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**SIXTH DIVISION
SEPTEMBER 4, 2011**

No. 1-09-3444

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 C2 20504
)	
JEFFERY WILLIAMS,)	Honorable
)	Garritt E. Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROBERT E. GORDON delivered the judgment of the court.
JUSTICE CAHILL and JUSTICE GARCIA concurred in the judgment.

ORDER

¶1 **HELD:** The evidence illustrated that the defendant was in possession of a switchblade knife which satisfies the definition of a switchblade knife under the unlawful use of a weapon statute, and thus the conviction of the defendant under the statute is affirmed. The \$20.00 preliminary examination fee assessed against the defendant is vacated and the *mittimus* is corrected because the defendant had previously waived his right to a preliminary hearing.

¶2 Following a bench trial, defendant Jeffery Williams was convicted of unlawful use of a weapon by a felon under 720 ILCS 5/24-1(a)(1) (West 2008) and sentenced to ten years in the Illinois Department of Corrections. The defendant was sentenced as a Class X offender. 730 ILCS 5/5-5-3(c)(8) (West 2008). The defendant was further assessed \$855 in fines, fees and

costs, including a \$20 preliminary examination fee pursuant to 55 ILCS 5/4-2002.1(a) (West 2008). On appeal, the defendant contends: (1) the trial court erred by finding that the knife retrieved from the defendant's person satisfied the definition of a switchblade knife under the unlawful use of a weapon statute, 720 ILCS 5/24-1(a)(1) (West 2008); and (2) the trial court erred in assessing the defendant a \$20 preliminary examination fee after the defendant had waived his right to a preliminary hearing.

¶3 The defendant was charged by information with one count burglary pursuant to 720 ILCS 5/19-1(a) (West 2008) and one count for unlawful use of a weapon by a felon pursuant to 720 ILCS 5/24-1(a)(1) (West 2008). On September 15, 2009, the defendant was found not guilty of the burglary charge and guilty of the unlawful use of a weapon charge. Accordingly, the present appeal is concerned only with the defendant's unlawful use of a weapon conviction. Both parties stipulated at trial that the defendant's felon status is derived from his prior second degree murder conviction for which he served eight and a half years in the Illinois Department of Corrections.

¶4 At trial, Dr. Sandra Berg testified for the State that on June 10, 2008, she observed a tall, dark-skinned man breaking into her neighbor's parked ford explorer motor vehicle in the 2100 block of Pioneer in Evanston, Illinois. Dr. Berg testified that she was awakened from her sleep at approximately 2:00 a.m. by her dog growling at her second-floor bedroom window. She then heard the sound of crunching glass, and when she looked out of her window, she observed a man's two legs sticking out of the ford explorer's rear window under the street lights. When the man emerged from the vehicle, Dr. Berg observed that he was wearing a dark long-sleeve jacket, blue jeans, white gym shoes and a tight cap. When the man walked toward another vehicle, Dr. Berg called the police.

¶5 Dr. Berg identified the man as the defendant when police officers later transported the defendant to the burglary scene for the purpose of conducting a “show up.” The trial court subsequently found Dr. Berg’s identification of the defendant insufficient to uphold the defendant’s burglary charge, because Dr. Berg had never observed the suspect’s face.

¶6 Police Officer Ralph Mieszala of the Evanston police department testified for the State that he responded to a dispatch call of a vehicle burglary in progress on June 10, 2008. Officer Mieszala testified that he was in plain-clothes when he drove to the scene in an unmarked vehicle, and when he approached the intersection of Pioneer and Payne, he observed the defendant walking northbound on Pioneer. He testified that the defendant fit dispatch’s description of the suspect as a dark-skinned man wearing a dark long-sleeved shirt, dark trousers, white gym shoes, and either a tight cap or bald head.

¶7 Officer Mieszala further testified that when the defendant observed Officer Mieszala’s vehicle approaching, he ran eastbound on Pioneer toward a strip of neighboring yards. Officer Mieszala then parked and exited his vehicle to pursue the defendant on foot. After a short pursuit, Officer Mieszala observed the defendant hiding in the shrubbery of a neighboring house approximately 50 yards from the burglary scene. Officer Mieszala testified that the defendant complied with Officer Mieszala’s command to show his hands and “get down” on the ground. At this time, Sergeant Collier and Detective Fernando Gomez of the Evanston Police Department arrived on the scene. After the defendant was handcuffed, Officer Mieszala turned the defendant over to Sergeant Collier and Detective Gomez and left to backtrack the defendant’s steps.

¶8 Detective Gomez was called by the State and testified that he conducted a pat-down search of the defendant moments after Officer Mieszala apprehended the defendant. As Detective Gomez initiated the pat-down, the defendant told Detective Gomez that he had a knife

located in the front right pocket of his jeans. Detective Gomez retrieved the knife from that location. The knife was introduced into evidence without objection with a stipulation that it was the knife recovered from the defendant by Detective Gomez on June 10, 2008 and that the chain of custody was proper.

¶19 Detective Gomez described the weapon as a “spring loaded knife” and provided the following testimony:

DETECTIVE GOMEZ: “It’s a Black Eagle knife which have [sic] some kind of cover that covers the blade, the actual blade of the knife, and you have a button on the side of the handle of the knife that by you pressing the button, you expose the actual knife, and the knife - - and the blade is exposed which can be used.”

ASA: “Indicating, for the record, that the officer has taken what appeared to be a sheathed knife, pushed the button and that exposed the blade.”

THE COURT: “So noted.”

ASA: “Can you show us that one more time a little bit slower?”

DETECTIVE GOMEZ: “The way the knife is as it shows here, it has a cover that the blade of the knife is always out, and you have a plastic cover covering the blade. You can see that if you do this, you won’t be able to cut yourself.”

ASA: “Indicating for the record that the officer is touching himself with what would be the tip of the blade in the sheath.”

DETECTIVE GOMEZ: “And you won’t be able to cut yourself or won’t be able to stab

yourself because the plastic sheath is covering the metal blade. As soon as you hit the button, the spring, I'm not going to do this, but if you attempt to do the same thing that I was doing, I would have been able to stab myself or cut myself."

¶19 Detective Gomez approximated the knife's blade to be three and a quarter inches long and attached to a four to five inch long handle. On cross examination, Detective Gomez clarified that when the handle button is pressed, the knife's sheath retracts to reveal the blade, which remains permanently fixed projecting out of the handle. He added to his description of the knife as follows:

DEFENSE COUNSEL: "Just so the record is clear, this particular knife, the part that is spring loaded is only the cover, the plastic cover of the knife or this could even be metal. Could you tell whether that's metal or plastic, the cover?"

DETECTIVE GOMEZ: "I think it's plastic, sir."

DEFENSE COUNSEL: "And is it fair to say that the only spring-loaded part of that knife is the actual cover is spring loaded?"

The State objected to this characterization of the knife. The Court overruled the objection and Detective Gomez continued his testimony as follows:

DETECTIVE GOMEZ: "Yes, the blade stay [sic] out and the plastic cover which covers the blade is the one that is spring loaded which by hitting this button exposed the blade and becomes a weapon."

DEFENSE COUNSEL: "So the record is clear also, the blade is permanently out at all times, correct?"

DETECTIVE GOMEZ: “Yes, sir.”

¶10 After the State rested its case, the defendant made a motion for a directed finding on the grounds that the defendant was not adequately identified as the offender and the defendant’s knife did not satisfy the definition of a switchblade under 720 ILCS 5/24-1(a)(1) (West 2008). The defendant argues that the blade must be spring loaded to qualify as a switchblade under the statute, and because the defendant’s knife blade is permanently fixed to the handle, the defendant should be found not guilty of possession of a switchblade knife. The trial judge denied the motion and the defense then called the defendant to testify in his own behalf.

¶11 The defendant testified that he did not commit the burglary. He testified that at the time of the burglary, he was walking home from his godmother’s residence, which was less than a mile from the burglary scene. The defendant testified that he used the knife on June 9, 2008, to help workers install brick block windows into his godmother’s basement. He had arrived at his godmother’s residence at approximately 12:30 p.m. to 1:00 p.m. on June 9, 2008, and left at approximately 1:30 a.m. to 1:45 a.m. on June 10, 2008.

¶12 The defendant testified that the knife had been given to him by his previous employer, Indiana Energy. The knife was used at Indiana Energy to cut through loops in nylon cords as required in the process of installing residential heating systems. The defendant testified to using the knife daily while working Monday through Friday or Saturday. The defendant was no longer employed by Indiana Energy at the time of the burglary, but had continued using the knife on handyman jobs.

¶13 On September 15, 2009, the trial court found that the knife satisfied the statutory definition of a switchblade and consequently, the defendant was found guilty of unlawful use of a weapon by a felon. On October 13, 2009, the defendant filed a Motion to Reconsider, which

was denied on October 13, 2009. The defendant filed a timely appeal, requesting his conviction be reversed and his \$20 preliminary examination fee to be vacated.

¶14 **Unlawful Use of a Weapon by a Felon**

¶15 On appeal, the defendant contends that the trial court erred in finding his knife satisfied the statutory definition of a switchblade under 720 ILCS 5/24-1(a)(1) (West 2008). The determination of what items fall under the statute's switchblade definition is a question of statutory construction subject to de novo review. See *People v. Lamborn*, 185 Ill. 2d 585, 590 (1999).

¶16 The primary objective when accessing the scope of a statutory term is to give effect to the legislature's intent. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 274 (2009). The plain language of the statute is considered the best indication of legislative intent. *Exelon Corp.*, 234 Ill. 2d at 275. "Where the statutory language is clear and unambiguous, the court must give the language effect without resorting to other tools of interpretation." *Exelon Corp.*, 234 Ill. 2d at 275. "It is never proper for a court to depart from plain language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent." *Exelon Corp.*, 234 Ill. 2d at 275.

¶17 The defendant presented multiple dictionary definitions of the term "switchblade" that describe the knife as having a blade that moves. The defendant argues that his knife does not satisfy such dictionary definitions because its blade is permanently fixed projecting out of the handle, and therefore, his knife should not be considered a switchblade under Section 5/24-1(a)(1).

¶18 However, Section 24-1(a)(1) provides its own definition of what qualifies as a switchblade under the statute, and when a statute includes a definition that uses plain and

unambiguous language, the court is bound to apply the statutory definition. *People v. Collins*, 214 Ill. 2d 206, 214 (2005). Aids of statutory construction, such as a dictionary, may only be used to determine the ordinary and popularly understood meaning of an undefined term or to determine what the legislature intended in using ambiguous language. *Gem Electronics of Monmouth, Inc. v. Department of Revenue*, 183 Ill. 2d 470, 475, 478 (1998). The defendant fails to point to any term within the statute's definition and argue its ambiguity. Likewise, the other Illinois cases that considered whether an item qualified as a switchblade under Section 24-1(a)(1) did not determine that the statutory definition was ambiguous. See *People v. Velez*, 336 Ill. App. 3d 261 (2nd Dist. 2003); *People v. Vodicka*, 1 Ill. App. 3d 1062 (1st Dist. 1971). We therefore must apply the statutory definition's plain language without looking to outside aids of statutory construction. See *People v. Collins*, 214 Ill.2d at 214 (2005).

¶19 Section 24-1(a)(1) provides in pertinent part: "A person commits the offense of unlawful use of weapons when he knowingly sells, manufacturers, purchases or carries...any knife, commonly referred to as a switchblade knife, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife..." 720 ILCS 5/24-1(a)(1) (West 2008). As described in Detective Gomez's testimony, the defendant's knife has a blade that is approximately three and a quarter inches long. When someone uses their hand to push a button in the knife's handle, a spring-loaded plastic sheath retracts to expose the blade. The blade could be considered closed when covered by the sheath and open when the sheath retracts. Because such characteristics describe "a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife," the defendant's knife is determined to be a switchblade for the purposes of Section 5/24-1(a)(1).

¶20 Illinois case law bolsters our finding that a knife with a blade that does not move may nevertheless qualify as a switchblade under Section 24-1(a)(1). See *People v. Velez*, 336 Ill. App. 3d 261 (2nd Dist. 2003). In *People v. Velez*, the defendant possessed a knife with a blade that was originally designed to open when a handle button was pressed; however, because the knife was broken at the time of the defendant’s arrest, the blade no longer moved when the button was pressed. *Velez*, 336 Ill. App. 3d at 265. The Second Appellate District found the knife to be a switchblade, noting that the “UW statute reflects a strong public policy to dissuade persons from carrying and brandishing weapons or any ‘objects’ which may have the appearance or characteristics of a firearm or deadly weapon.” *Velez*, 336 Ill. App. 3d at 266.

¶21 The knife in the case at bar is analogous to the *Velez* knife in that although both have a blade that remains in a fixed position, both were designed to have the characteristics of a dangerous weapon when a handle button is pressed. As Detective Gomez testified, when the sheath is covering the blade, the defendant’s knife is unable to cut or stab anyone; however, when the button is pressed, the knife becomes a weapon that can cut or stab others. Therefore, whether the blade moves or not is not determinative of a finding under Section 5/24-1(a)(1).

¶22 Although whether a sheath-retracting knife satisfies Section 24-1(a)(1) is a case of first impression in Illinois, *People ex rel. Mautner v. Quattrone* offers persuasive authority by analyzing a similar sheath-retracting knife under a similar statutory switchblade ban. 211 Cal. App. 3d 1389 (1st Dist. 1989). The defendant’s knife is analogous to the *Mautner* knife in that both have a plastic sheath that retracts to reveal a fixed blade when a handle button is pressed. 211 Cal. App. 3d at 1394. The *Mautner* knife satisfied California Penal Code § 653k’s definition of a switchblade as “a spring-blade knife, snap-blade knife, gravity knife or any other similar type of knife, [having a blade or blades] which can be released automatically . . . by any type of

mechanism whatsoever.” 211 Cal. App. 3d at 1395. The court found that the term “released automatically” encompassed knives where the blade was exposed either by the blade’s movement or a sheath’s retraction. 211 Cal. App. 3d at 1398. The court reasoned, “It is designed to operate with one hand with the same split-second speed as a switchblade. Functionally, it is of no legal significance that the handle is pulled away from the blade rather than the other way around.” 211 Cal. App. 3d at 1398-9.

¶23 In applying *Mautner*’s reasoning, Section 24-1(a)(1)’s requirement that the blade “opens automatically” should encompass knives where either the blade moves to expose itself or, as in the defendant’s case, where the sheath retracts to expose the blade, because both have the same effect of quickly opening the blade for use.

¶24 Although legislative history is not needed here, it further suggests that Section 24-1(a)(1) sought to address the dangers associated with quick-opening knives. See S. Rep. 85-1980 (1958). Section 24-1(a)(1) was enacted shortly after The Switchblade Knife Act, a federal act enacted in 1958 that banned switchblades from interstate commerce and encouraged the states to further regulate switchblade knives. See S. Rep. 85-1980 (1958). The Committee on Interstate and Foreign Commerce supported the Act, because the late 1950s saw an increase in quick-opening knives being used for criminal purposes. S. Rep. 85-1980 (1958). The Committee felt the switchblade’s quick-opening nature made it “almost exclusively the weapon of the thug and the delinquent.” S. Rep. 85-1980 (1958).

¶25 The Act defined the term “switchblade knife” as “any knife having a blade which opens automatically (1) by hand pressure applied to a button or other device in the handle of the knife, or (2) by operation of inertia, gravity, or both.” 15 U.S.C. § 1241(b) (West 2008). Because Section 24(a)(1) used the Act’s wording in its definition and was enacted shortly after the

Committee noted the escalating dangers of switchblade knives, Section 24(a)(1) likely sought to further minimize the dangers of such quick-opening knives. See S. Rep. 85-1980 (1958).

¶26 For the foregoing reasons, the trial court did not err in finding the defendant's knife was a switchblade under Illinois' unlawful use of a weapon statute (720 ILCS 5/24-1(a)(1) (West 2008)).

¶27 **Preliminary Examination Fee**

¶28 The defendant next contends that the trial court erred in assessing the defendant a \$20 preliminary examination fee pursuant to 55 ILCS 5/4-2002.1(a) (West 2008), because the defendant had previously waived his right to a preliminary hearing.

¶29 The Illinois Supreme Court recently held that a preliminary examination fee is improper when no preliminary hearing is conducted. *People v. Smith*, 236 Ill. 2d 162, 174 (2010).

¶30 The State has agreed that this court should vacate the \$20 preliminary examination fee assessed against the defendant (55 ICLS 5/4-2002.1(a) (West 2008)). Accordingly, we order the *mittimus* corrected to reflect the removal of this fee.

¶31 **Conclusion**

¶32 The evidence illustrated that the defendant was in possession of a switchblade knife which satisfies the definition of a switchblade knife under the unlawful use of a weapon statute, and thus the conviction of the defendant under the statute is affirmed. The \$20.00 preliminary examination fee assessed against the defendant is vacated and the *mittimus* is corrected because the defendant had previously waived his right to a preliminary hearing.

¶33 Affirmed.