STATE OF MICHIGAN

COURT OF APPEALS

In re MILES DORIAN LEE, a Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

MILES DORIAN LEE,

Respondent-Appellant.

UNPUBLISHED
April 16, 2002

No. 231074
Wayne Circuit Court
LC No. 00-388471

Before: Zahra, P.J., and Neff and Saad, JJ.

PER CURIAM.

The juvenile respondent was charged with felonious assault, MCL 750.82(1), carry a dangerous weapon with unlawful intent, MCL 750.226, and carrying a concealed weapon (CCW), MCL 750.227. Respondent was convicted following an adjudicative hearing of felonious assault and CCW. He was placed with the Wayne County Department of Community Justice. Respondent now appeals as of right. We affirm.

First, respondent argues that there was insufficient evidence presented at the adjudicative hearing to convict him of CCW. Specifically, respondent claims that petitioner did not demonstrate that the knife was a dangerous weapon. We disagree.

We review a challenge to the sufficiency of the evidence by considering the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999). MCL 750.227, the statute pertaining to carrying concealed weapons, provides in part:

> (1) A person shall not carry a dagger, dirk, stiletto, a double-edged nonfolding stabbing instrument of any length, or any other dangerous weapon, except a hunting knife adapted and carried as such, concealed on or about his or her person, or whether concealed or otherwise in any vehicle operated or occupied by the person, except in his or her dwelling house, place of business or on other land possessed by the person.

* * *

> (3) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 5 years, or by a fine of not more than $2,500.00.

As explained by our Supreme Court in *People v Lynn*, 459 Mich 53; 586 NW2d 534 (1998):

> [MCL 750.227(1)] in effect provides that several categories of knives and stabbing instruments are dangerous weapons per se. If the jury finds that the object is a "dagger," "dirk," "stiletto," or a "double-edged nonfolding instrument," no further inquiry is required regarding whether the item is within the class of weapons the carrying of which in a vehicle is prohibited. If an item does not fall within one of those categories, the prosecution must proceed on the theory that it falls within the 'other dangerous weapon' category. [*Id*. at 58 (citations omitted).]

In this case, petitioner did not argue that the knife used by respondent fell into one of the categories of knives specifically recognized as dangerous per se. Therefore, the question becomes whether petitioner demonstrated that the knife fell within the "other dangerous weapon" category. Our Supreme Court, in *People v Vaines*, 310 Mich 500, 505-506; 17 NW2d 729 (1945), explained:

> pocket knives, razors, hammers, hatchets, wrenches, cutting tools, and other articles which are manufactured and generally used for peaceful and proper purposes, would fall within the category of dangerous weapons if used for or carried for the purpose of assault or defense. Whether or not such articles are dangerous weapons, within the meaning of that term as used in section 227, would depend upon the use which the carrier made of them.
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> Therefore, in a prosecution under section 227 it becomes a question of fact for court or jury determination as to whether or not such articles or instruments are used or carried for the purpose of use as weapons of assault or defense.

See also *People v Brown*, 406 Mich 215; 277 NW2d 155 (1979), and *People v Morris*, 8 Mich App 688; 155 NW2d 270 (1967).

We conclude that petitioner presented sufficient evidence that respondent carried the knife for purposes of bodily assault. The victim testified that respondent confronted him on bicycle as he was sitting on his front porch. Respondent accused the victim of talking about him. The victim testified that respondent pulled out a knife with a long silver blade and told the victim that he would "shove" the knife in the victim and "cut" the victim. Given this evidence, it is plainly evident that respondent carried the knife and produced it in a threatening manner to frighten the victim. The knife was not being used for an innocent purpose. Thus, petitioner produced sufficient evidence that the knife was used as a dangerous weapon under the statute.

Respondent nonetheless urges us to find that the victim's testimony was replete with contradictions and could not be relied upon to determine if sufficient evidence was presented to sustain the CCW conviction. Respondent points out that the victim was inconsistent about what portion of the knife he observed. We reject respondent's argument. Credibility is a matter for the trier of fact to decide. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Thus, "[we] will rarely overturn a conviction when the only issue is the credibility of a witness." *People v Crump*, 216 Mich App 210, 215; 549 NW2d 36 (1996).

Second, respondent argues that insufficient evidence was presented at the adjudicative hearing to support his felonious assault conviction. Again, we disagree. The elements of felonious assault are: an assault; with a dangerous weapon; and with the intent to injure or place the victim in reasonable apprehension of an immediate battery. MCL 750.82(1); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Further, petitioner is also required to demonstrate that respondent had the present ability or the apparent present ability to commit battery. *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993); *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995).

Respondent claims there was insufficient proof that respondent assaulted the victim with a dangerous weapon. The plain language of the statute indicates that a knife is considered a dangerous weapon for purposes of this statute. MCL 750.82(1). See also *People v Venticinque*, 459 Mich 90, 99-100; 586 NW2d 732 (1998) (concluding the Legislature is presumed to have intended the meaning it plainly expressed).

Respondent further claims that there was insufficient proof respondent had the present ability or apparent present ability to commit a battery. Respondent asserts that there was substantial distance between the victim and respondent and, therefore, did not have the ability to commit a battery.

We do not find the fact that respondent was approximately ten feet away from the victim to be supportive of the conclusion that respondent lacked the present ability or apparent present ability to commit a battery. Respondent could have covered the ten-foot distance in just a few steps. In light of that fact and in light of the evidence that respondent possessed a knife, removed the knife from its concealed location, and threatened the victim that he was going to use it, we conclude there was sufficient evidence that respondent had the present ability or apparent present ability to commit a battery.

Finally, we do not agree with respondent that the fact he was thirteen years old and the victim was seventeen years old compels us to conclude that he lacked the present ability or apparent present ability to commit a battery. Indeed, the matter of age is irrelevant when respondent had a knife and was threatening the victim with it. Furthermore, there is some indication in the record that the victim was a "special needs" child.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Henry William Saad