

COA Opinion: To prove a knife is a dangerous weapon under MCL 750.226, the prosecution must show its blade is at least three inches

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In *People v. Parker*, No. 289357, the Court of Appeals overturned the defendant's conviction and acquitted him of the charge of carrying a dangerous weapon with unlawful intent, MCL § 750.226. Because this statute applies only to a person who **both** (1) carries "a pistol or other firearm or dagger, . . . or knife having a blade over 3 inches in length, or any other dangerous or deadly weapon" **and** (2) carries the instrument "with intent to use the same unlawfully," the Court concluded that a knife qualified as a dangerous weapon under this particular statute only if it has a blade of at least 3 inches. Because the prosecution failed to prove the length of the knife, it failed to prove an element of the crime, and the Court ordered the defendant's acquittal because the Double Jeopardy Clause would bar a retrial.

Interestingly, the Court explained that the outcome could be different under a related statute, MCL § 750.227, because the Michigan Supreme Court has interpreted the second statute (a concealed weapon statute) to forbid **either** (1) carrying an instrument that is a dangerous weapon per se **or** (2) carrying an "instrument used, or intended for use, as a weapon for bodily assault or defense." This means that under § 750.226 the prosecution must prove both intent to use a weapon unlawfully and that the knife is at least 3 inches, while under § 750.227 the prosecution could prove that a 2 and 1/2 knife was carried "for bodily assault or defense."