing instrument,” with the phrase “capable of ready use as a stabbing weapon.” (*Rubalcava*, at p. 330, italics omitted.)²

² A 1997 revision, not relevant here, added, “A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.”

For *this* aspect of the crime, a defendant's intention has some relevance. As recognized in *Rubalcava*, the defendant's intention is not an element of the crime. (*Rubalcava, supra*, 23 Cal.4th at p. 329.) Nonetheless, because the dirk or dagger portion of section 12020 criminalizes traditionally lawful conduct, it must be construed to contain a "knowledge" element. "Thus, to commit the offense, a defendant must still have the requisite *guilty mind*, that is, the defendant must knowingly and intentionally carry concealed upon his or her person an instrument 'that is capable of ready use as a stabbing weapon.' [Citation.] A defendant who does not know that he is carrying the weapon or that the concealed instrument may be used as a stabbing weapon is therefore not guilty of violating section 12020." (*Rubalcava*, at pp. 331-332.)³

The terms "dirk or dagger" are to be strictly construed. (*People v. Bain* (1971) 5 Cal.3d 839, 850; *Barrios, supra*, 7 Cal.App.4th at p. 505.) Here, while the minor's companion may have *intended* to use the altered comb as a stabbing instrument, his subjective intent could not supply the requirement that the device actually be capable of ready use as a stabbing instrument. In addition, under *Forrest, supra*, 67 Cal.2d 478, and *Barrios*, it is not enough that it is *possible* to use the device to stab someone. Although the definition of "dirk or dagger" has changed since those cases were decided, nothing in the legislative history or case law suggests an intent to broaden the definition to include devices possessing characteristics substantially limiting their effectiveness for use as stabbing weapons. An unsharpened plastic comb is less useful as a stabbing weapon than the bread knife in *Barrios* and quite possibly than the folding knife in *Forrest*. In short, because the comb possessed characteristics substantially limiting its effectiveness for use as a stabbing weapon, it is not a dirk or a dagger as a matter of law, irrespective of the intent of the minor's companion.

³ Cases such as *People v. Grubb* (1965) 63 Cal.2d 614, 621-622 and *People v. Fannin* (2001) 91 Cal.App.4th 1399, 1406, cited by the Attorney General, recognize that a defendant's intent may be relevant in deciding whether a defendant knowingly possesses a dirk or dagger, but are not authority for the proposition that a defendant's intent in some way removes the requirement that a particular device actually be capable of ready use as a stabbing instrument.

As we reverse the jurisdictional and dispositional orders for this reason, we do not consider the minor's other appellate contentions that the evidence also fails to support the finding that the comb was capable of inflicting great bodily injury or death or that the minor knew it could be used as a stabbing weapon.

DISPOSITION

The orders continuing wardship and ordering the minor's confinement are reversed.

STEIN, J.

We concur:

MARCHIANO, P. J.

MARGULIES, J.