Circuit Court for Charles County
Case No. C-08-JV-20-000022

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 278

September Term, 2021

IN RE: J.D.

Graeff,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: June 2, 2022

The Circuit Court for Charles County, sitting as the juvenile court, found J.D., appellant, involved in the delinquent act of possessing a deadly weapon on school property. Appellant was adjudged delinquent and placed on supervised probation. On appeal, appellant challenges the sufficiency of the evidence to sustain the court's finding.

For the reasons set forth below, we reverse the judgment of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

During appellant's juvenile hearing, the following testimony was provided. On November 12, 2019, B.J., a student in the sixth grade at John Hanson Middle School, was in math class completing a "scavenger hunt" in his classroom, which required him to "walk around and write … answers down on a clipboard" when he observed appellant "in the corner, and he had a knife out." B.J. stated that the knife was "like a pocketknife." He could not recall the size of the knife. He recalled that the blade was "sticking out" and appellant was "kind of fidgeting with it" and "moving it between his hands." B.J. described appellant's demeanor as "calm" with no suggestion of "a harmful attitude." B.J. felt scared "[b]ecause [appellant] had that knife." B.J. responded by "back[ing] up" and moving to another area of the room to continue the scavenger hunt.

The following day, the school resource officer, Officer Stefan Hillman of the Charles County Sheriff's Office, received a report of a "weapon" found on school property. Officer Hillman initially spoke with B.J. and his mother, Ms. Proffet,[1] who met him in the main office of the school to "express her concerns." Officer Hillman also spoke with the

[1] Ms. Proffet's first name does not appear in the transcript.

school principal, Benjamin Kohlhorst, who provided Officer Hillman with the knife. Mr. Kohlhorst did not testify. Officer Hillman testified that he had obtained witness statements from students who witnessed the incident, though none of those students testified. The State did not offer the knife, or a photo of the knife, into evidence. Because Officer Hillman had no first-hand knowledge of the recovery of the knife, he was precluded from testifying as to the appearance of the knife.

Following appellant's motion for judgment of acquittal, the State withdrew the charge of first-degree assault. The juvenile court granted appellant's motion for judgment of acquittal as to the charges of second-degree assault, reckless endangerment, threatening another student with bodily harm, and wearing or carrying a dangerous weapon with the intent to injure another. Appellant was found not involved as to the charge of disturbing school operations. As indicated, the court found appellant involved in the possession of a deadly weapon on school property. At the disposition hearing, appellant was adjudged delinquent and placed on indefinite supervised probation. He noted a timely appeal.

STANDARD OF REVIEW

When reviewing a case from the juvenile court, we apply the same standard of review of evidentiary sufficiency as in other criminal cases. *In re: James R.*, 220 Md. App. 132, 137 (2014). Specifically, "[w]e must determine whether, after viewing 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." *Id*. (quotation marks and citation omitted). "We defer to any possible reasonable inferences the [trier of fact] could

have drawn from the admitted evidence[.]" *State v. Mayers*, 417 Md. 449, 466 (2010). For purposes of our review, "the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw an inference, but whether the inference [it] did make was supported by the evidence." *State v. Suddith*, 379 Md. 425, 447 (2004) (quotation marks and citation omitted).

DISCUSSION

Appellant contends that the evidence was insufficient to sustain the court's finding of involvement in possession of a "deadly weapon" within the meaning of Section 4-102 of Md. Code, Criminal Law Article ("C.L."). Appellant asserts that the State failed to show that, under the circumstances of the case, the pocketknife could reasonably be considered a deadly weapon within the meaning of C.L. § 4-102(b).

The State responds that the evidence was sufficient to support the juvenile court's finding. The State argues that a reasonable fact-finder could have concluded that appellant's holding of the knife with the blade open and his classmate's reaction to the knife was sufficient to support the inference that, under the circumstances, the knife could reasonably be considered a deadly weapon.

Section 4-102(b) states: "A person may not carry or possess a firearm, knife, or deadly weapon of any kind on public school property." The statute does not define "deadly weapon." Relying on *In re: Melanie H.*, 120 Md. App. 158, 167 (1998), appellant argues that because there was no evidence suggesting that he had intended to carry the pocketknife as an offensive or defensive weapon, the pocketknife did not qualify as a deadly weapon

within the meaning of the statute. In *Melanie H.*, the trial court found that Melanie had "committed the delinquent act of possessing a deadly weapon on public school property" because the butter knife found in Melanie's school locker qualified as a "deadly weapon" on school property.[2] 120 Md. App. at 159.

On appeal, Melanie argued that the knife, which she claimed to use as a tool to pry open the locked food cabinets at her group home, was not a *per se* deadly weapon, and there was no evidence that she intended to use the knife as a deadly weapon. *Id.* at 160. The State responded that the statute unequivocally prohibited the possession of any knife on school property, including the butter knife found in Melanie's possession. *Id*. at 167.

This Court determined that, although the statute prohibited the possession of any knife on school property, the Legislature did not intend that all knives, regardless of their use or purpose, be included within the statute:

> The inclusion of all knives within that statute would result in its daily violation at, quite possibly, every public school in this State. Undoubtedly, there are knives, plastic or metal, in school cafeterias for the use of students as well as cafeteria workers. Home economics classes, in which students prepare meals, would surely require the use of knives, as would biology labs where students dissect frogs. Knives may also be used in woodworking classes. A drama department might use a knife when staging productions such as *Romeo and Juliet* or *West Side Story*, in which knives would be part of the performance, quite possibly a stage knife with the blade retracting into the hilt when someone is "stabbed" or even a rubber knife that could inflict no harm. In addition, the custodians and groundskeeper at the schools might possess knives to perform their daily work and so might any private contractors who are properly on school property. Yet, all these instruments from the cafeteria to the biology lab to the woodworking shop to the

[2] Melanie was found to have violated Article 27, section 36A, of the Maryland Code, which was the predecessor of C.L. § 4-102. The Revisor's Note (Acts 2002, c.26) provides that § 4-102 was "derived without substantive change from former Art. 27, §36A."

> auditorium stage are labeled "knives" in our common everyday language. No exception is allowed for the possessing or carrying of these knives on public school property. We do not believe that the Legislature intended such an absurd result.

Id. at 168-69 (footnote omitted).

We concluded that "in order to convict a person of carrying or possessing any rifle, gun, or knife on school property … **the State must show that the instrument possessed can, under the circumstances of the case, reasonably be considered a deadly weapon**." *Id*. at 169 (emphasis added). In reversing the juvenile court's finding of delinquency, we determined that the knife was not a deadly weapon under the statute, "*i.e*., a knife reasonably adapted for use, or capable of being used, as a deadly weapon." *Id.* at 170. We noted specifically that the butter knife was "an all-metal flatware knife which had a blunt edge and a rounded end," which was "obviously not intended for slashing or stabbing." *Id*.

In reaching our conclusion, we considered the Court of Appeals' decision in *Anderson v. State*, 328 Md. 426 (1992), addressing whether a "'razor knife,' a type of utility knife," qualified as a dangerous weapon under Article 27, § 36,[3] the statute prohibiting the carrying of concealed dangerous weapons. *Id*. at 165-66. In *Anderson*, the defendant was approached by a police officer in an "open air drug market" and asked if he was carrying any type of weapon or knife. 328 Md. at 429. The defendant responded by reaching in his back pocket and removing a "razor knife," which, he told the officer, he used for his job.

[3] Article 27, § 36 was the predecessor to C.L. § 4-101, proscribing the carrying and concealment of dangerous weapons. *See* Revisor's Note (Acts 2002, c. 26) ("[t]his section is new language derived without substantive change from former Art. 27, § 36.").

Id. at 430. Based on his possession of the razor knife, the defendant was convicted of wearing and carrying a concealed dangerous or deadly weapon. *Id*. at 431.

The Court of Appeals reversed Anderson's conviction, holding that, in determining whether the concealed weapon statute has been violated in the case of an instrument that has not been legislatively classified as a dangerous or deadly weapon *per se*, the trier of fact must consider whether "[t]he person carrying the object [has] at least the general intent to carry the instrument for its use as a weapon, either of offense or defense." *Id*. at 438. General intent "is a question of fact," to be determined by considering "all of the circumstances" involved, based on "the common experience of persons in our society[.]" *Id*. at 438, 440.

In the present case, there was no evidence that the pocketknife was a deadly weapon *per se*. The State did not produce the knife, a photograph of the knife, or any other evidence of the size or appearance of the knife. Absent tangible evidence of the knife, there must be sufficient circumstantial evidence to support the inference that the knife was a dangerous or deadly weapon. *See Stanley v. State*, 118 Md. App. 45, 57 (1997) (overturning defendant's weapons convictions for insufficient evidence where the "State presented no evidence to demonstrate the type of knife used"), *aff'd in part, vacated in part on other grounds*, 351 Md. 733 (1998); *Bacon v. State*, 322 Md. 140, 143-44 (1991) (holding that evidence was insufficient to support weapons conviction where knife at issue was not introduced in evidence and witness descriptions did not support inference that knife qualified as a deadly weapon).

B.J.'s description of the knife as "like a pocketknife" with the blade "sticking out" did not establish that the knife was objectively dangerous or deadly. *See also Anderson*, 328 Md. at 437 (noting that "all knives are not dangerous or deadly weapons and … depending on the circumstances, the concealed carrying of some cutting tools may be considered lawful"); *Simpler v. State*, 318 Md. 311, 321 (1990) (noting that a carpet knife "is a knife which may lawfully be carried, just as the ordinary pocket knife may lawfully be carried"); *Lockard v. State*, 247 Md. App. 90, 113 (2020) (holding that the presence of a folded knife in defendant's pocket failed to provide reasonable articulable suspicion that defendant was armed and dangerous).

Because the evidence did not show that the knife was "intended for slashing or stabbing," *see Melanie H.*, 120 Md. App. at 170, the State was required to demonstrate that appellant had a general intent to use the knife as a weapon. *See Anderson*, 328 Md. at 438. The facts of the case were limited. B.J. explained that he was scared "[b]ecause [appellant] had that knife." He also described appellant's attitude while holding the knife as "calm" and non-hostile. The evidence that appellant was idly "fidgeting" with the knife during class, though certainly imprudent, did not demonstrate a general intent to use the knife as a weapon. There was no evidence that appellant had brandished the knife or displayed it in a malicious or threatening manner, or that he had intended to use the knife for such a purpose.[4] In the absence of any evidence showing that appellant had an intent to use the

[4] Notably, appellant was acquitted of the charges requiring proof of such conduct - threatening or intending to frighten another student, wearing or carrying a dangerous weapon with intent to injure, and disturbing school operations.

knife either offensively or defensively, we conclude that the evidence was insufficient to support a reasonable inference that the pocketknife, under the circumstances of this case, constituted a dangerous or deadly weapon.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED. COSTS TO BE PAID BY CHARLES COUNTY.