No. 116

In the Matter of Antwaine T.,
Respondent;
Presentment Agency,
Appellant.

Dona B. Morris, for appellant.
John A. Newbery, for respondent.

PIGOTT, J.:

The issue in this juvenile delinquency proceeding is whether the petition was facially sufficient to charge respondent Antwaine T. with a violation of Penal Law § 265.05, which proscribes a juvenile's possession of "any dangerous knife." We conclude that the petition was facially sufficient.

On November 23, 2010, a petition was filed in Family Court against respondent, then 15 years old, charging him with criminal possession of a weapon in the fourth degree (Penal Law § 265.01 [2]) and unlawful possession of weapons by persons under sixteen (Penal Law § 265.05). The two counts of the petition were supported by a sworn statement of the arresting officer. In the statement, the officer recounted that at approximately 11:23 p.m. in Brooklyn, respondent,

> "a person under the age of [16], possessed a dangerous instrument or deadly weapon, to wit: a machete, with intent to use the same unlawfully against another, in that:
>
> At the above date, time and location, I was working in my official capacity as a police officer when I recovered a machete from [respondent]. The blade of the machete was approximately 14 inches in length. I then vouchered the machete using New York Property Clerk invoice number R648888.
>
> Later, [respondent's] mother informed that [he] was born on January 30, 1995 and that he is 15 years old. The mother provided me with a photocopy of [respondent's] birth certificate, which confirmed this information."

Respondent initially entered a denial of the petition, but later withdrew that denial and made an admission to the count of unlawful possession of weapons by persons under sixteen. Specifically, he admitted that at the pertinent time and place, he was fifteen years old and he "was in possession of a dangerous knife, and more specifically a machete that had a blade of approximately 14 inches." Family Court granted respondent an

adjournment in contemplation of dismissal (ACD).

On June 3, 2011, the case was restored to the Family Court's calendar because respondent had not complied with the terms of his ACD. Family Court placed him under enhanced probation supervision for a period of nine months. Later, upon finding that respondent had violated the conditions of his probation, the court revoked the earlier order of disposition, adjudicated respondent a juvenile delinquent, and placed him on probation for six months.

On appeal, the Appellate Division found the petition facially insufficient "because it did not contain allegations which, if true, would have established that the knife he possessed was a 'dangerous knife'" pursuant to section 265.05 (105 AD3d 859, 859 [2d Dept 2013] quoting Matter of Neftali D., 85 NY2d 631, 635 [1995]). Rather, the arresting officer's account "merely described the unmodified, utilitarian knife which [respondent] possessed, and contained no allegations as to the 'circumstances of its possession'" (105 AD3d at 860 quoting Matter of Jamie D., 59 NY2d 589, 593 [1983]). Thus, it held, there were insufficient allegations to permit a finding that, when respondent was arrested, the knife served as "a weapon rather than a utensil" (id.).

This Court granted the presentment agency leave to appeal and we now reverse.

A petition commencing a juvenile delinquency proceeding

must contain "a plain and concise factual statement in each count which . . . asserts facts supporting every element of the crime charged and the respondent's commission thereof with sufficient precision to clearly apprise the respondent of the conduct which is the subject of the accusation" (Family Court Act § 311.1 [3] [h]). The petition is sufficient on its face when "non-hearsay allegations of the factual part of the petition or of any supporting depositions establish, if true, every element of each crime charged and the respondent's commission thereof" (id. § 311.2 [3]). The absence of factual allegations supporting each element of the crimes alleged constitutes a nonwaivable jurisdictional defect (Matter of David T., 75 NY2d 927 [1990]).

Penal Law § 265.05 provides, in relevant part,:

> "It shall be unlawful for any person under the age of sixteen to possess any air-gun, spring-gun or other instrument or weapon in which the propelling force is a spring or air, or any gun or any instrument or weapon in or upon which any loaded or blank cartridges may be used, or any loaded or blank cartridges or ammunition therefor, *or any dangerous knife*; provided that the possession of rifle or shotgun or ammunition therefor by the holder of a hunting license or permit issued pursuant to article eleven of the environmental conservation law and used in accordance with said law shall not be governed by this section" (emphasis added).

The statute does not define the term "dangerous knife." In Matter of Jamie D. (59 NY2d 589 [1983]), however, this Court held that the term, as used in the statute, "connotes a knife which may be characterized as a weapon" (id. at 592). We

explained that certain knives may fall within the scope of the statute based solely on the knife's particular characteristics. For instance,"a bayonet, a stiletto, or a dagger" would come within the meaning of "dangerous knife" because those instruments are "primarily intended for use as a weapon" (id. at 592-93).

We also explained that other knives, which are designed and primarily intended for use as "utilitarian utensils," may also come within the statutory language in at least two ways (id. at 593). First, a knife may be converted into a weapon, and second, "the circumstances of its possession, although there has been no modification of the implement, may permit a finding that on the occasion of its possession it was essentially a weapon rather than a utensil" (id. at 593).

A "machete" is generally defined as "a large, heavy knife that is used for cutting plants and as a weapon" (http://www.merriam-webster.com/dictionary/machete). While a machete has utilitarian purposes, under the circumstances of this case, it would be unreasonable to infer from the statement supporting the petition that respondent was using the machete for cutting plants. Rather, the arresting officer's description of the "machete", with its 14-inch blade, being carried by respondent late at night on a street in Brooklyn, adequately states "circumstances of . . . possession" (Jamie D. at 593) that support the charge that defendant was carrying a weapon.

Accordingly, the order of the Appellate Division should

be reversed, without costs, and the order of Family Court reinstated.

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Order reversed, without costs, and order of Family Court, Kings County, reinstated. Opinion by Judge Pigott. Chief Judge Lippman and Judges Graffeo, Read, Smith, Rivera and Abdus-Salaam concur.

Decided June 5, 2014