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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2002-CA-002371-MR

JOSH D. BROWN

APPELLANT

v. APPEAL FROM BATH CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 01-CR-00030

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, COMBS, and DYCHE, Judges.

COMBS, JUDGE: Josh D. Brown brings this appeal from a conditional guilty plea. He challenges the determination of the circuit court that a knife which he had brought onto school premises qualified as a deadly weapon under KRS¹ 527.070. We agree that the knife at issue constituted a deadly weapon as a matter of law. Therefore, we affirm.

¹ Kentucky Revised Statutes.

On May 5, 2001, Brown was present at the Bath County High School prom to assist a disc jockey (the DJ) who had been hired to provide the music for the event. Brown rode to the prom with the DJ. Over the course of the evening, Brown was observed to appear intoxicated, and school authorities notified the police. According to the police officers, Brown had slurred speech and a dry mouth; he was unstable on his feet. They searched the DJ's van and found marijuana and rolling papers in the glove box. They searched Brown and found a knife, various pills, and rolling papers. Brown admitted to police that he had ingested six Xanax pills and four OxyContin pills and that he had smoked marijuana.

On June 21, 2001, Brown was indicted for trafficking in a controlled substance (Xanax and OxyContin) in or near a school (KRS 218A.1411); possession of marijuana (KRS 218A.1422); unlawful possession of a weapon on school property (KRS 527.070); possession of drug paraphernalia (KRS 218A.500); and first-degree persistent felony offender (KRS 532.080).

On October 14, 2002, Brown entered into a conditional plea agreement in which the Commonwealth agreed to drop all charges except possession of the knife as a deadly weapon. Brown reserved the right to appeal the ruling of the trial court that his knife was a deadly weapon as a matter of law. In sentencing Brown to three-years' imprisonment, the court

dismissed the other charges conditionally with the understanding that if this Court were to remand the case for trial, those other charges could be reinstated.

On appeal, Brown contends that his knife is not a deadly weapon pursuant to KRS 527.070 because the blade folds into the handle and the knife is suitable for carrying in his pocket. Brown argues that the knife falls within the "ordinary pocket knife" exception of KRS 500.080(4)(c).

Whether a weapon qualifies as a deadly weapon is a matter of law to be determined by the court. Hicks v. Commonwealth, Ky., 550 S.W.2d 480, 481 (1977). We review questions of law *de novo* and do not defer to the interpretation of the circuit court. Bob Hook Chevrolet Isuzu, Inc. v. Commonwealth, Transportation Cabinet, Ky., 983 S.W.2d 488, 490 (1998); Commonwealth, Cabinet for Health Services v. Family Home Health Care, Inc., Ky. App., 98 S.W.3d 524, 527 (2003).

KRS 527.070 defines the crime of unlawful possession of a weapon on school property as a Class D felony. That statute provides as follows:

A person is guilty of unlawful possession of a weapon on school property when he knowingly deposits, possesses, or carries, whether openly or concealed, for purposes other than instructional or school-sanctioned ceremonial purposes . . . any firearm or other deadly weapon, destructive device, or booby trap device in any public or private school building or bus, on any

public or private school campus, grounds, recreation area, athletic field, or any other property owned, used, or operated by any board of education, school, board of trustees, regents, or directors for the administration of any public or private educational institution.

KRS 500.080, the definitional section of the Kentucky Penal Code, defines a "deadly weapon" as follows:

(4) "Deadly weapon" means any of the following:

(c) Any knife other than an ordinary pocket knife or hunting knife;

The statutes do not define "ordinary pocket knife."

Accordingly, we must resort to traditional principles of statutory construction. We begin with the principle that "our duty is to ascertain and give effect to the intent" of the Legislature. Beckham v. Board of Education of Jefferson County, Ky., 873 S.W.2d 575, 577 (1994). In so doing, it is not our function "to add or subtract from the legislative enactment nor discover meaning not reasonably ascertainable from the language used." Id. We are instead directed to follow the clear language of the statute, Lydic v. Lydic, Ky. App., 664 S.W.2d 941, 943 (1983), and when "plain and unambiguous" words are employed, we must apply those terms "without resort to any construction or interpretation." Terhune v. Commonwealth, Ky. App., 907 S.W.2d 779, 782 (1995); Smith v. Commonwealth, Ky. App., 41 S.W.3d 458, 460 (2001).

In attempting to ascertain the intent of the legislature, courts must view the statute as a whole, considering not only its language but also its spirit. Combs v. Hubb Coal Corp., Ky., 934 S.W.2d 250, 252 (1996). Kentucky statutes are to be given a liberal construction, and the language used should be given its ordinary meaning except when it has a special meaning in the law. In such a case, its technical meaning is appropriate. KRS 446.080(1) and (4); Withers v. University of Kentucky, Ky., 939 S.W.2d 340, 345 (1997). A court may refer also to a dictionary to ascertain the plain and ordinary meaning which the legislature intended to ascribe to the term. See Young v. Commonwealth, Ky., 968 S.W.2d 670, 672 (1998).

In the absence of statutory or case-law definitions to guide us, we have consulted a dictionary for a definition of the applicable terms. *Pocketknife* is defined as "a knife that has one or more blades that fold into the handle and that can be carried in the pocket." Merriam-Webster's Collegiate Dictionary (10th ed. 1993). *Ordinary* is defined as "of a kind to be expected in the normal order of events: Routine, Usual." Id. From these definitions, we infer that the legislature's intended definition of an "ordinary pocket knife" was:

A type of knife that has one or more blades that fold into the handle that can be carried in the pocket, and which is of the

usual and routine kind of knife carried in the pocket expected to be observed in the normal order of events.

See L.B. v. Florida, 700 So.2d 370, 372 (Fl. 1997).

The knife that Brown carried into the prom on May 5, 2002, is a lock-blade knife with a black plastic handle and a belt clip at the base of one end. With a handle of six inches in length, the knife measures 11 inches when unfolded. The blade measures 5 inches in length and 1 1/8 inches at its widest point. Folded, the knife measures 1 7/8 inches at its widest point.

CR² 75.07(3)³ notwithstanding, the knife itself was included in the record on appeal in this case. Upon viewing the knife, one immediately perceives that the knife is not an "ordinary" pocketknife that would be carried in a pocket in the normal course of events. With its locked-blade capacity, the knife constitutes a very formidable weapon. Quite frankly, it is beyond ludicrous to apply the adjective *ordinary* as modifying "pocketknife." On the contrary, the knife is remarkably large.

While this precise issue has not come before our appellate courts, we note that a utility knife was held to be a

² Kentucky Rules of Civil Procedure.

³ CR 75.07(3) provides "(e)xcept for (a) documents, (b) maps and charts, and (c) other papers reasonably capable of being enclosed in envelopes, exhibits shall be retained by the clerk and shall not be transmitted to the appellate court unless specifically directed by the appellate court on motion of a party or upon its own motion."

dangerous weapon in Stout v. Commonwealth of Kentucky, Ky.App., 33 S.W.3d 531 (2000). The appellant in Stout contended that his utility knife qualified as a tool rather than a deadly weapon -- despite the fact that he had utilized the small knife in a burglary. That knife was by far more diminutive than the formidably large knife in this case.

In summary, we agree with the trial court that the knife does not meet the ordinary pocketknife exception of KRS 500.080(4)(c). We agree that the knife is a deadly weapon as a matter of law.

Brown also contends that the trial court erred in refusing to allow him to introduce excerpts from a book: The Working Folding Knife, by Steven Dick, Stoger Publishing Company.⁴ He sought to introduce an excerpt by reading it into the record. Brown contends that the book was admissible under KRE⁵ 902(6), which provides that with respect to books, newspapers, and periodicals, extrinsic evidence of authenticity as a condition precedent to admissibility is not required.

We agree with Brown that the book was self-authenticating under KRE 902(6). However, the excerpt that Brown sought to introduce into evidence was hearsay under KRE 801 as a written statement offered to prove the truth of the

⁴ The record does not contain the publication date or edition number for the book.

⁵ Kentucky Rules of Evidence.

matter asserted. The hearsay exception contained at KRE 803(18) arguably might render the book admissible as a learned treatise. However, in order for that exception to have been applicable, Brown would have had to offer the testimony of an expert witness to establish the book as a reliable authority. Thus, the excerpt was inadmissible hearsay.

For the foregoing reasons, the judgment of the Bath Circuit Court is affirmed.

ALL CONCUR.

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