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August 2, 2018

VIA EXPRESS MAIL

Hon. John P. Asiello
Clerk of the Court
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Re: People v. Steven Berrezueta
APL-2017-00224
Return Date: August 13, 2018

Dear Clerk:

Enclosed please find an original and one copy of a Notion of Motion to File Brief *Amici Curiae* in Support of Defendant-Appellant Reargument (including Brief, Supporting Affidavit, and Affidavit of Service) as well as our Attorney's Check for \$45 filing fee of said motion.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact my office.

Sincerely,
EVAN F. NAPPEN ATTORNEY AT LAW, P.C.

Ali Homayouni, Esq. /s

By: Ali Homayouni, Esq.
For the Firm

c: District Attorney
Steven Berrezueta

COURT OF APPEALS OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF
NEW YORK,

Plaintiff-Respondent,

-against-

STEVEN BERREZUETA,

Defendant-Appellant.

APL-2017-00224

**AFFIRMATION OF
ALI HOMAYOUNI, ESQ.,
IN SUPPORT OF MOTION
FOR LEAVE TO FILE A
BRIEF *AMICI CURIAE* IN
SUPPORT OF
DEFENDANT-APPELLANT
STEVEN BERREZUETA FOR
REARGUMENT**

Ali Homayouni, an attorney admitted to practice in the Courts of New York State, hereby affirms under penalty of perjury:

1. I am a member of the firm of Evan F. Nappen Attorney At Law P.C., 21 Throckmorton Avenue, Eatontown, New Jersey 07724. I make this affirmation in support of the motion by Knife Rights Foundation, Inc. and Ken Onion to file an amici curiae brief in support of the Defendant-Appellant's motion for reargument.

2. Daniel L. Schmutter, counsel for the Defendant-Appellant, consents to the participation of Knife Rights Foundation, Inc. and Ken Onion as amici curiae in this matter.

3. We most respectfully submit that the parties are not capable of the full and adequate presentation of the issues identified and developed by the special expertise and domain knowledge of the Knife Rights Foundation, Inc. and world-renown knife-designer and patent-holder Ken Onion. The Knife Rights Foundation, Inc. has particular insight in this subject matter across jurisdictions and through history. Ken Onion has specific knowledge as to the technical, legal, and patent definitions of these implements and how they relate to regulation, sales, and ordinary customary acquisition, possession, and use.


4. To the best of my knowledge no party's counsel contributed content to the brief or participated in the brief in any other manner beyond brief limited early verbal discussion.

5. No party or party's counsel contributed money that was intended to fund preparation or submission of the brief. Only Knife Rights Foundation, Inc. has contributed money intended to fund preparation and submission of the brief.

6. Pursuant to Rule 500.1[f], proposed amici each hereby certify that they have no parent corporation, subsidiaries, or affiliates.

7. For all these reason, as well as those developed in the attached proposed brief, we most respectfully seek leave to submit a brief as amici curiae.

Dated August 2, 2018

By: 

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COURT OF APPEALS OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF
NEW YORK,

Plaintiff-Respondent,

-against-

STEVEN BERREZUETA,

Defendant-Appellant.

APL-2017-00224

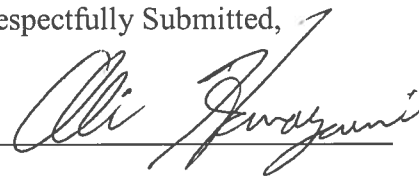
**NOTICE OF MOTION
FOR LEAVE TO FILE A
BRIEF *AMICI CURIAE* IN
SUPPORT OF
DEFENDANT-APPELLANT
STEVEN BERREZUETA FOR
REARGUMENT**

PLEASE TAKE NOTICE that upon the annexed affirmation of Ali Homayouni, dated August 2, 2018, the proposed *Amici Curiae* Knife Rights Foundation, Inc. and Ken Onion, will move before this Court at 20 Eagle Street, Albany, New York, on Monday, August 13, 2018, or as soon thereafter as counsel may be heard, for an order, pursuant to NYCRR Rule 500.23, for leave to file the proposed BRIEF OF *AMICI CURIAE* KEN ONION AND KNIFE RIGHTS FOUNDATION, INC. IN SUPPORT OF MOTION FOR REARGUMENT, filed herewith, and for such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Dated August 2, 2018

By: _____



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Counsel for Proposed *Amici Curiae*

Court of Appeals
of the
State of New York

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

- against -

STEVEN BERREZUETA,

Defendant-Appellant.

**BRIEF OF *AMICI CURIAE* KEN
ONION AND KNIFE RIGHTS
FOUNDATION, INC. IN
SUPPORT OF MOTION FOR
REARGUMENT**

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July 9, 2018

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INTEREST OF *AMICI CURIAE*

The Knife Rights Foundation, Inc. is a non-profit organization that serves its members and the public, through direct and grassroots advocacy, focused on protecting the rights of knife owners to keep and carry knives and edged tools. The purposes of the Knife Rights Foundation include the promotion of education regarding state and federal knife laws, and the defense and protection of the civil rights of knife owners nationwide.

Ken Onion, born in 1963, is an American custom knifemaker based in Hawaii best known for inventing and patenting the “SpeedSafe” assisted opening mechanism under Kershaw Knives and popularizing the mechanism with them under the title of Premier Knife Designer. He is a veterans of the U.S. Marines and holds 36 patents related to knives. He is the youngest inductee into the Blade Magazine Cutlery Hall of Fame and designed knives for Columbia Knife River & Tool, Spyderco, and celebrities. He has unique insight into the legally distinguishable mechanisms of a knife, their popularity and proclivity, and knife culture.

LIST OF AMICI CURIAE

Ken Onion

Knife Rights Foundation

BACKGROUND

We concur with Judge Rivera's thoroughly analyzed dissent. *People v. Berrezenta*, ___ N.E.3d ___, (2018 WL 2724977) (2018). We briefly summarize her key points as framework for the additional guidance this brief may supply.

Judge Rivera did not find the accusatory instrument to be jurisdictionally sound because the knife did not meet the statutory description of a switchblade. Failing that, the evidence at trial failed to establish the knife in question was a switchblade. Judge Rivera properly applies case law, statutory construction, and jurisprudence to find that the court may not interpret statutory language contrary to its express terminology.

Centrally, the key assertion is that defendant's knife is not a switchblade as defined by Penal Law because the knife opens upon pressure placed on the blade and not a pressure-sensitive device located in the handle. Judge Rivera walks through the court's jurisprudence on statutory definition of knives and finds a consistent refusal to rewrite or ignore the legislative intent of the statutory text. The Legislature has had many opportunities to amend or define switchblade differently; and clearly had the capacity to include pressure to the blade, long after such mechanism had been popularized throughout the United States, and the Legislature has made such changes in response to changing technology in the past.

Judge Rivera then looks that the harm of such construction considering the ubiquity and legal function of these knives as staple tools. She notes how the lack of criminal intent or knowledge means this should be a carefully, narrowly, and strictly construed statute. Judge Rivera walks through the defective Accusatory Instrument, the People's misplaced reliance on a gravity knife case and billy club case and the insufficiency of the trial evidence to establish the statutory definition.

Finally, Judge Rivera concludes with a plain reading of the Statute: "A knife's blade and handle are two different entities, and no amount of legal finessing can change that simple fact."

PREFACE

We submit this amicus brief to bring to the Court's attention: First, the unexpected and disproportionate impact of the ruling on a ubiquitous class of common folding knife that is universally lawful; and Second, the mechanical design, functional and cultural distinctions between Appellant's class of knife and the prohibited switchblade. Understanding the scope of law-abiding citizens impacted by this ruling; and how those citizens readily distinguish their common folding knives from a switchblade; is relevant to the Courts consideration of the Appellant's motion.

In sum, this brief seeks to put facts and figures to Judge Rivera's concerns: where a per se weapon requiring neither proof of criminal intent nor knowledge of illegality is not construed narrowly, "Given that knives are staple tools found in the home and workplace, individuals may **confuse** a criminally-proscribed knife with a legally-acceptable one and **mistakenly** believe their possession to be lawful. . . . [W]e must be careful not to broaden the category of per se knives beyond the legislatively-adopted, definitional terms in violation of the legislative intent." Please allow this brief to illuminate the practical reason for care in this arena based on impact and citizen understanding of the categories.

ARGUMENT

I. Assisted Opening Knives

Appellant's knife was an Assisted Opening knife or Assisted Opener. The necessity of this amicus brief arises from a review of the full record below, where it was apparent that this class of knives was not known or understood. This created an anchoring bias in favor of The People's burden to prove Appellant's knife was a "knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife". Appellant should not be a victim of Maslow's Gavel.¹ We respectfully seek to illuminate this category of

¹ Better known as the law of the instrument or law of the hammer, it is a cognitive bias towards over-reliance on

popular legally compliant knives enjoyed throughout the United States known as Assisted Openers.

a. History and Popularity

Assisted Opening knives have existed for nearly a quarter-century and were inspired by the strut or kickstand mechanism of motorcycles.² The operation and experience are essentially the same. Despite being a distinct and clearly defined sub-genre of common folding knives for over 20 years, to date there are no Federal or State laws which explicitly ban Assisted Opening knives by name or by a technical description. To the contrary, because of their measurable increase in utility and safety, the introduction of a novel innovation in a tool category dating to prehistoric times, the Assisted Opener has seen widespread adoption worldwide.

“Assisted Opening” is a Amazon subcategory of Folding and Pocket Knives. Assisted Opening knives, which are just another common folding knife, [are/have been] lawfully sold and available from major retailers throughout the State of New York, both in brick and mortar stores and through their online portals, including but not limited to: Walmart³, Sears⁴, Target⁵, Lowe’s Home Improvement⁶, Dick’s Sporting Goods⁷, and countless others. This means that when the tradesperson, camper, scout, outdoors person, collector, sports person, or average person picked up a pocket knife, there is a good chance it was a lawful-to-own common folding knife prior to this ruling but this same person may now be guilty of Criminal Possession of a Weapon in the Fourth Degree for a Switchblade Knife.

a familiar tool: “If all you have is a hammer... everything is a nail.”, Abraham Maslow (1966). Here, Appellant knife was viewed only through the lens of a switchblade with no context for the common lawful assisted opening knife.

² Blackie Collins designed the first assisted opener in 1995 based on his Ducati motorcycle strut. Ken Onion patented a similar popular design in 1998. https://en.wikipedia.org/wiki/Assisted-opening_knife

³ <https://www.walmart.com/ip/Kershaw-Filter-Blackwash-Assisted-Opening-Pocket-Knife-1306BW/46597927>

⁴ <https://www.sears.com/smith-wesson-3rd-gen-black-ops-serrated-knife/p-00694627000P>

⁵ <https://www.target.com/p/gerber-mini-fast-draw-assisted-opening-knife/-/A-51531783>

⁶ <https://www.lowes.com/pd/SOG-3-4-in-Stainless-Steel-Clip-Point-Pocket-Knife/1000033255>

⁷ <https://www.dickssportinggoods.com/p/kershaw-scrip-drop-point-assisted-opening-knife-16kshuscrpxxxxxxcut/>

No one can better attest to the rise, success, and ubiquity of Assisted Opening knives than Ken Onion, an American knifemaker who invented and patented⁸ one of the most popular assisted opening mechanisms and rose to prominence designing especially Assisted Opening knives for Kershaw Knives (Est. 1974). Onion is a Veteran of the U.S. Marines, he has been inducted into the Blade Cutlery Hall of Fame as its youngest living member, and he holds over 36 design patents⁹ and has filed many more.¹⁰

Attached please find Onion's affidavit attesting to:

14) A switchblade is also known as an automatic knife or pushbutton knife. It has a folding or sliding blade contained in the handle which is opened automatically, by a spring, when a button, switch or other device in the handle of the knife is actuated. A switchblade blade must be locked (also referred to as "latched") in the closed position because it is spring-loaded to open. Without being latched in the closed position, it cannot stay closed. When the button in the handle is pressed, the latch is released, and a compressed spring immediately launches the blade to the fully opened position.

15) Assisted opening knives are not "switchblades" and are clearly distinguishable from switchblades, in fact, because:

a. Assisted opening knives do not open "automatically." The user must apply manual force to the blade for it to open. This is in stark contrast to a switchblade, where the button, switch or other device in the handle must be actuated, and then the blade suddenly springs open fully without any further action by the user -- fully automatic in its operation until completely open.

b. Assisted opening knives have no button, switch or other device in the handle (or any other place) which releases the blade. There is no button, switch or other device in the "handle" (or anywhere) because there is no need for one as compared to a switchblade, which requires a latch to keep the blade from springing open.

c. Assisted opening knives use thumb studs, various thumb holes, tabs, nail notches, nail mark grooves, textured surfaces, and more to produce leverage on the blade to manually move it from the folded position to the open position. In every circumstance these studs, holes, tabs, grooves, etc. are part of, or fixed to, the blade itself and simply move with the blade when manual force is applied to these elements.

d. Upon applying force to the above elements to start manually rotating the blade out of the handle, at some point, typically after 30 degrees +/- of movement, a spring assists the blade to open fully. Thus, we get the terminology "assisted opener."

⁸ <http://www.google.com/patents?vid=USPAT6145202&id>

⁹ https://en.wikipedia.org/wiki/Ken_Onion

¹⁰ <https://patents.justia.com/inventor/kenneth-j-onion>

16) Traditional pocket knives like the classic Swiss Army Knife (known in the industry as Slip Joints – having no locking mechanism), are in fact of very similar design to assisted openers. For example, the classic Swiss Army Knife, just like the assisted opener, also has a blade which must be manually opened by the user applying force to the blade itself to rotate the blade out of the handle, and then when the blade is partially out of the handle a spring assists to bring the blade to the fully open position. Upon applying force to manually rotate the blade out of the handle, at some point, typically approximately 15-20 degrees from being fully open, the back spring assists the blade to open fully. An assisted opening knife does the same thing, only sooner in the arc of the manual opening of the knife. A switchblade does not and cannot manually open at all.

17) My assisted opener invention merely assists opening the blade sooner in the manual opening process of a folding knife. In this way, assisted openers are fundamentally the same as traditional pocket knives and fundamentally different than switchblades.

20) The folding knife at issue in this case is not a switchblade. It is an assisted opening knife in which the blade requires manual pressure applied to the blade by the user to open. It contains no device in the handle which releases the blade from a latched position, allowing it to open automatically.

Indeed, precisely as Judge Rivera predicts and explains, knives are common, ubiquitous tools which creates a significant risk of confusion and mistake among law-abiding citizens. CEO of SOG Specially Knives & Tools, LLC ("SOG"), Joe McSwiney, says that SOG has sold approximately 2,700,000 Assisted Opening knives in the United States over the past 10 years and estimates that 162,000 of those were sold in New York State. Given that he claims SOG's sales to be 11% of the market in these knives and that knives are durable goods that persist, McSwiney estimates the Court's ruling may impact more than 739,000 New York citizens in possession of Assisted Opening knives legal to possess prior to this ruling.

To understand both why Assisted Opening knives are popular and why they are easily distinguished from switchblades by the citizenship (but not so easily distinguished from any other common folding knife) it is necessary to understand the purpose and function of an Assisted Opening knife. With the schema for this class of knives it is clearly distinguishable from the mechanism, operation, and legal definition of a switchblade when each of the elements are considered.

b. Kickstand Inspired

The simplest way for someone unfamiliar with folding knives to think of an Assisted Opening knife's mechanism is to analogize it to the inspiration for the initial invention, as mentioned above: the motorcycle kickstand.

Like a kickstand, which must stay safely and securely in the up and stowed position during the operation of the motorcycle, the blade of an assisted opener will stay securely closed in the pocket being biased to the closed position by some mechanical means such as a spring ("bias toward closure"). When a deliberate, moderate, orthogonal force is applied to the kickstand *directly*, it moves from its stowed state to being securely deployed; similarly, after direct manual force is applied to the blade of an Assisted Opener, moving it past its bias towards closure, it moves to being securely open, just as with the aforementioned classic Swiss Army knife.

As we know from a kickstand, the spring tension makes the blade remain stable in the fully closed or fully open position. A kickstand is not at risk of dangerous accidental sudden deployment as the spring mechanism keeps it safely tucked away. A kickstand is not at risk of partial deployment or accidental collapse as the spring mechanism ensures the kickstand will move fully to the open and locked position when deployed.

These same practical safety considerations are embodied in the assisted opening knife which will stay securely folded if not manually manipulated and moved beyond the bias toward closure, thereby then fully opening through to the securely locked position when deployed. The spring tension is meant to make the blade bi-stable and favor only being fully closed or fully open and locked, rather than the dangerous mid-range state where it is neither suitable for safe transport or safe use.

Indeed, it is exactly for this reason that Ken Onion's patented assisted opening mechanism is trademarked as "SpeedSafe" and the abstract to his initial patent¹¹

¹¹ <https://patents.google.com/patent/US6145202>

corroborates the function as described:

“This invention relates to a mechanism in a folding knife that **urges the blade to move** to an open and alternatively **to a closed position**. The knife generally consists of a blade member having a tang extending outwardly from the blade; a handle having at least one recessed portion; a bar pivotally connecting the tang and the handle; and a bias element engaging the blade wherein the bias element is housed within the recessed portion of the handle. Generally, in the present invention, **the blade must be moved manually** a certain distance whereupon the mechanism serves to complete the movement of the blade without the application of further outside force by the user.”
[Emphasis added.]

c. Assisted Opening Knives Indistinguishable from Common Folders

Notably, we see that an Assisted Opening knife is bi-stable, like a kickstand, urged “to move to an open” or “closed position” and biased towards closure until it is “moved manually a certain distance.” It should be recognized that **practically all modern folding knives have some similar mechanism which bias the knife towards closure** while being folded for safety purposes; and/or the open and, in some knives, “locked” position. Typically, these knives rely upon using springs, detents, or hinges to make the blade inclined towards opening or closure. Even the humble, ubiquitous, and presumptively legal Swiss Army Knife has spring tension against a squared hinge that makes the knife “click” into place on either end of its range of movement. With a classic Swiss Army knife, at some point, typically approximately 15-20 degrees from being fully open, the back spring assists the blade to open fully.

Assisted Openers simply have the same inclination towards advancing into the fully open position once moved manually past the bias toward closure; making them reliably deploy and safer to use than other common folding knives which could get hung up midway. Exactly like a motorcycle kickstand, the spring assist is only a bi-product of the practical desire to have a knife that persists in its two secure and safe states and not a dangerous mid-point.

For this reason, no Federal or State statute demarcates or defines knives by the amount or degree or gradation of pressure, a measurement of the movement, a number of degrees arced, etc. Instead, bright statutory lines are used to classify lawful common folding knives. Significantly, Congress enacted language to prevent switchblade prohibitions from applying to common folding knives. Specifically, the Federal prohibition for switchblades under 15 U.S.C. § 1244(5) contains an exemption for:

“a knife that contains a spring, detent, or other mechanism designed to create a **bias toward closure** of the blade and that requires exertion applied to the blade by hand, wrist, or arm to overcome the **bias toward closure** to assist in opening the knife.” [Emphasis added.]

This Federal definition clearly and properly excludes all Assisted Opening knives which are explicitly and patently, “biased towards closure”, practically a statutory enactment of Onion’s patent abstract: “a mechanism . . . that urges the blade . . . to a closed position . . . [by] a bias element engaging the blade . . . the blade must be moved manually a certain distance . . . to complete the movement of the blade.”

This is clarity in law, practice, and mechanically, for the lay person and the law-abiding citizen. In the simplest terms, if your folding knife *tries* to remain closed, it *cannot* be a switchblade under Federal law. In historical context, Assisted Openers are introduced in 1995, popularized in 1998, and squarely exempted by the United States Legislature in 2009, enjoying an uninterrupted quarter-century of presumptive legitimacy among law-abiding citizens.

d. Distinguished from Switchblade Knives

The legislative and cultural history of switchblades cannot be more different. By contrast, the first national bill to ban switchblades was submitted by Democratic Rep. James J. Delaney of New York in 1954 and enacted in 1958. That’s **sixty years**.

They are *per se* contraband and weapons in the State of New York and unavailable for sale at any large national retailer whether online or in store. For all practical purposes for almost all its residents, switchblades are illegal and cannot be acquired in New York. Contrast this with Assisted Opening knives which are simply another type of common folding knives that are readily purchased in New York and elsewhere. The Court's ruling is not on all-fours with the traditions, expectations, and understanding of New York State's law-abiding citizens. The risk of confusion and mistake are high, real, and significant.

Such risks are aggravated by the lack of clarity and guidance supplied in this ruling and cautioned by Judge Rivera. Congress specifically enacted an exception to exclude all common folding knives from their switchblade prohibition, including Assisted Opening knives, based on their bias towards closure. This provides clear, bright-line proscription for all: if your knife tries to remain closed, it is legal. A switchblade knife has a folding or sliding blade contained in the handle which is opened automatically, by a spring, when a button, switch or other device in the handle of the knife is actuated. A switchblade blade must be locked (also referred to as "latched") in the closed position because it is spring-loaded to open. Without being latched in the closed position, it cannot stay closed. When the button in the handle is pressed, the latch is released, and a compressed spring immediately launches the blade to the fully opened position.

e. "Opens Automatically"

Assisted Opening knives do not open automatically. Automatically means "by a device or process requiring no human intervention" or Black's Law Dictionary says, "to use an automated system to perform a function." The process or function here is the opening or deployment of the blade. Assisted Openers are patently defined as "the blade **must** be moved **manually**", with "manual" meaning "using the hands" or "by hand rather than automatically or electronically"; literally the antonym of

automatically.

A switchblade opens automatically. The blade is under spring tension with a bias toward opening but held in place by a mechanism that is actuated by a button. When the button is toggled the latch is released and an automatic spring-loaded system takes over requiring no human intervention: the mechanism releases the blade immediately and it opens of its own volition. The desired result is the movement of the blade, which is accomplished by the user pushing a button. This is not only the case as defined by New York Statute and other state statutes¹² that prohibit or restrict switchblade knives, but in practice and indeed with the United States Patent Office; George Schrade, founder of Schrade Cutlery Company (Est. 1904), today Imperial, Schrade Corp., submitted several patents for automatic knives in 1906¹³ with essentially these claims.

For Assisted Openers it is impossible to separate the process or function from human intervention and call it an automated system. The desired result is the movement of the blade, which is accomplished *by* the user *manually moving the blade*.¹⁴ The risk of mistake and confusion is high when the public are under the legal fiction of knowing the law- unable to claim ignorance of the law as a defense- when such knowledge requires construing manual execution of the thing itself as being automatic or automatically.

There is no statutory gradation between the degree or percentage upon which the mechanism may assist **although nearly all lawful folding knives do to some extent**. As discussed earlier, modern common folding knives, and even the humble classic Swiss Army Knife, have detents, springs, mechanisms and hinges, which will move the blade on its own through the last few degrees of movement to ensure a

¹² See, e.g., N.J.S.A 2C:39-1(p); Md. Code, CR § 4-105(a)(1); CO Rev Stat § 18-12-101(j) (repealed).

¹³ <https://patents.google.com/patent/US812601>

¹⁴ Note that in the case of switchblades, the unrestricted movement of the blade is essential to its automatic function; that is, that manual pressure applied to or on the blade would most likely foil or frustrate the opening of the knife. Conversely, most Assisted Openers can still be operated and deployed maintaining full hand pressure upon the blade. The spring tension merely assists, it does not override, replace, or remove all human intervention.

secure and stable usable deployment. In practical terms, if I bring a classic Swiss Army blade within 15-20 degrees of being fully open, the spine and joint will, through the back-spring pressure, move the blade the remaining arc to settle securely into position.

This tendency towards a stable position is not considered “automatic” whether discussing motorcycle kickstands, soft-close drawers, car hood pneumatics, reclining chairs, and so on and so forth. All are mechanisms which assist manual operation. Assisted Opening knives are exactly the same thing. However, under this ruling, this *would* be considered “opening automatically” and cause mistake and confusion.

f. “Button, spring, or other device”

Confusion and mistake will propagate if inert parts of the blade are considered mechanisms in the handle. A major distinguishing factor of switchblades is the inclusion of a separate button or device required to release the latch and deploy the knife blade, whereas Assisted Opening knives use the same techniques all common folding knives use to gain purchase on the blade for deployment. The user must manually exert force on the blade in order to open the knife.

As Ken Onion notes in his affidavit:

Assisted opening knives use thumb studs, various thumb holes, tabs, nail notches, nail mark grooves, textured surfaces, and more to produce leverage on the blade to manually move it from the folded position to the open position. In every circumstance these studs, holes, tabs, grooves, etc. are part of, or fixed to, the blade itself and simply move with the blade when manual force is applied to these elements.

These elements are *all* fixed, non-moving and do not represent a “system” or “process” as with a button or a spring. In every circumstances they are either a part of the blade or result from removal of blade material or *could be*. Simply put, a thumb stud or tab is not a button.

Additionally, naming a feature of the blade does not in and of itself transform the blade into a “button, spring, or other device.” Many common folding knives, whether assisted opening or not, allow the user leverage on the blade by way of a tab on the blade. When the knife is open the tab may serve the function of a finger guard, but despite being a named *part* of the blade, it is still a fixed, non-moving, non-system, non-process part of the blade and *not* the handle. It moves with the blade because it is part of the blade. Any force or pressure or actuation or manipulation of the “tab” is nothing more than manipulation of the blade itself. We can easily and readily name parts of the blade- spine, point, heel, edge, belly, choil- but they never cease to be part of the blade. The blade is definitively, physically, mechanically, in reality, and in law a separate entity from the handle.

A thumb stud or tab on the blade is not “in the handle.”

g. “In the handle”

There is also no sense in which these elements which are part and parcel of the blade are “in the handle” as required by the New York’s statutory definition of a switchblade. Here, we must repeat Judge Rivera’s dissent that “A knife's blade and handle are two different entities, and no amount of legal finessing can change that simple fact.”

Fundamental fairness drives the rule of lenity with respect to statutory construction. To the citizen, layperson, law-abiding individual seeking to comply with the law, “in the handle” must have some meaning that approaches expectations in common parlance in order to provide guidance and proscribe lawful behavior. The Court’s ruling finds that *any* part of a folding knife may be deemed “in the handle” if the blade, a thumb stud or tab, or the spine of a blade are considered so. Such finding renders the words “in the handle” meaningless and essentially that *any* “button, spring, or other device” found *anywhere* on the knife is unlawful. This violates the precepts of the lenity and fairness in statutory construction.

h. Contradiction

The Majority's ruling results in contradiction:

"Automatically" means manually accomplishing the intended task.

"Button" means an inert, non-moving, and fixed part of the blade.

"In the handle" means any part of the knife, including the blade.

At the heart of statutory construction is the plain meaning rule, or literal rule, dictating that statutes be interpreted using the ordinary meaning of the language, otherwise the results would be cruel or absurd. Under this ruling, it is not impossible to imagine a scout with their first responsibly and lawfully acquired Swiss Army Knife being found to be in Criminal Possession of a Switchblade:

Like Appellant's knife, the Scout's Swiss Army Knife will move some portion of its range of movement with spring assisted force to an open position, *after* the blade was manually moved several degrees by direct pressure by the user *to* the blade, which this ruling appears to call "automatically."

Like Appellant's knife, Scout's Swiss Army Knife has no moving part, button, or device to toggle or actuate, but instead leverage must be achieved over the blade and manual hand pressure applied to move it, yet the means of obtaining purchase (a nail groove, a thumb stud, or other part of the blade) appears to be deemed a "button."

Like Appellant's knife, Scout's Swiss Army Knife can deploy *only* by moving the *blade* and not *anything* "in the handle", but this ruling appears to render those qualifiers meaningless.

Accordingly, as guided by this Court's ruling, we should fear that Scout could be found guilty of Criminal Possession of a Weapon in the Fourth Degree for a Switchblade Knife.

II. Insufficiency of Trial Evidence

Nowhere in the record do the People, counsel, or Majority define Assisted Opening knives or distinguish them from switchblades. No one on the record explained that Assisted Opening knives do not open automatically and require the user to manipulate the blade itself to deploy. This is a crucial difference found nowhere in the record.

Conversely, trial testimony describes an inert, fixed, non-moving, part-of-the-blade thumb stud as a “button” repeatedly without objection, rebuttal, contest, or clarification. Nowhere in the record is the assisted opening mechanism of manually applying force to the blade or thumb stud explained, clarified, or even mentioned.

As these are essential elements to the offense and exonerating arguments, the People failed to meet its burden to convict Defendant.

CONCLUSION

For the aforementioned reasons above, we respectfully request Appellant's Motion for Reargument be granted.

Respectfully Submitted,

Dated August 2, 2018

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COURT OF APPEALS OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF
NEW YORK,

Plaintiff-Respondent,

-against-

STEVEN BERREZUETA,

Defendant-Appellant.

APL-2017-00224

**AFFIDAVIT OF SERVICE
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Arden Young, being duly sworn, depose and my say that deponent is not a party to the action, is over 18 years of age and is employed at Evan F. Nappen Attorney At Law, P.C., 21 Throckmorton Avenue, New Jersey 07724, on August 2, 2018 deponent served the within:

Motion to File Brief of Amici Curiae, Brief Amici Curiae, and Affidavit of Ken Onion

Upon:

Clerk of the Court
New York Court of Appeals
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Albany, New York 12207-1095


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The address(es) designated by said attorney(s) for that purpose by depositing 1 true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Dated August 2, 2018

By:


Arden Young