

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

UNPUBLISHED  
October 20, 2015

v

JAMES ARTHUR LAICH,  
Defendant-Appellee.

No. 324622  
Oakland Circuit Court  
LC No. 2014-141232-AR

---

Before: FORT HOOD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

The prosecution appeals as on leave granted<sup>1</sup> the circuit court order affirming the district court's dismissal of one count of carrying a concealed weapon, MCL 750.227, brought against defendant. We reverse and remand for further proceedings consistent with this opinion.

This case arises from an incident involving defendant at a shopping mall. A shopper alerted mall security that a man in the mall was carrying a rifle on his back, and she pointed out defendant. Troy Police Officers and mall security converged on defendant and restrained him, but failed to locate a firearm. Defendant was carrying an item resembling a spike in a sheath. The item was made of hard plastic or a composite material and was approximately 8 inches long, with a textured cylindrical handle and three 3- to 3 ½-inch straight edges terminating in a sharp point. The district court dismissed the case at the conclusion of defendant's preliminary examination, holding that the item was not a dagger, dirk, stiletto, or any other dangerous weapon pursuant to MCL 750.227.

The prosecution contends that the district court erred because the item could properly be considered a dagger, dirk, or other dangerous weapon per se, and that, in the alternative, sufficient evidence existed to show that defendant intended to use the item for bodily assault or defense. We agree that the district court erred in failing to bind over defendant for trial because there was sufficient evidence to show that the item carried by defendant was a dangerous weapon pursuant to MCL 750.227.

---

<sup>1</sup> *People v Laich*, 497 Mich 1025; 863 NW2d 43 (2015).

In the context of a district court's bindover decision, we review de novo the court's rulings concerning questions of law. *People v Flick*, 487 Mich 1, 9; 790 NW2d 295 (2010). Following review by the circuit court, we review de novo a district court's bindover decision, affording no deference to the circuit court's review. *People v Norwood*, 303 Mich App 466, 468; 843 NW2d 775 (2013). Likewise, we review de novo questions of law, including the proper interpretation and application of a statute. *People v Lyon*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2015) (Docket No. 319242); slip op at 2.

Under MCL 766.13, a defendant must be bound over for trial when the prosecutor presents evidence showing probable cause that a felony has been committed and that the defendant committed the offense. *People v Plunkett*, 485 Mich 50, 57; 780 NW2d 280 (2010). To show probable cause, the prosecution must produce "evidence from which at least an inference may be drawn establishing the elements of the crime charged[.]" *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003). Circumstantial evidence and reasonable inferences arising from that evidence may establish probable cause. *People v Nguyen*, 305 Mich App 740, 752; 854 NW2d 223 (2014). The evidence, however, must be "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt." *Yost*, 468 Mich at 126 (citation and quotation marks omitted). "If the evidence introduced at the preliminary examination conflicts or raises a reasonable doubt about the defendant's guilt, the magistrate must let the factfinder at trial resolve those questions of fact" and must bind the defendant over for trial. *People v Hudson*, 241 Mich App 268, 278; 615 NW2d 784 (2000).

Resolution of the issue in this case requires the interpretation and application of MCL 750.227. MCL 750.227, which prohibits carrying a concealed weapon, provides, in relevant 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.

This Court has previously noted that "the general purpose behind the concealed weapon statute is to prevent the possibility that quarrelling persons would suddenly draw a hidden weapon without notice to other persons." *People v Nimeth*, 236 Mich App 616, 621; 601 NW2d 393 (1999) (citation and quotation marks omitted).

When analyzing whether an item comes within the meaning of MCL 750.227, certain categories of knives and stabbing instruments are dangerous weapons per se. *People v Lynn*, 459 Mich 53, 58; 586 NW2d 534 (1998). If the object is a dagger, dirk, stiletto, or a double-edged nonfolding stabbing instrument, no further inquiry is required because the item is dangerous per se. *Id.* However, "[i]f 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.* Under this category, the burden is on the prosecution to prove that the instrument carried by defendant is a

dangerous weapon per se or that the instrument was used or intended for use as a weapon. *Id.* at 58-59, citing *People v Brown*, 406 Mich 215, 222; 277 NW2d 155 (1979).

Initially, we reject the prosecutor’s argument that the trial court erred in concluding that defendant’s item was not one of the instruments listed in MCL 750.227. Specifically, the prosecution contends that the item could properly and reasonably be classified as a dagger or dirk pursuant to the statute. It is appropriate to consult a dictionary to ascertain the plain, ordinary meaning of “dagger” and “dirk” because MCL 750.227 does not define either term. See *People v Ackah-Essien*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2015) (Docket No. 317411); slip op at 6. Merriam-Webster’s defines a “dagger” as “[a] sharp pointed knife for stabbing[.]” *Merriam-Webster’s Collegiate Dictionary* (2014), while the Michigan Model Criminal Jury Instructions define it as “a knife with a short, pointed blade[.]” M Crim JI 11.5. A “dirk” is defined as “a long straight-bladed dagger[.]” *Merriam-Webster’s Collegiate Dictionary* (2014), and “a straight knife with a pointed blade[.]” M Crim JI 11.5. Accordingly, both weapons are knives. A “knife,” in turn, is defined as “a cutting instrument consisting of a sharp blade fastened to a handle[.]” *Merriam-Webster’s Collegiate Dictionary* (2014), and “an instrument having a handle and at least one sharp-edged blade” over three inches long, M Crim JI 11.18. Parsing the language still further, a “blade” is defined as “the cutting part of an implement.” *Merriam-Webster’s Collegiate Dictionary* (2014). Thus, a knife is a *cutting* instrument that consists of a sharp cutting part (a blade) and a handle. By deduction, then, both a dagger and a dirk must also be cutting instruments with handles and sharp blades.

Defendant’s item had three edges, but the record indicates that those edges were not sharp. Defense counsel applied pressure with all three edges to the courtroom podium, a legal pad, and his own hand to no effect. Troy Police Officer Greg Stopczynski admitted that his duty knife would cut flesh given a comparable amount of pressure. Officer Stopczynski, despite referring to the item as a “knife-type item,” testified that it was “used for poking,” and Troy Police Officer Dan Galich testified that it was a stabbing device. The prosecutor himself told the district judge that “this object only has one possible use and that is to puncture.” The judge examined the item and doubted that the edges could be considered blades or that the item was a knife. Accordingly, the district court correctly held that the item was not a dagger or dirk because it was not a cutting instrument with a sharp blade. Therefore, we agree that the item was not one specifically listed in MCL 750.227.

Because the item was not one specifically listed in MCL 750.227, “the prosecution must proceed on the theory that it falls within the ‘other dangerous weapon’ category.” *Lynn*, 459 Mich at 58.<sup>2</sup> To show an item falls within this category, the prosecution must show that “the

---

<sup>2</sup> Generally, we apply the rule of *eiusdem generis* to determine whether an instrument may be considered in the category of “other dangerous weapon,” which limits the meaning to the “same kind, class, or category as those specifically enumerated[.]” by MCL 750.227. *People v Smith*, 393 Mich 432, 436; 225 NW2d 165 (1975); *Brown*, 406 Mich at 221-222. A pointed instrument, such as the item at issue here, falls within the same class or kind as the items specifically enumerated in MCL 750.227. See *Lynn*, 459 Mich at 59; see also *Brown*, 406 Mich at 221-222.

instrument carried by the defendant is a dangerous weapon [p]er se or that the instrument was used, or intended for use, as a weapon for bodily assault or defense.” *Brown*, 406 Mich at 222. The Michigan Supreme Court has noted that dangerous weapons per se under MCL 750.227 include the specifically denoted weapons as well as “similar articles[] *designed for the purpose* of bodily assault or defense[.]” *People v Vaines*, 310 Mich 500, 505; 17 NW2d 729 (1945) (emphasis added). Alternatively, the prosecution may show that the weapon was used, or intended for use, as a weapon for bodily assault or defense. *Lynn*, 459 Mich at 59, quoting *Brown*, 406 Mich at 222-223. The determination of whether the weapon was used, or intended for use, as a weapon for bodily assault or defense is a question of fact. *Vaines*, 310 Mich at 505-506.

Initially, we conclude that the prosecution introduced sufficient evidence for the district court to conclude that defendant’s item was designed for the purpose of bodily assault or defense, and, thus, was dangerous per se. *Id.* at 505. As noted earlier, both Officer Stopczynski and Officer Galich testified that the item was specifically designed for stabbing or poking, with Officer Galich comparing it to the dirks that he had used in his martial-arts training. An online retail website selling the item included customer commentary which described the item as a small knife that could easily be hidden, stated that the item was made of a nonmetal material used to circumvent metal detectors, and was designed to create a puncture wound. In addition, the district judge opined, “I don’t think this really appears to be something that was designed for peaceful purposes” when examining the item.

We further hold that the district court erred in failing to bind over defendant for trial because a question of fact existed regarding his intent to use the item for bodily assault or defense. Again, it is a question of fact whether a defendant carried an item with the intent to use it for bodily assault or defense. *Id.* at 505-506. Thus, assuming *arguendo* that the item in this case was not a dangerous weapon per se, the district court should have left the question of defendant’s intent for the trier of fact and bound over defendant for trial if the evidence created a reasonable inference of intent. See *Yost*, 468 Mich at 126; *Nguyen*, 305 Mich App at 752; *Hudson*, 241 Mich App at 278. Second, evidence was presented to suggest that defendant intended to use the item for bodily assault or defense. Defendant carried the item in a sheath, with one end of the sheath clipped to his belt and the other concealed in his front pants pocket. Officer Galich testified that the way defendant carried the item specifically contemplated using it as a weapon: “It was carried upside down so that he can access it with one hand and when he pulls it away the Velcro portion stays to his belt[,] so it’s drawn like a fixed blade would be[.]” Defendant also carried the item with a canister of pepper spray and a seatbelt cutter. Based on these facts, sufficient evidence existed to create a reasonable inference of defendant’s intent, making the issue a question of fact for the jury or court to resolve at trial. See *Yost*, 468 Mich at 126; *Vaines*, 310 Mich at 505-506. Accordingly, even assuming the item was not dangerous per se, the district court erred in failing to bind over defendant for trial because a question of fact existed regarding his intent to use the item for bodily assault or defense. See *Hudson*, 241 Mich App at 278.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood  
/s/ Mark J. Cavanagh  
/s/ Kirsten Frank Kelly