

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 REARGUMENT AND TO
SUPPLEMENT THE RECORD**

PLEASE TAKE NOTICE that Defendant-Appellant, Steven Berrezueta, will move before this Court at 9:00 a.m. on July 23, 2018, or as soon thereafter as counsel may be heard, for an order granting re-argument pursuant to Rule 500.24, granting leave for Defendant-Appellant to supplement the record, and for such other and further relief as this Court deems just and proper.

In support of the motion, Counsel for Defendant-Appellant submits the following Affidavit of Ken Onion, Affidavit of Joe Mc Swiney, and Brief.

Respectfully submitted,

Dated July 9, 2018

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Court of Appeals
of the
State of New York

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

v.

STEVEN BERREZUETA,

Defendant-Appellant.

**BRIEF OF DEFENDANT-APPELLANT STEVEN
BERREZUETA IN SUPPORT OF MOTION FOR
REARGUMENT AND TO SUPPLEMENT THE
RECORD**

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PRELIMINARY STATEMENT

Sweeping changes in the law should never be made inadvertently, and they certainly ought not be made summarily. Defendant-Appellant Steven Berrezueta fears that has happened in this case.

This Court's one paragraph memorandum opinion, heard and decided as an SSM pursuant to Rule 500.11, with limited briefing and with no oral argument, has likely massively and fundamentally changed New York law regarding knives, and in doing so may have instantly made criminals out of hundreds of thousands of New Yorkers who previously had no reason to believe they were breaking the law. Defendant-Appellant Steven Berrezueta was convicted of attempted possession of a switchblade knife in violation of Penal Law §110 and §265.01(1). That conviction was affirmed by this Court under No. 105 SSM 4 (*see* opinion attached hereto). The problem is the Mr. Berrezueta did not have a switchblade knife. He had an assisted opening folding knife.

Assisted opening Common Folding Knives ("Assisted Openers") are not remotely switchblade knives ("Switchblades") (here in New York or anywhere in the United States), but this Court's summary affirmance of the judgment below appears to have inadvertently made them so.

The reason for this can be found in the record. At each stage of these proceedings, Mr. Berrezueta was represented by pro bono assigned counsel, and

while these attorneys were all, no doubt, fine attorneys, they simply did not know enough about knives to convey, to this Court or the courts below, the critical and fundamental differences between Assisted Openers and Switchblades. Not knowing this resulted in ineffective assistance of counsel. A prime example of this is the cross examination at trial of the arresting police officer, Michael Leone (which will be addressed in more detail later in this brief). Trial counsel allowed Officer Leone to get away with saying that he pressed a “button” on the knife when in fact the knife in question *has no button at all*.¹ Someone with a clear understanding of knives would have known that and would have conducted the cross examination with the goal of ensuring that the record reflected this very important fact. Instead, the entire case focused on what the trial court, the Appellate Term, and this Court all seem to have considered to be a trivial issue, that is, where on the knife was this so called “button.” This is a critical error (among many) because the fact that this knife actually has no button of any kind reflects the fundamental difference in design and function between Assisted Openers (which are essentially ordinary pocket knives with a single enhanced feature and, as such, heretofore presumed to be legal under New York law) and switchblades, which are wholly different and are illegal under New York law.

¹ The definition of “switchblade knife” in Penal Law §265.00(4) requires “hand pressure applied to a button, spring or other device in the handle of the knife.”

As a result, each court that heard this case appeared to have been under the mistaken impression that they were dealing with minor technicalities regarding switchblade knives, when in fact what was before them was an entirely and fundamentally different category of knives – knives that do not fall under anyone's definition of switchblade (including New York's).

Surely, if this Court intended to effect a massive change in the law and newly bring within the statute's sweep hundreds of thousands (perhaps over a million) law abiding New Yorkers who previously has no reason to believe they may be in possession of an illegal switchblade knife, it would have done so explicitly, with full briefing and oral argument, and would not have announced such a massive change in the law in a one paragraph memorandum.

It is for this reason Defendant-Appellant Steven Berrezueta asks that this Court rehear the appeal and grant oral argument. He also asks that the Court allow supplementation of the record, as prior counsel simply did not know enough about knives to present this material in the prior proceedings.

BRIEF STATEMENT OF FACTS AND PROCEDURAL HISTORY

For a detailed Statement of Facts and Procedural History Defendant-Appellant refers the Court to his brief submitted to the Appellate Term which was made part of this Court's record pursuant to Rule 500.11. For the purposes of this Motion, Mr. Berrezueta emphasizes the following:

On April 22, 2015, Mr. Berrezueta was commuting to his job in the mail room of an investment company when he was stopped by Police Officer Leone. The stop resulted in Mr. Berrezueta being arrested and charged with, *inter alia*, criminal possession of a weapon in the fourth degree, based on the allegation that the knife he was carrying was a switchblade knife within the meaning of Penal Law §265.00(4). That provision defines “switchblade knife” as follows:

“any 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.”

At trial, Officer Leone testified that he pressed a “button” on the knife. Most of the trial and appellate record focuses on where this so-called “button” was located. In other words, the entire litigation of this case focused on the whether or not the so-called “button” was “in the handle” or not. Although Judge Rivera, in her well-reasoned dissent, treated this point as critical and outcome determinative, it is clear from the record that the trial court, the Appellate Term, and six of the seven judges of this Court believed this issue to be more of a technicality rather than fundamental and categorical.

Accordingly, the trial court denied a motion for a trial order of dismissal, the Appellate Term affirmed Mr. Berrezueta’s conviction, and this Court heard the within appeal as an SSM pursuant to Rule 500.11, rather than as a normal course appeal with full briefing and oral argument. In doing so, this Court may have

fundamentally altered New York law regarding knives and thereby made at least hundreds of thousands of New Yorkers criminals overnight.

THE ADDITIONAL FACTUAL MATERIAL

The knife Mr. Berrezueta possessed was an Assisted Opening Common Folding Knife (“Assisted Opener”). Assisted Openers are fundamentally different than switchblade knives. This critical concept was wholly absent from the prior record in this matter but was absolutely essential for the Court to understand in order to avoid inadvertently and fundamentally changing New York law regarding knives. In support of this Mr. Berrezueta presents the Affidavit of Ken Onion, the inventor of the commercially successful Assisted Opener. Had prior trial counsel understood knives, Mr. Onion no doubt would have been an expert witness at trial. Mr. Onion also separately seeks to appear as an *amicus curiae* along with Knife Rights Foundation, Inc., a non-profit organization that serves its members and the public, focused on protecting the rights of knife owners to keep and carry knives and edged tools.

But sweeping changes in the law should never take place on the basis of a weak record.

In his Affidavit Mr. Onion explains as follows:

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.

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."

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.

Onion's 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.

The folding knife at issue in this case is an imported assisted opening knife, and it is marked as an officially licensed product of the U.S. Army. As with every folding knife, it is comprised of a handle and a blade, two entirely distinct and separate parts of the knife.

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.

The feature that the police officer incorrectly testified at trial was a "button" was not a "button" at all. It was simply a tab on the blade. When he pushed on the tab, he pushed on the blade itself, manually rotating it from out of the handle. This is completely different than pressing a "button" "in the handle," which releases a latch on a spring-loaded switchblade, "automatically" opening the blade.

Mr. Berrezueta also presents the Affidavit of Joe Mc Swiney, Chief Executive Officer of SOG Specially Knives & Tools, LLC ("SOG"). Mr. Mc

Swiney explains that the number of individuals potentially impacted by the Court's decision may exceed 700,000.

He notes that over the past 10 years, SOG has sold approximately 2,700,000 assisted opening knives in the U.S.

People in every one of the 50 states and the District of Columbia, including in New York State, have purchased these knives.

Because of distributors' sales and online retail sellers, it is impossible for him to state exactly how many of these assisted opening knives go to customers in New York State. If one assumes that knife sales track population, with New York State approximately 6% of the U.S. population, that equates to approximately 162,000 over the previous 10 years alone.

Pocket knives, in his experience, are not consumables and while a small percentage of these knives are lost, damaged, worn out or given away, it is generally his experience that these knives will likely still be in possession of the original owners no matter how long ago they were purchased. Some persons own multiple knives so, to be conservative, one could reduce that number by half to 81,000.

A good faith estimate of SOG's market share of assisted opening knives in the U.S. would be 11%. If one applies that to the 10-year estimate above, one can reasonably estimate that from sales made in the previous 10 years approximately

739,000 New York State citizens possess an assisted opening knife.

Since assisted opening knives have been generally available since 1998, or 20 years ago, and given that they are generally not consumables, the actual number of New York State citizens possessing an assisted opening knife is likely to be significantly higher than 739,000.

Thus, the Court's decision in this case may have inadvertently made overnight criminals of more than 700,000 otherwise law abiding New Yorkers,

ARGUMENT

The Court Should Grant Reargument Because it Did Not Have Before it a Proper Record Identifying the Fundamental Difference Between Defendant-Appellant's Knife (an Assisted Opener) and a Switchblade, and that Omission Likely Resulted in an Inadvertent But Sweeping Change in New York Law

I. Ineffective Assistance of Counsel²

Under the New York Constitution an ineffective assistance of counsel claim will prevail where counsel "failed to provide meaningful representations and thus deprived defendant of a fair trial." *People v. Young*, 160 A.D.3d 1206 (3d Dep't 2018) (quoting *People v. Clark*, 28 N.Y.3d 556, 562, 565 (2016)). A claim of

² While Mr. Berrezueta recognizes that ineffective assistance of counsel is typically raised with the trial court in a CPL 440 motion, because the errors of counsel were made not just in the trial court but also on appeal, including in this Court, and because the consequences of those errors resulted not just in a narrow affirmance of his conviction but also in an opinion of this Court with sweeping consequences for a massive change in New York law, raising it here in this motion is appropriate and, in fact, necessary to obtain sufficiently broad relief.

ineffective assistance of counsel will succeed where counsel's choices cannot be objectively explained as part of a legitimate strategy. *People v. Orama*, 157 A.D.3d 967, 969 (2d Dep't 2018) or by showing "the absence of strategic or other legitimate explanations for counsel's alleged failure[s]." *People v. Sposito*, 30 N.Y.3d 1110, 1111 (2018) (quoting *People v. Nicholson*, 26 N.Y.3d 813, 831 (2016); *People v. Wragg*, 26 N.Y.3d 403, 409 (2015)).

As this brief makes clear and will be further demonstrated below, there can be no legitimate strategic explanation for both trial counsel and appellate counsel failing to make *any* record whatsoever of the difference between Assisted Openers and Switchblades. They simply did not have the knowledge essential (1) to properly cross-examine Officer Leone (letting him get away with saying he pressed a button when he plainly did no such thing), (2) to properly argue the motion for a trial order of dismissal, and (3) to brief and argue the appeal before the Appellate Term and this Court. As is further made clear below, identifying the subject knife as an Assisted Opener and explaining the fundamental differences between Assisted Openers and Switchblades was critical in order to obtain an acquittal or dismissal and also to prevent this Court from inadvertently effecting a massive change in New York law regarding knives on appeal.

II. The Statutory Framework

Penal Law §265.01(1) provides that possession of a “switchblade knife” constitutes criminal possession of a weapon in the fourth degree.

Penal Law §265.00(4) defines “switchblade knife” as follows:

“any 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.”

Essential to the definition of switchblade knife are the concepts of “opens automatically,” “button, spring or other device,” and “in the handle of the knife.” These are not arbitrarily chosen elements. These elements define the very nature, design, and function of a switchblade knife.

In fact, New York’s definition of switchblade knife is typical and is (or was prior to repeal) shared by other states’ statutes. *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).

III. What is a Switchblade Knife?

As is clear from the Onion Affidavit and the Onion/Knife Rights Amicus, a Switchblade has very specific and unambiguous design and function – a design and function that *exactly* matches New York’s statutory definition.

A. Automatic

Above all, a Switchblade opens *automatically*. A Switchblade is designed with a spring-loaded blade held in place by a latch. The latch is the only thing keeping the spring-loaded blade in place. But for the latch, the blade would pop open. In this way a Switchblade is *entirely* automatic. The blade requires no force to be applied by the user for it to open. The spring-loaded blade is at all times ready to spring out from the handle and is prevented from doing so only by the latch which secures it safely in the handle.

All the user does to release the blade is release the latch. The latch is released by pressing on a button (or other device that releases the latch). This is the essence of automatic operation.

B. Button or Other Device

A Switchblade must have a button (or something to press) in order to release the latch. This is a button no different than an elevator button or a button on a traditional touch-tone telephone or a television remote control. The button is mechanically interfaced with the latch such that the user presses the button, and by that displaced movement of the button the latch is released. Once the latch releases there is nothing holding the spring-loaded blade in place, and it automatically springs forth out of the handle and into the fully open position.

C. In the Handle

The entire trial and appellate record focused on this phrase: “in the handle.” Unfortunately, because no court that heard this case at any level was given any context or background regarding the design and function of a Switchblade, the phrase “in the handle” appears to have had little significance to those that heard it (other than Judge Rivera).

Given the detailed background presented by the Onion Affidavit, the phrase “in the handle” now takes on major significance. We know from Mr. Onion that a folding knife has only two major components: the handle and the blade. Thus, “in the handle” must mean “*not on the blade.*” Given what the Court now knows about the design and function of switchblades, it is clear why “in the handle” matters. In order to be connected to and release the latch which holds the spring-loaded blade in place the button *must be in the handle.* If it is not in the handle then the only other place it could be is *on the blade.* If a person presses on the blade then he is not pressing a button to release a latch. He is, in fact, *pushing on the blade itself.* That is not automatic. In fact, that is the exact opposite of automatic. That is *manually* pushing the blade open.

Given that New York’s statutory definition of “switchblade knife” is not unusual, and that it includes the concept of “automatic,” there is only one reasonable way to read “in the handle.” “In the handle” must mean “not on the

blade.” More importantly “in the handle” with respect to “button” or other device can only reasonably mean situated in the handle such that it pushes in (like a button on a telephone) to release the latch holding the spring-loaded blade in place. Any other reading of “in the handle” is nonsensical given what the Court now knows about how Switchblades work.

Because neither the trial court, nor the Appellate Term, nor this Court was told how a Switchblade is designed and how it functions, the phrase “in the handle” simply did not have the significance it should have had, and in particular Officer Leone got away with obviously sloppy and inaccurate testimony in describing the subject knife.

IV. What is an Assisted Opener?

In contrast to a Switchblade, the Onion Affidavit and the Onion/Knife Rights Amicus explain that an Assisted Opener is simply an enhancement of an ordinary Common Folding Knife, and in fact its design is very much like a traditional Swiss Army Knife (and therefore fundamentally different than a Switchblade).

Like a Swiss Army Knife, an Assisted Opener opens by the *user exerting force directly on the blade*. This is *manual* operation, not *automatic* operation. Like a Swiss Army Knife, at some point during the movement of the blade out

from the handle, a spring mechanism helps the blade the rest of the way to the fully open position. All Common Folding Knives (not Switchblades) work this way.

The only significant difference/enhancement offered by an Assisted Opener of that the assistance from the spring kicks in sooner than with a traditional Swiss Army Knife.

To be sure, this enhancement is very useful, which is why millions have been sold to law abiding folks, including in New York (*see* Mc Swiney Affidavit). But, it is clear that an Assisted Opener is fundamentally different than a Switchblade. Thus, if they are to be treated as the same, that is for the Legislature to decide. Treating Assisted Openers and Switchblades as if they are the same thing is a massive change in the law.

V. Mr. Berrezueta's Knife was an Assisted Opener, Not a Switchblade

It is plain from the record that Mr. Berrezueta's knife was an Assisted Opener, not a Switchblade. First, Mr. Onion indicates in his Affidavit that he is familiar with that specific knife and knows it to be an Assisted Opener and not a Switchblade.

Second, from the trial testimony it is clear that there is no actual button being pressed to release any kind of latch as one would find on an actual Switchblade so as to allow it to open automatically, as is required for a knife to be

a Switchblade under the statute. Reading the trial testimony through the lens of knowledge the Court *now* has regard these different types of knives, it is obvious that Officer Leone is describing using his finger to push on the blade itself via a metal tab that protrudes as part of the blade design. The metal tab is located on the spine of the blade and protrudes out the back of the handle. As he pushes on it, he manually pushes the blade out from the handle. That is not a Switchblade under New York law. It does not open automatically, and the blade is not released by pressure applied to a button or other device in the handle. The knife opens *manually by pushing on the blade itself*.

VI. The Court Should Grant Reargument and Allow the Record to be Supplemented with the Ken Onion and Joe Mc Swiney Affidavits

It should be clear now that the Court decided this appeal without being presented with information sufficient to decide it properly, and that the appeal (and the possible sweeping but inadvertent change in the law) was materially impacted by ineffective assistance of counsel. In addition to Mr. Berrezueta being convicted of an offense he plainly did not commit, the Court's affirmance will almost certainly allow District Attorney's offices all over the State to charge law abiding folks with possession of a Switchblade for merely possessing a completely legal Assisted Opener.

This sweeping change in the law could not have been intended by this Court -- certainly not via the SSM procedure without oral argument and in a one paragraph memorandum opinion.

The Court should hear reargument and have at its disposal a full record with all of the relevant information that is essential to correctly deciding this appeal.

CONCLUSION

In view of the foregoing, Defendant-Appellant Steven Berrezueta respectfully requests that this Court grant his motion for reargument and to supplement the record.

Respectfully submitted,

Dated July 9, 2018

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CERTIFICATE OF COMPLIANCE

This brief has been prepared in a proportionally spaced typeface in Times New Roman 14-point font, in compliance with N.Y.C.R.R. 500.1(j)(1).

Opinion

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 105 SSM 4
The People &c.,
Respondent,
v.
Steven Berrezueta,
Appellant.

Submitted by Siobhan Atkins, for appellant.
Submitted by Katherine Kulkarni, for respondent.

MEMORANDUM:

The order of the Appellate Term, insofar as appealed from, should be affirmed.

After defendant was found in possession of a switchblade knife at a subway station he was charged, among other things, with attempted criminal possession of a weapon in

the fourth degree. Penal Law § 265.00(4) defines a switchblade knife as “any 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.” The weapon possession count of the accusatory instrument, as supported by nonhearsay allegations which gave defendant sufficient notice of the charged conduct to prepare a defense and avoid double jeopardy, was not jurisdictionally deficient. Moreover, the evidence presented at trial by the People, which included the police officer’s testimony and his demonstration of the operability of the knife, was sufficient to support the factfinder’s conclusion that the knife found on defendant’s person met the statutory definition of a switchblade.

People v Steven Berrezueta

SSM No. 4

RIVERA, J. (dissenting):

Defendant Steven Berrezueta appeals from that portion of an order of the Appellate Term that affirmed his conviction, after a nonjury trial, of attempted possession of a weapon in the fourth degree (Penal Law § 265.01 [1]), specifically a switchblade (People v Berrezueta, 55 Misc 3d 143 [A], 2017 NY Slip Op 50633 [U] [App Term 1st Dept 2017]).¹ Defendant was arrested for possession of a United States Army-themed knife,

¹ Defendant does not appeal the Appellate Term order so far as it affirmed his conviction for possession of a weapon or other dangerous instrument within the Transit Authority (21 NYCRR 1050.8 [a]). Given that the majority has no occasion to consider whether a multiple count information may be dismissed when one count is found to have been

which he testified he bought online for use in the mailroom where he worked. The People do not dispute defendant's explanation or argue that he had a nefarious reason for possessing the knife.

Instead, the narrow issue presented on this appeal is whether the knife described in the accusatory instrument and at trial meets the statutory description for a per se weapon, one which is outlawed regardless of the defendant's reasons for possession. The majority holds that the accusatory instrument is jurisdictionally sound because the knife as described meets the statutory definition of a switchblade (maj op; see Penal Law § 265.00 [4]). I disagree. Moreover, even if the majority were correct, the evidence at trial established that the knife in question was not a switchblade within the meaning of the Penal Law.

In the accusatory instrument, the arresting officer described the knife he found on defendant as having "a spring-loaded portion of the blade of the knife protruding from the handle of the knife." At trial, the officer testified that the spring mechanism was "in the blade." Neither description comports with the Penal Law definition of a switchblade: a knife whose blade opens automatically "by hand pressure applied to a button, spring or other device in the handle of the knife" (Penal Law § 265.00 [4]). Since we may not interpret the statutory language contrary to its express terminology, I would reverse defendant's conviction for attempted criminal possession of a weapon in the fourth degree.

insufficiently alleged, I limit my dissent to the sufficiency of the information's allegations and the trial evidence regarding the Penal Law count.

I.

Defendant was on his way to work at the mailroom of an investment company when he was stopped and arrested at a New York City subway station; the arresting officer had observed a knife protruding from defendant's rear pants' pocket. Defendant was initially charged by misdemeanor complaint with criminal possession of a weapon in the fourth degree (Penal Law § 265.01 [1]), and subsequently additionally charged by superseding information with possession of a knife worn outside of clothing (Administrative Code § 10-133 [c]) and possession of a weapon or other dangerous instrument within the Transit Authority (21 NYCRR 1050.8 [a]).

The deponent arresting officer alleged in the superseding information:

"I observed a knife clipped to the defendant's rear right pants pocket so that I could see the entire clip and the head of the knife protruding from his pocket while the defendant was standing in the mezzanine area in the transit facility at the above location, a public place.

I took a switchblade knife from the defendant's rear right pants pocket. The defendant is not law enforcement personnel and could not produce a valid license or permit to carry such knife.

I know that the knife is in fact a switchblade knife based on my training and experience as a police officer and because, when I applied hand pressure to a spring-loaded portion of the blade of the knife protruding from the handle of the knife, the blade swung open automatically."

Defendant filed an omnibus motion, arguing, as relevant here, that the accusatory instrument was defective, since it failed to allege facts to support the elements of the charge and thus meet the facial sufficiency requirements of CPL 100.40. The knife described in the accusatory instrument, defendant argued, was not a switchblade as defined by the

statute. After a suppression hearing, the court denied the motion and immediately proceeded to hold a bench trial.

The arresting officer was the People's sole witness. He testified that the knife was opened by "put[ting] pressure on the button, spring loaded inside, the spring opens the knife and locks the blade in place." The officer further testified that the button was "on the side of the knife," "[a]ttached to the blade," although at other times he stated that the button was "on the handle" and "not on the blade," and that to open the knife the "thing you press" "moves to above the handle." The People also entered the knife into evidence, along with pictures of the knife in open and closed positions. The People concede that the button moved with the knife's blade away from the handle when the knife opened. In addition, the pictures of the knife admitted into evidence show that the button was on the blade, which, when the knife is closed, protrudes from the side of the handle. Flipping open and locking into place, the metal blade and the button on its surface remain separate from the handle when the knife is in use.

Defense counsel argued at the close of the People's case that the charges should be dismissed, since the knife opened by a button on the blade rather than in the handle, and thus the People had not established that the knife was a switchblade. The court denied the motion.

Defendant took the stand in his defense and testified that he had no criminal record and that he purchased the knife on a well-known website. He further testified that he used the knife exclusively for work, to open packages in his job in the mailroom, where he had

worked for almost 12 years. He explained that he opened the knife like a box cutter “with the control of [his] thumb.” He agreed that the knife could be opened by pressing the button, although, he added, “that method” would require that he “put enough force,” and that he never maneuvered it in that way, instead “always use[ing] the knob.”

Defense counsel again moved to dismiss, arguing that defendant’s conduct fell within the Administrative Code’s exception for those whose employment, trade or occupation customarily requires the use of such a knife. The court denied the motion, and convicted defendant of attempted criminal possession of a weapon in the fourth degree and possession of a weapon or dangerous instrument within the Transit Authority. After a bench conference, the People dismissed the remaining Administrative Code charge and the court sentenced defendant to time served.

The Appellate Term affirmed defendant’s conviction (Berrezueta, 55 Misc 3d at 143 [A]). The court concluded that the accusatory instrument was not jurisdictionally deficient, because “the weapon described possessed general features common to a switchblade so as to give defendant ‘sufficient notice of the charged crime[s] to satisfy the demands of due process and double jeopardy’” (*id.*, quoting People v Sans, 26 NY3d 13, 17 [2015]). The court also held the trial evidence was sufficient as it “established the operability of the switchblade at issue” based on the testimony of “the arresting officer who tested the knife, described the manner in which it operated, and also demonstrated its operability in court” (*id.* [internal citation omitted]). A Judge of this Court granted defendant leave to appeal (People v Berrezueta, 30 NY3d 978 [2017]). On motion of the Court, the appeal was set

for alternative review pursuant to Court Rule 500.11, and the parties submitted their written submissions in compliance with that rule (see Rules of Practice of Court of Appeals § 500.11).

II.

Defendant claims that the accusatory instrument negates an element of the crime and thus is facially insufficient, as it states the activating button or device was on the knife's blade, rather than "in the handle of the knife" as required by the Penal Law's definition of a "switchblade knife." Defendant similarly argues that the evidence at trial was insufficient to establish that the knife found on his person was a switchblade, since while the knife introduced at trial and described in court opens by use of a pressure-sensitive device, that device is not located in the handle. I agree with the core of defendant's argument that the knife at issue is not a switchblade as defined by the Penal Law, because the knife opens upon pressure placed on the blade.

A. Per Se Weapon Switchblade Knife as Defined by the Penal Law

A "person is guilty of criminal possession of a weapon in the fourth degree when [such person] possesses any . . . switchblade knife" (id. § 265.01 [1]), which is defined as "any 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" (Penal Law § 265.00 [4]). The Court has consistently refused to rewrite or ignore statutory definitions of knives as enacted

by the Legislature (see e.g. Sans, 26 NY3d at 16; People v Dreyden, 15 NY3d 100, 103-104 [2010]). Instead, we look to the plain language to determine the legislative intent (see People v Golo, 26 NY3d 358, 361 [2015] [“(T)he clearest indicator of legislative intent is the statutory text, (and) the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof”], quoting Majewski v Broadalbin-Perth Cent. Sch. Dist., 91 NY2d 577, 583 [1998]; see also People v Andujar, 30 NY3d 160, 169 [2017]). In the case of a switchblade, the statute requires that the “button, spring or other device” be located “in the handle of the knife” (Penal Law § 265.00 [4]). The Legislature has thus specified this category of prohibited weapon by the physical mechanism that triggers the manner in which the knife open, and “[t]he line is so drawn” (see People v Case, 42 NY2d 98, 102-103 [1977]).

If the Legislature intended to exclude this definitional limitation on what constitutes a switchblade it knew how to do so, demonstrated by the fact that other definitions do not specify where an opening device must be located (see e.g. Penal Law § 265.06 [banning “spring-gun or other instrument or weapon in which the propelling force is a spring” on school grounds]; §§ 265.01, .00 [5] [prohibiting gravity knives, which lock into place by a “button, spring, lever or other device” in an unspecified location]). Indeed, this statute has been amended many times throughout the years to address advances in weaponry, and the Legislature has chosen not to delete the requirement that the device to which pressure is applied must be in the handle portion of the knife:

“In 1909, the New York State legislature revised the Penal Code to create a comprehensive body of laws which comprised the new penal law. It sought

to disarm criminals as a primary means of crime prevention, defining a handful of items as ‘per se’ weapons By 1930, the list of “per se” weapons included the possession of ‘a blackjack, slungshot, billy, sand club, sandbag, metal knuckles and bludgeon’ In 1954 New York made selling or possessing a ‘switchblade’ a misdemeanor. A switchblade was defined as ‘any 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’ An exception was carved out of the statute: possession of a switchblade knife was lawful if it was necessary for ‘purposes of business, trade or profession, or for use while hunting, trapping and fishing,’ with a license Two years later the law was amended, making it unlawful to possess a switchblade even if it was necessary for the possessor’s employment [because] although the 1954 statute ‘has not been without effect, enforcement is made difficult by’ the professional provision, and the defense ‘goes far towards vitiating the statute’ The ‘gravity knife,’ . . . was dubbed a ‘legal’ successor to the switchblade, since it contained the same basic characteristics as the switchblade, yet it circumvented the law because of the manner in which the blade was deployed” (United States v Irizarry, 509 F Supp 2d 198, 206-207 [ED NY 2007]).

We are bound by the chosen language and the apparent legislative intent to define this per se weapon by a distinct characteristic, to the exclusion of other knives. As we have repeatedly acknowledged, this Court may not rewrite the law, even to correct what may appear to be a defect in the legislation; that task is for the Legislature, if, in the exercise of its lawmaking authority, it chooses to do so (see People v Kupprat, 6 NY2d 88, 90 [1959] [“(T)he argument for change (to a statute) is to be addressed to the Legislature, not to the courts”]; McKinney’s Cons Laws of NY, Book 1, Statutes § 73 [“(I)t is not for the courts to correct supposed errors, omissions or defects in legislation”])).

Moreover, a switchblade is a per se weapon, meaning neither proof of criminal intent nor knowledge of the illegality of the weapon is necessary for the People to establish guilt (see People v Parrilla, 27 NY3d 400, 404 [2016]). In construing per se weapon

statutory sections, in which physically possessing a certain object is the only element of the crime, “we are mindful that Penal Law § 265.01 (1) should be interpreted narrowly in light of the absence of an intent element” (People v Ocasio, 28 NY3d 178, 182 [2016]).

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. While ignorance is no excuse under the law, we must be careful not to broaden the category of per se knives beyond the legislatively-adopted, definitional terms in violation of the legislative intent. In other words, judicial adherence to the exactitudes of a statutory definition – unquestionably mandated by our rules of statutory construction – is of paramount importance, given that the Legislature has categorized a possession of a switchblade knife as a strict liability crime, meaning a defendant is criminally liable regardless of the reason for possession.

B. Sufficiency of the Accusatory Instrument

“The factual allegations of a misdemeanor complaint must establish ‘reasonable cause’ to believe that a defendant committed the charged offense” (People v McCain, 2018 NY Slip Op 01018 [2018], citing CPL 100.40 [4] [b]; see also People v Kalin, 12 NY3d 225, 228 [2009]). Reasonable cause “exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed

it” (CPL 70.10 [2]). An information must also meet the prima facie requirement that it “set forth nonhearsay allegations which, if true, establish every element of the offense charged and the defendant’s commission thereof An information that does not satisfy this standard by failing to allege a complete element of the charged offense is jurisdictionally defective” (Kalin, 12 NY3d at 228-229 [quotation marks and internal citation omitted]; see also CPL 100.40 [1] [c]). Yet, “an accusatory instrument must be given a reasonable, not overly technical reading” (People v Konieczny, 2 NY3d 569, 576 [2004]; see also People v Casey, 95 NY2d 354 [2000]). The factual allegations of an information must always “give an accused notice sufficient to prepare a defense and [be] adequately detailed to prevent a defendant from being tried twice for the same offense” (Casey, 95 NY2d at 360).

Here, the accusatory instrument is facially insufficient because the description of the knife does not fit the statutory definition of a switchblade’s appearance and working mechanism. By describing the pressure-sensitive device that opens the knife as located on the blade and not in the handle, and thereby characterizing the knife as other than a switchblade as defined by the statute, the instrument negates an element of the charged offense and as such failed to provide defendant with adequate notice of the crime charged.

The People’s reliance on Sans is misplaced. Sans involved a “gravity knife,” which is defined by the way in which it functions: the blade is “released from the handle or sheath thereof by the force of gravity or the application of centrifugal force” and “when released, is locked in place by means of a button, spring, lever or other device” (Penal Law § 265.00 [5]). In Sans, we held the factual allegations in an accusatory instrument were sufficient

because they contained a police officer's statement "that he had 'observed the defendant remove a knife from the defendant's pocket, . . . recovered said knife from the defendant,' and 'tested the . . . knife and determined that it was a gravity knife, in that it opens with centrifugal force and locks automatically in place'" (26 NY3d at 15). That description of how the knife opened provided the defendant with adequate notice of the charged crime (26 NY3d at 17). The present case, in contrast, involves a knife that the People argue is a switchblade. Unlike a gravity knife, a switchblade is defined in the Penal Law not solely by how it operates, but by the appearance and location of the pressure-sensitive mechanism by which it opens. Thus, because the instrument's description of the knife in this case does not match the statutory physical characteristics, i.e. the knife described is something other than a switchblade, the instrument is facially insufficient.² Defendant's case is thus distinguishable from Sans due to differences in the statutory definitions, which must guide our analysis.

Nor do Ocasio or Andujar favor the People. In Ocasio, the Court interpreted the meaning of another per se weapon, a "billy," which is not defined in the Penal Law. The Court looked to that word's common meaning, its dictionary definition, and to the statutory provision's legislative history to discern the statute's proper construction (Ocasio, 28 NY3d at 181-184). In Andujar, we faced a similar question and followed the same

² In addition, Sans examined the sufficiency of a misdemeanor complaint, the allegations of which need not meet the higher standard applicable to an information (compare CPL § 100.40 [1] [c] [the allegations must "establish, if true, every element of the offense charged and the defendant's commission thereof"] with CPL 100.40 [4] [b]; see also Kalin, 12 NY3d at 228).

analytical approach. The Court held that “[n]either the Vehicle and Traffic Law nor the Penal Law defines ‘equips’ or any derivation of that word. Absent a statutory definition we must give the term its ordinary and commonly understood meaning” (Andujar, 30 NY3d at 163 [quotation marks omitted], quoting Ocasio, 28 NY3d at 181). Unlike these cases, in which the law did not provide a definition for the operative term, here the Penal Law defines “switchblade,” and we have no reason to look elsewhere for the meaning of this term. Since the knife as described in the accusatory instrument does not fit the statutory definition, the instrument is jurisdictionally defective.

C. Sufficiency of the Trial Evidence

Even if the accusatory instrument survives defendant’s jurisdictional challenge, the trial evidence was insufficient to establish that the knife in defendant’s possession was a switchblade as defined by the Penal Law. The officer testified the button was “on the side of the knife” and “[a]ttached to the blade,” while defendant testified he opened the knife like a box cutter, “with the control of [his] thumb.” Indeed, the People concede, “the button was attached to the metal portion of the knife, and it moved with the blade, away from the handle, when the knife opened.” Pictures of the knife introduced into evidence confirm that the activating button is on the blade, not “in the handle.” Therefore, the evidence failed to establish that the knife “has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife” (Penal Law § 265.00 [4]).

We may not ignore the statute's plain language; to do so would risk impermissibly expanding the statute's sweep beyond the legislative intent.

III.

The accusatory instrument describes the knife found on defendant as having “a spring-loaded portion of the blade of the knife protruding from the handle of the knife” and at trial the arresting officer testified that the spring mechanism was “in the blade.” Neither description comports with the Penal Law definition of a switchblade as a knife whose blade opens automatically “by hand pressure applied to a button, spring or other device in the handle of the knife” (Penal Law § 265.00 [4]). A knife's blade and handle are two different entities, and no amount of legal finessing can change that simple fact. Indeed, the majority decision risks rendering irrelevant a defining characteristic of a switchblade knife as described in Penal Law § 265.00 (4) – the location of the triggering mechanism used to lock the knife into an open position. I dissent and would reverse defendant's conviction on the Penal Law count.

* * * * *

On review of submissions pursuant to section 500.11 of the Rules, order insofar as appealed from affirmed, in a memorandum. Chief Judge DiFiore and Judges Stein, Fahey, Garcia, Wilson and Feinman concur. Judge Rivera dissents in an opinion.

Decided June 7, 2018

THE PEOPLE OF THE STATE OF
NEW YORK,

Plaintiff-Respondent,

-against-

STEVEN BERREZUETA,

Defendant-Appellant.

AFFIDAVIT OF KEN ONION

Ken Onion, being duly sworn, deposes and says:

1) I am over 18 years of age and not a party to this action. I submit this affidavit to explain to the Court the fundamental and critical differences between assisted opening folding knives and switchblade knives. In fact, as will be seen clearly below, an assisted opening knife is nothing more than the evolution of a traditional folding pocket knife, like a classic Swiss Army Knife, and has little in common with a switchblade knife.

My Background

2) I am an American custom knifemaker, designer and inventor living in Kaneohe, Hawaii, United States.

3) I invented the "SpeedSafe" assisted opening mechanism which was licensed to Kershaw Knives, and I was the Premier Knife Designer for Kershaw Knives.

4) In 2008 I became (and remain) the youngest inductee ever into the Blade Magazine Hall of Fame, and I am recognized as one of the most innovative and successful knife designers of all time.

5) In 1996 I created the first commercially successful assisted opening mechanism.

6) While recovering from back surgery in 1996, I decided to try to design a folder that was easier to manipulate than what was available, but which was *not* a switchblade. The result was the first assisted opening knife that I called "Speed Safe".

7) I was granted a patent (US6338431B1) in 1998 for the assisted opening knife, and with its successful commercial introduction by Kershaw Knives created a unique evolution of the common folding knife that proved wildly popular.

8) The Patent background is described as follows:

"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. 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. In the folding knife and cutlery industry, there typically is provided a folding knife having a housing or handle for supporting the blade in the open position and for receiving the blade in the closed position. It is also generally known to cause the blade of the knife to be locked when in the open position. An example of such locking mechanism is found in Neely U.S. Pat. No. 5,060,379 and Wiethoff U.S. Pat. No. 4,404,748.

The mechanism of the present invention overcomes the various deficiencies of the folding knives and opening and closing mechanisms presently in the knife and cutlery industry by providing positive opening and closing assistance while enabling such opening and closing to be performed or carried out with only a single hand of the user, to the advantage of the general public but especially to persons who experience difficulty in using two hands to open a knife, whether such difficulty is caused by physical, mental or safety reasons."

- 9) In 1998 I signed on with Kershaw Knives as their designer. Kershaw has grown substantially since. I now have roughly 36 patents on various items including locks, gadgetry, mechanisms, safeties, designs, as well as several trademarks.
- 10) I have traveled on behalf of Kershaw to perform lectures and classes (teaching sales teams and retail cutlery stores about the differences in types of knives, their operation, and their application, as well as general knowledge about knives so that they can answer customer's questions) and guide them in making knowledgeable decisions in a non-biased manner.
- 11) I teach knifemaking (including folding knives) and advanced classes at my home/shop to new makers, as well as experienced makers. I teach designing classes, business theory, and strategy classes.
- 12) In 2002 I was inducted into Strathmore's "Who's Who" as a lifetime member as a distinguished inventor/entrepreneur.
- 13) I am currently working with Columbia River Knife & Tool as their Premier Knife Designer.

Assisted Openers and Switchblades are Fundamentally Different

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."

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.

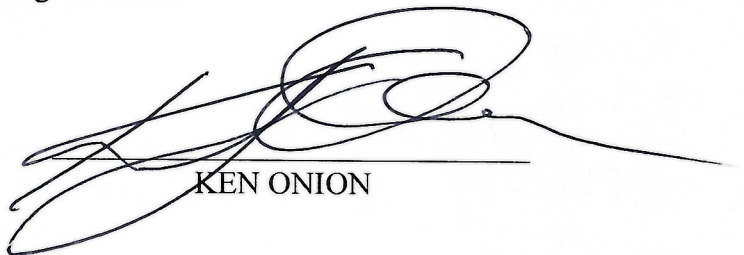
The Knife at Issue in this Case

18) I am familiar with the folding knife at issue in this case. It is an imported assisted opening knife, and it is marked as an officially licensed product of the U.S. Army.

19) As with every folding knife, it is comprised of a handle and a blade, two entirely distinct and separate parts of the knife.

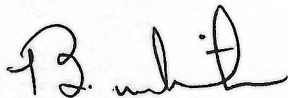
20) The folding knife at issue in this case is not a switchblade. It is an assisted opening knife in which the blade requires manual pressure applied to the blade by the user to open. It contains no device in the handle which releases the blade from a latched position, allowing it to open automatically.

21) The feature that the police officer incorrectly testified at trial was a "button" was not a "button" at all. It was simply a tab on the blade. When he pushed on the tab, he pushed on the blade itself, manually rotating it from out of the handle. This is completely different than pressing a "button" "in the handle," which releases a latch on a spring-loaded switchblade, "automatically" opening the blade.


KEN ONION

Sworn to before me this

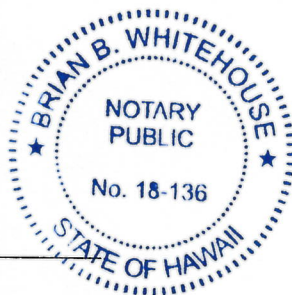
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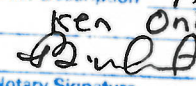


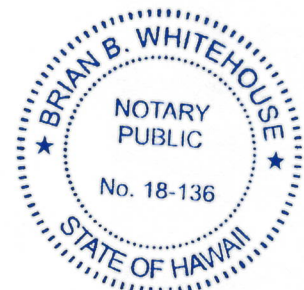
NOTARY PUBLIC

BRIAN B. WHITEHOUSE

My Commission Expires: March 25, 2022



Doc. Date: undated # Pages 6
Notary Name: Brian B. Whitehouse First Circuit
Doc. Description: Affidavit of
Ken Onion

Notary Signature JUL 06 2018
Date



THE PEOPLE OF THE STATE OF
NEW YORK,

Plaintiff-Respondent,
-against-

Defendant-Appellant.

STATE OF WASHINGTON)
)
) ss:
COUNTY OF King County)


- 1) I am over 18 years of age and not a party to this action.
- 2) I am Chief Executive Officer of SOG Specially Knives & Tools, LLC ("SOG") headquartered at 6521 212th Street Southwest, Lynnwood, Washington.
- 3) Over the past 10 years, SOG has sold approximately 2,700,000 assisted opening knives in the U.S.
- 4) People in every one of the 50 states and the District of Columbia, including in New York State, have purchased these knives.
- 5) Because of distributors' sales and online retail sellers, it is impossible for me to state exactly how many of these assisted opening knives go to customers in New York State. If I assume that knife sales track population, with New York State approximately 6% of the U.S. population, that equates to approximately 162,000 over the previous 10 years alone.
- 6) Pocket knives, in my experience, are not consumables and while a small

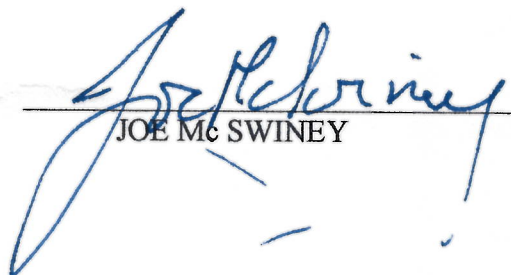
percentage of these knives are lost, damaged, worn out or given away, it is generally my experience that these knives will likely still be in possession of the original owners no matter how long ago they were purchased. Some persons own multiple knives so, to be conservative, we could reduce that number by half to 81,000.

7) A good faith estimate of SOG's market share of assisted opening knives in the U.S. would be 11%. If you apply that to the 10-year estimate above, you can reasonably estimate that from sales made in the previous 10 years approximately 739,000 New York State citizens possess an assisted opening knife.

8) Since assisted opening knives have been generally available since 1998, or 20 years ago, and given that they are generally not consumables, the actual number of New York State citizens possessing an assisted opening knife is likely to be significantly higher than 739,000.

Sworn to before me this
6th day of July 2018


NOTARY PUBLIC


JOE Mc SWINEY



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

State of New Jersey)
County of Bergen) SS:

Stephanie Ralston, being duly sworn, deposes and says:

1. I am not a party to the within action and am over 18 years of age.
2. On July 9, 2018, I served two (2) copies of the following described papers:
 - a. Consent to Change Attorney;
 - b. Notice of Motion for Reargument and to Supplement the Record;
 - c. Affidavit of Ken Onion;
 - d. Affidavit of Joe McSwiney;
 - e. Brief;
 - f. Within Affidavit of Service.

on the persons below at the address(es) below designated by him/her/them for that purpose by dispatching the copies to said person at the address designated for that purpose by depositing the copy, enclosed in a properly-addressed wrapper, in the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by said service of overnight delivery.

Katherine Kulkarni, Esq.
Assistant District Attorney
District Attorney of the County of New York
One Hogan Plcae
New York, New York 10013

Stephanie Ralston
Stephanie Ralston

Sworn to before me this 9th
day of July, 2018

Laura Mungieillo

Notary Public
of the State of New Jersey
My commission expires:

LAURA MUNGIELLO
A Notary Public of New Jersey
My Commission Expires 10/23/20 22

