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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re JUSTIN S., a Person Coming Under
the Juvenile Court Law.

B235453
(Los Angeles County
Super. Ct. No. FJ45650)

THE PEOPLE,

Plaintiff and Respondent,

v.

JUSTIN S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Cynthia Loo, Juvenile Court Referee. Reversed.

Jonathan E. Demson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court sustained a petition alleging that in February 2011 appellant Justin S. carried a concealed dirk or dagger in violation of former Penal Code section 12020, subdivision (a)(4).¹ The court found that appellant was a person described by Welfare and Institutions Code section 602, adjudged appellant to be a ward of the court, and placed him on home probation. The court ordered that the terms and conditions of probation ordered on June 2010 remain in full effect.

Appellant appeals from the orders sustaining the petition and adjudging him to be a ward of the court, contending that there is insufficient evidence to support the juvenile court's finding that he carried a concealed dirk or dagger. He further contends that, assuming the evidence is sufficient, the matter must be remanded to the juvenile court to declare whether the offense was a misdemeanor or a felony. We reverse the juvenile court's orders.

Facts

About 8:30 p.m., February 11, 2011, Los Angeles Police Department Officer Andy Chang and his partner responded to a call of gang activity at 439 South Westminster in Los Angeles. There, he saw four male Asians in gang attire standing on the street. One was appellant.

Officer Chang saw appellant holding a shiny object in his hand. As Officer Chang approached the group, appellant walked away, bent down and dropped the object on the ground. Officer Chang's partner recovered the object, which turned out to be a seven-inch long ice pick. The ice pick had a blue handle. The metal part of the ice pick was four to five inches long. Officer Chang's partner searched the other men, and found ice picks on two of them.

¹ Operative January 1, 2012, Penal Code section 12020, subdivision (a)(4) had been repealed and reenacted/renumbered without substantive change as Penal Code section 21310. (Stats. 2010, ch. 711, § 6.) All references to Penal Code section 12020, subdivision (a)(4), are to the code sections as formerly numbered.

At the adjudication of this matter, the prosecutor asked Officer Chang: "Now, as far as when you saw the minor drop that ice pick did you see him pull that out of a pocket or out of his person?" Officer Chang replied: "I didn't see him pull it out exactly from any location. When I saw him he had it in his hand, and then I saw him drop something on the ground. That is what I saw. I didn't see him actually pull it out of his pocket or anything like that."

The prosecutor then asked Officer Chang: "So when you saw it in his hand, was most of that thing covered up by his hand?" The officer replied: "I just saw something like a shiny object in his hand, and then he dropped it. And then when my partner recovered it, that is when I realized it was an ice pick." The prosecutor said: "Okay. But what I want you to focus in on now is when you saw it in his hand. . . . were you able to see the entire ice pick?" Officer Chang responded: "No I was not." The prosecutor continued: "So you were only able to see a portion of it?" Officer Chang agreed: "Correct." The prosecutor asked: "Would you even describe that portion as a small portion of it?" Officer Chang replied: "A very small portion. Just enough for me to see that it was something shiny."

Discussion

Appellant contends that there is no evidence that the ice pick was concealed on his person and so no evidence to support the juvenile court's finding that he carried a concealed dirk or dagger. We agree.

Section 12020 punishes any person who "carries concealed upon his or her person any dirk or dagger." (§ 12020, subd. (a)(4).)

The standard of review for the sufficiency of the evidence to support a juvenile court's finding is the "same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal." (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) Under this standard, "the critical inquiry is 'whether, after reviewing 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* (1979) 443 U.S. 307, 318-319 [99 S.Ct. 2781, 2789, 61 L.Ed.2d 560].)" (*In re Ryan N.*, *supra*, 92 Cal.App.4th at p. 1371.)

Here, the evidence shows only that Officer Chang saw appellant holding "something like a shiny object" in his hand, and that a "very small portion" of the object was visible. Officer Chang did not describe anything unusual about the manner in which appellant was holding the object. Appellant dropped the object, which upon retrieval proved to be a seven-inch long ice pick. Officer Chang did not see him "pull it out of his pocket or anything like that."

Appellant contends that simply holding a dirk or dagger in the hand is not concealment. We agree.

Respondent has not cited, and we are not aware of, any cases which have held that holding a dirk or dagger in the hand constitutes concealment within the meaning of section 12020. The cases cited by both respondent and appellant all involve dirks or daggers concealed in clothing. Although not determinative, we note that in considering a statutory change to the definition of dirk or dagger, the California Supreme Court noted that the legislature was concerned with "gang members and other[s] who carry lethal knives *hidden in their clothing*." (*People v. Rubalcava* (2000) 23 Cal.4th 322, 330, italics added.)

If the phrase "concealed upon his or her person" included objects simply held in a person's hand, the statute would effectively criminalize the holding and use of a dirk or dagger. It is not possible for a person to hold a dirk or dagger in his hand without covering part of it. Similarly, it is not possible for a person to use a dirk or dagger without holding it in his hand and thereby covering part of it. That is not the purpose of the statute.

To the extent that respondent attempts to create a distinction between holding and concealing by arguing that concealing only occurs when a "substantial" amount of the

dirk or dagger is covered in any way, we find the argument unpersuasive.² The amount of the dirk or dagger covered will depend on the size of the hand and the size of the object. A person with a large hand who holds a small dirk or dagger will cover a large percentage of the dirk or dagger with his hand, leaving only a small portion visible. A person with a small hand who holds a large dirk or dagger will cover a smaller percentage of the dirk or dagger, leaving a large portion visible. There is no reason to believe that the Legislature intended to punish people based on their hand size.

There may be factual scenarios where the evidence shows that the defendant used his hand to conceal a dirk or dagger. For example, the person might use his open flat hand to press the dirk or dagger against his leg, thereby sandwiching the dirk or dagger between his body and his hand and concealing it from view. The person might use two hands to cover both the handle and dagger. That is not the situation here. The evidence shows only that appellant held the ice pick in his hand.

Since there is no substantial evidence to support the juvenile court's finding, that finding must be reversed.

² Respondent draws the term "substantial" from two cases, *People v. Fuentes* (1976) 64 Cal.App.3d 953 and *People v. Wharton* (1992) 5 Cal.App.4th 72. In both cases, the defendants had concealed a dirk or dagger in their clothing, but a small portion of the item was still visible. The courts found that a defendant "need not be totally successful in concealing a dirk" to be in violation of section 12020. (*People v. Fuentes, supra*, 64 Cal.App.3d at p. 955.) "Only substantial concealment is required." (*People v. Wharton, supra*, 5 Cal.App.4th at p. 75.) Nothing in the reason of *Fuentes* or *Wharton* suggests that any time a dirk or dagger is substantially covered by a hand it constitutes concealment.

Disposition

The orders of the juvenile court are reversed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.