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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN ESQUIVEL,

Defendant and Appellant.

E054487

(Super.Ct.No. FVA1100704)

OPINION

APPEAL from the Superior Court of San Bernardino County. Arthur Harrison, Judge. Affirmed.

Esther Hong, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant, Steven Esquivel, of carrying a dirk or dagger concealed on his person (Pen. Code, § 12020, subd. (a)(4)) and driving with a suspended

license (Veh. Code, § 14601.1, subd. (a)). He was granted probation and appeals, claiming Penal Code former section 12020¹ is constitutionally vague. We reject his contention and affirm.

FACTS

On January 17, 2011, defendant was stopped while driving on a suspended license. He was ordered out of the truck he was driving. The t-shirt he was wearing hung below the pockets of his pants and he did not pull his shirt up as he got out of the truck. The officer who stopped him asked him if he had anything illegal on him and defendant pointed to his back right pants pocket and said he had a knife. The officer lifted defendant's t-shirt and saw the handle of a knife protruding from the pocket. Defendant's t-shirt had completely covered the knife. The knife was in a sheath that covered the entire blade and the sheath was attached to the belt on defendant's pants. The sheath had a button snap that was not difficult to open. The knife had a fixed blade that was about four inches long and the handle was about the same length. The handle would protect the hand of whoever used the knife to stab from getting cutting.

ISSUE AND DISCUSSION

At the time of defendant's crimes, section 12020, subdivision (a)(4) (Stats. 2010, ch. 711, § 6.)² prohibited carrying a dirk or dagger concealed on the person. As is

¹ All further statutory references are to the Penal Code as it existed in 2011 unless otherwise indicated.

² That section is now 21310.

pertinent here, section 12020, subdivision (c)(24), as it then read,³ defined “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.”

Defendant contends that section 12020, subdivision (c)(24)’s definition of a dirk or dagger is unconstitutionally vague in that it does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that the person may act in conformity with its provisions. However, a defendant who is squarely within the reach of a statute lacks standing to challenge its vagueness as it hypothetically could be applied to the conduct of others. (*People v. Murphy* (2001) 25 Cal.4th 136, 149; *Parker v. Levy* (1974) 417 U.S. 733, 756.) Indisputably, defendant concealed a knife with a four inch long fixed blade that could inflict great bodily injury or death. His conduct fell squarely within the reach of section 12020, subdivisions (a)(4) and (c)(24) and, therefore, he lacks standing to challenge the vagueness of other parts of the statute that might be applied to the conduct of others in different circumstances. Moreover, the legislature recognized that the definition of dirk or dagger in section 12020, subdivision (c)(24) might criminalize the innocent carrying of legal instruments, such as steak knives, scissors or metal knitting needles, but concluded that there was no need to carry such items in public. (*People v. Rubalcava* (2000) 23 Cal.4th 322, 330 (*Rubalcava*)). Thus, aside from defendant’s lack of standing, his argument lacks merit.

³ That section is now 16470.

Defendant also asserts that the definition of a dirk or dagger in section 12020, subdivision (c)(24) authorizes or encourages discriminatory enforcement, which is another avenue by which a statute may be declared unconstitutionally vague. (See *People v. Annin* (2004) 117 Cal.App.4th 591, 607.) Such a statute must impermissibly delegate basic policy matters to police officers, judges and juries for resolution on an ad hoc and subjective basis with the attendant dangers of arbitrary and discriminatory application to be void for vagueness. (*Gayned v. City of Rockford* (1972) 408 U.S. 104, 108, 109.) However, as *Rubalcava* noted, the statutory language and legislative history of section 12020 indicates that the Legislature intended to criminalize previously legal conduct where it constituted carrying the items concealed in public. (*Rubalcava, supra*, 23 Cal.4th at pp. 330, 332.) Moreover, *Rubalcava* allowed that while the breadth of former section 12020 may invite arbitrary and discriminatory enforcement due to the wide range of otherwise innocent activities it proscribes, the defendant there (just like defendant here) did not engage in any of these, but carried a knife capable of causing death or serious bodily injury concealed on his person.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.