

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
July 11, 2013

v

ALEXANDER LEE TAYLOR,
Defendant-Appellant.

No. 310729
Saginaw Circuit Court
LC No. 11-035992-FC

Before: BECKERING, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals his jury trial convictions of assault with intent to murder, MCL 750.83, and carrying a dangerous weapon with unlawful intent, MCL 750.226.¹ The trial court sentenced defendant as a habitual offender, third offense, MCL 769.11, to serve 300 months to 45 years in prison for assault with intent to commit murder and 72 months to 10 years in prison for carrying a weapon with unlawful intent. We affirm defendant's conviction for assault with intent to murder, vacate his conviction and sentence for carrying a dangerous weapon with unlawful intent, and remand for resentencing.

Defendant lived at Beacon Harbor House, an adult foster care home for people with mental limitations. On February 3, 2011, defendant entered a room and repeatedly stabbed a staff member who was giving medications to another resident. As a result of the attack, the victim lost 80 percent of his blood, his lung collapsed, and he had to undergo two emergency surgeries. The police arrested defendant later that day at his mother's house, and defendant gave two incriminating statements that were recorded and played for the jury.

Defendant challenges the sufficiency of the evidence supporting his conviction of carrying a dangerous weapon with unlawful intent. We review de novo challenges to the sufficiency of the evidence. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). When evaluating the claim, "we construe the evidence in a light most favorable to the prosecution and consider whether there was sufficient evidence to justify a rational trier of fact in

¹ The jury found defendant not guilty of carjacking, MCL 750.520a.

finding that all the elements of the crime were proved beyond a reasonable doubt.” *People v Phelps*, 288 Mich App 123, 131-132; 791 NW2d 732 (2010).

MCL 750.226 provides in pertinent part as follows:

Any person who, with intent to use the same unlawfully against the person of another, goes armed with a pistol or other firearm or dagger, dirk, razor, stiletto, or knife having a blade over 3 inches in length, or any other dangerous or deadly weapon or instrument, shall be guilty of a felony

In *People v Parker*, 288 Mich App 500, 509; 795 NW2d 596 (2010), this Court held that “in prosecutions under MCL 750.226 involving a knife, an element of the crime is that the knife’s blade be more than three inches in length.” Here, the trial judge specifically instructed the jury that it had to find beyond a reasonable doubt that “defendant was armed with a knife having a blade over three inches in length.” Defendant argues that the prosecutor failed to prove this element.

The knife was never recovered, and no witness testified about the length of the blade. An employee of the store where defendant bought the knife testified that, generally, the blade length of the knives sold there was between 2½ and 3 inches. A police officer investigating the crimes testified that he bought a similar knife from the store, but he did not testify about the length of the blade. If the knife the officer bought was similar to the knife purchased by defendant, and if the store sold knives with blades between 2½ and 3 inches long, then the inference from the evidence is that the blade was not more than 3 inches long, as the statute requires for conviction. Accordingly, there is “simply no basis for ascertaining whether the knife’s blade was longer than three inches.” *Parker*, 288 Mich App at 504. In any case, the prosecutor failed to present sufficient evidence to establish this element and, therefore, we must vacate defendant’s conviction of carrying a dangerous weapon with unlawful intent.

Defendant argues that the trial judge erred when she instructed the jury that it could not consider defendant’s mental limitations when deciding the issue of intent or guilt. We disagree. “A claim of instructional error is reviewed de novo.” *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). The instructions must “clearly present the case and the applicable law to the jury.” *Id.*

During trial, defendant asked for a jury instruction on insanity, and the trial judge said she would consider it. Thereafter, the judge gave trial counsel an instruction “regarding mental disability and mental illness” drafted in accordance with *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001). The prosecutor brought a motion in limine to prohibit defendant from arguing that, due to mental illness, he could not form the necessary intent to murder. The court granted the motion and prohibited defendant from arguing that he “had a diminished capacity or a mental illness or anything that affected his ability . . . to form the intent.” The court instructed the jury as follows regarding the intent element of assault with intent to murder:

The defendant’s intent may be proved by what he said, what he did, how he did it, or by any other facts and circumstances in evidence.

During this trial you have heard some evidence of defendant's living situation in a group home for people who obviously have some mental limitations. That evidence was introduced to explain the background and circumstances of the crime. You may not assume any mental disability affected the defendant, and you may not consider any mental disability in determining his guilt. Lack of capacity or mental illness is not a defense that applies in this case. Mental illness is not to be considered in determining defendant's intent or guilt.

In *Carpenter*, our Supreme Court addressed the continued viability of the diminished capacity defense in Michigan. *Id.* at 236. At that time, the defense allowed "a defendant, even though legally sane, to offer evidence of some mental abnormality to negate the specific intent required to commit a particular crime." *Id.* at 232. However, in *Carpenter*, our Supreme Court ruled that our Legislature had enacted a comprehensive statutory scheme that "conclusively determined when mental incapacity can serve as a basis for relieving one from criminal responsibility." *Id.* at 237. The Court held "that the insanity defense as established by the Legislature is the sole standard for determining criminal responsibility as it relates to mental illness or retardation." *Id.* at 239.

Later, in *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008), this Court addressed the extent that evidence of a defendant's limited mental capacity could be admitted after the diminished capacity defense was abolished. The Court held that "to the extent that this evidence was offered for a purpose other than to negate the intent element of the charged offenses, the evidence was not barred by the rule stated in *Carpenter*, *supra*, even though it dealt with defendant's limited mental capacity." *Id.* at 357-358.

Here, the judge correctly instructed the jury because the instruction was consistent with *Carpenter* and *Yost* and the evidence introduced at trial.

For the reasons set forth above, we affirm defendant's conviction for assault with intent to murder, we vacate defendant's conviction for carrying a dangerous weapon with unlawful intent, and we remand for resentencing consistent with this opinion. See *People v Jackson*, 487 Mich 783, 801-802; 790 NW2d 340 (2010).² We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Henry William Saad
/s/ Peter D. O'Connell

² Because we vacate defendant's conviction for carrying a dangerous weapon, remand is necessary for completion of an updated presentence investigation report. Further, the trial court should consider whether the vacated conviction alters defendant's sentencing score or the guidelines range for defendant's sentence for assault with intent to commit murder.