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CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

June 4, 2019

Honorable Scott S. Harris, Clerk of Court
United States Supreme Court
Office of the Clerk
1 First Street, NE
Washington, D.C. 20543-0001

Re: John Copeland, et al. v. Cyrus R. Vance, et al., No. 18-918

Dear Mr. Harris:

I represent New York County District Attorney Cyrus R. Vance, Jr. in regard to the above-captioned petition for certiorari, which has been distributed for conference on June 13. On behalf of D.A. Vance and the other respondent in this matter, the City of New York, I write to inform the Court that the New York State statutory provisions challenged in this case have been repealed, effective immediately. This newly enacted legislation renders the case moot and makes clear that certiorari should be denied.

Petitioners raise a vagueness challenge to two sections of the New York Penal Law: § 265.00(5), which defines a “gravity knife,” and § 256.01(1), which renders possession of a gravity knife a misdemeanor offense. Throughout this litigation, the parties have referred to these two sections as “the gravity knife law” or the “gravity knife statute.” Pet. 3; DA Opp. 3. The complaint seeks a declaration and an injunction enjoining enforcement of the gravity knife statute with respect to a particular class of knives. 2d Cir. Joint Appendix (J) 51-52.

Petitioners seek only prospective relief. While each petitioner has previously been charged with, or investigated for, possession of a gravity knife, they do not seek relief relating to the prior enforcement actions. As the petition for certiorari states, those earlier events “are not the basis of [petitioners’] claim.” Pet. 23. Instead, petitioners claim future harm due to alleged vagueness in the statute. *Id.*; Petitioners’ Appendix (A) 13-14.

On May 30, 2019, the Governor signed Assembly Bill 5944, entitled “An Act to amend the penal law, in relation to gravity knives,” following passage of the

bill by both houses of the New York Legislature. The legislation removes “gravity knives” from the list of weapons that can support a charge under Penal Law § 265.01(1), thereby de-criminalizing possession of a gravity knife. The legislation takes effect immediately. A copy of the legislation and the Governor’s memorandum are enclosed with this letter.

Petitioners’ counsel has authorized us to represent that petitioners “do not believe the legislation moots the petition.” Respondents disagree. With the repeal of the gravity knife statute, there is no longer a live case or controversy between the parties. A declaratory judgment that the gravity knife statute is vague as applied to the class of knives described in the complaint and an injunction against its application to the same will no longer benefit petitioners because the statute no longer exists. By de-criminalizing the conduct petitioners wish to engage in, the legislation moots their claim for prospective relief.

As set forth in respondents’ briefs in opposition to the petition, even before this legislative change, there were multiple reasons why this case did not warrant the Court’s review. This development confirms that certiorari should be denied.

Respectfully submitted,

/s/ Elizabeth N.Krasnow
Elizabeth N. Krasnow
Assistant District Attorney

Encl.

cc: Daniel L. Schmutter, Counsel for Petitioners
Richard Dearing, Counsel for City Respondent

STATE OF NEW YORK

S. 3898

A. 5944

2019-2020 Regular Sessions

SENATE - ASSEMBLY

February 20, 2019

IN SENATE -- Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

IN ASSEMBLY -- Introduced by M. of A. QUART -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to gravity knives

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 265.01 of the penal law, as
2 amended by chapter 1 of the laws of 2013, is amended to read as follows:
3 (1) He or she possesses any firearm, electronic dart gun, electronic
4 stun gun, [~~gravity knife,~~] switchblade knife, pilum ballistic knife,
5 metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic
6 knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace
7 type slingshot or slungshot, shirken, or "Kung Fu star"; [~~ex~~]
8 § 2. Subdivision 12 of section 10.00 of the penal law, as amended by
9 chapter 257 of the laws of 2008, is amended to read as follows:
10 12. "Deadly weapon" means any loaded weapon from which a shot, readily
11 capable of producing death or other serious physical injury, may be
12 discharged, or a switchblade knife, [~~gravity knife,~~] pilum ballistic
13 knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles,
14 or metal knuckles.
15 § 3. Subdivision 5-c of section 265.00 of the penal law, as added by
16 chapter 510 of the laws of 2007, is amended to read as follows:
17 5-c. "Automatic knife" includes a stiletto, a switchblade knife, [~~a~~
18 ~~gravity knife,~~] a cane sword, a pilum ballistic knife, and a metal
19 knuckle knife.
20 § 4. Subdivisions 1 and 2 of section 265.10 of the penal law, as
21 amended by chapter 257 of the laws of 2008, are amended to read as
22 follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD08025-02-9

1 1. Any person who manufactures or causes to be manufactured any
2 machine-gun, assault weapon, large capacity ammunition feeding device or
3 disguised gun is guilty of a class D felony. Any person who manufactures
4 or causes to be manufactured any switchblade knife, [~~gravity knife~~],
5 pilum ballistic knife, metal knuckle knife, billy, blackjack, bludgeon,
6 plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag,
7 sandclub or slungshot is guilty of a class A misdemeanor.

8 2. Any person who transports or ships any machine-gun, firearm silenc-
9 er, assault weapon or large capacity ammunition feeding device or
10 disguised gun, or who transports or ships as merchandise five or more
11 firearms, is guilty of a class D felony. Any person who transports or
12 ships as merchandise any firearm, other than an assault weapon, switch-
13 blade knife, [~~gravity knife~~], pilum ballistic knife, billy, blackjack,
14 bludgeon, plastic knuckles, metal knuckles, Kung Fu star, chuka stick,
15 sandbag or slungshot is guilty of a class A misdemeanor.

16 § 5. Subdivision 3 of section 265.15 of the penal law, as amended by
17 chapter 257 of the laws of 2008, is amended to read as follows:

18 3. The presence in an automobile, other than a stolen one or a public
19 omnibus, of any firearm, large capacity ammunition feeding device,
20 defaced firearm, defaced rifle or shotgun, defaced large capacity ammu-
21 nition feeding device, firearm silencer, explosive or incendiary bomb,
22 bombshell, [~~gravity knife~~], switchblade knife, pilum ballistic knife,
23 metal knuckle knife, dagger, dirk, stiletto, billy, blackjack, plastic
24 knuckles, metal knuckles, chuka stick, sandbag, sandclub or slungshot is
25 presumptive evidence of its possession by all persons occupying such
26 automobile at the time such weapon, instrument or appliance is found,
27 except under the following circumstances: (a) if such weapon, instrument
28 or appliance is found upon the person of one of the occupants therein;
29 (b) if such weapon, instrument or appliance is found in an automobile
30 which is being operated for hire by a duly licensed driver in the due,
31 lawful and proper pursuit of his or her trade, then such presumption
32 shall not apply to the driver; or (c) if the weapon so found is a pistol
33 or revolver and one of the occupants, not present under duress, has in
34 his or her possession a valid license to have and carry concealed the
35 same.

36 § 6. Paragraphs 2 and 6 of subdivision a of section 265.20 of the
37 penal law, paragraph 2 as amended by chapter 189 of the laws of 2000 and
38 paragraph 6 as amended by chapter 1041 of the laws of 1974, are amended
39 to read as follows:

40 2. Possession of a machine-gun, large capacity ammunition feeding
41 device, firearm, switchblade knife, [~~gravity knife~~], pilum ballistic
42 knife, billy or blackjack by a warden, superintendent, headkeeper or
43 deputy of a state prison, penitentiary, workhouse, county jail or other
44 institution for the detention of persons convicted or accused of crime
45 or detained as witnesses in criminal cases, in pursuit of official duty
46 or when duly authorized by regulation or order to possess the same.

47 6. Possession of a switchblade [~~ex-gravity knife~~] for use while hunt-
48 ing, trapping or fishing by a person carrying a valid license issued to
49 him pursuant to section 11-0713 of the environmental conservation law.

50 § 7. This act shall take effect immediately.



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

APPROVAL # 2
CHAPTER # 34

May 30, 2019

MEMORANDUM filed with Assembly Bill 5944, entitled:

“AN ACT to amend the penal law, in relation to gravity knives”

APPROVED

This bill, unanimously passed by the Legislature, would legalize the possession of commonly sold and lawfully used folding knives by removing the term “gravity knife” from the Penal Law, while leaving intact law enforcement’s ability to pursue those who otherwise use these knives unlawfully.

This is not the first time the Legislature has sought to remove the criminal sanctions associated with possessing these knives, which are widely available in hardware and sporting goods stores. Indeed, in 2016 and 2017, I was constrained to veto similar bills (see Veto No. 299 of 2016 and Veto No. 171 of 2017). As I explained in each of those instances, despite recognizing the absurdity of a criminal justice system which has regularly charged individuals for simply carrying folding knives designed, marketed and sold as work tools for construction workers, artisans, restaurant workers, and day laborers, the uniform opposition of the State’s law enforcement entities and mayors could not be ignored. Recognizing the concerns on both sides of this issue, the Executive strived to reach a compromise over the past three years, carefully constructing bills that would have legalized these knives in a limited fashion so that individuals using them for work could not be prosecuted. None of those attempts to reach a resolution proved successful.

As I review this bill for a third time, the legal landscape has changed. In March of this year, the United States District Court for the Southern District of New York declared the State’s existing “gravity knife” ban unconstitutional. As argued by many who have advocated for this change in law, the court reasoned that the existing law could result in arbitrary and discriminatory enforcement.

While I remain aware of the cautious community voices, I cannot veto a bill passed by the Legislature to address a decided constitutional infirmity in existing law, as recently affirmed by a federal court. I remain confident that our law enforcement community will continue to keep our communities safe by pursuing anyone who uses, or attempts to use, one of these knives in an unlawful manner.

This bill is approved.

A handwritten signature in black ink, appearing to read "Andrew Cuomo".