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THE "PENKNIFE" EXCEPTION IN MARYLAND'S CONCEALED WEAPONS STATUTE

QUESTION: DOES A POLICE OFFICER HAVE PROBABLE CAUSE TO MAKE AN ARREST UNDER MARYLAND'S CONCEALED WEAPONS STATUTE WHERE THE SUSPECT IS IN POSSESSION OF A FOLDING KNIFE (A KNIFE WITH THE BLADE FOLDING INTO THE HANDLE)?

ANSWER: NO. MARYLAND'S CONCEALED WEAPONS STATUTE CONTAINS AN EXCEPTION FOR "A PENKNIFE WITHOUT A SWITCHBLADE", WHICH HAS BEEN INTERPRETED BY THE COURTS TO MEAN ANY KNIFE WITH THE BLADE FOLDING INTO THE HANDLE, REGARDLESS OF SIZE, AND REGARDLESS OF WHETHER THE KNIFE HAS A LOCKING DEVICE.

STATUTE: Section 4-101, Criminal Law Article, Annotated Code of Maryland

Section 4-101(c)(1) of the Criminal Law Article prohibits a person from wearing or carrying "a dangerous weapon of any kind concealed on or about the person." Section 4-101(c)(2) prohibits a person from wearing or carrying "a dangerous weapon, chemical mace, pepper mace, or a tear gas device openly with the intent or purpose of injuring an individual in an unlawful manner." A person who violates these provisions of the statute is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

Section 4-101(a)(5)(i) defines "weapon" to include a dirk knife, bowie knife, switchblade knife, star knife, sandclub, metal knuckles, razor, and nunchaku. However, "weapon" does not include "[a] penknife *without a switchblade*." *Id.* § 4-101(a)(5)(ii) (emphasis added). So, the question for police officers is, "What is a penknife without a switchblade?" Here, the statute offers no guidance, as "penknife" is not defined. The courts, however, have created a judicial definition that has the force of law. As far back as 1978, in *Mackall v. State*, 283 Md. 100 (1978), the Maryland Court of Appeals stated, "Penknives today are commonly considered to encompass any knife with the blade folding into the handle, some very large." *Id.* at 769 n.13. In short, more than 25 years ago, the Court of Appeals clearly defined a penknife as any knife whose blade folds into the handle. The concealed weapons statute does not prohibit carrying such a knife, even if it is deadly and even if it is large. Later cases established that even a folding knife with a locking device (a device that maintains the blade in an open position) is considered a "penknife". See *In re Daryl L.*, 68 Md. App. 375 (1985) (knife with a 3 and 3/4-inch blade

and locking device). Finally, in *Bacon v. State*, 322 Md. 140 (1991) (knife with five-inch blade, open and locked), the Court of Appeals ruled that a folding knife that was unfolded and locked was not illegal under the concealed weapons statute. Thus, the character of a penknife is not changed merely because it is large, because the blade is open and locked, or because it is carried concealed or openly.

NOTE: A police officer is presumed by the courts to know clearly established law. Because the legality of penknives is clearly established, an officer will not be shielded by qualified immunity in a federal civil rights action arising from a wrongful arrest under Maryland's concealed weapons statute.

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