

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



IN THE HIGH COURT OF JUSTICE

CO/2932/2018

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2018] EWHC 3330 (Admin)

Royal Courts of Justice

Wednesday, 14 November 2018

Before:

LORD JUSTICE LEGGATT

MRS JUSTICE ELISABETH LAING

B E T W E E N :

SHARMA

Appellant

- and -

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

---

MS K. LYKOURGOU (instructed by Berry and Lambert Solicitors) appeared on behalf of the Appellant.

MR L. CHINWEZE (instructed by the Crown Prosecution Service) appeared on behalf of the Respondent.

---

**J U D G M E N T**

LORD JUSTICE LEGGATT:

1 The question raised on this appeal is whether a particular kind of knife is a folding pocketknife within the meaning of s.139 of the Criminal Justice Act 1988, with the result that a person who has such a knife with him in a public place cannot be guilty of an offence under that section.

2 Section 139(1) to (3) provide as follows:

"(1) Subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence.

(2) Subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed except a folding pocketknife.

(3) This section applies to a folding pocketknife if the cutting edge of its blade exceeds 3 inches."

Subsection (4) provides for a defence where a person charged with an offence under the section proves that he had a good reason or lawful authority for having the article with him in a public place, and subsection (5) specifies certain reasons which are treated as a matter of law as good reasons for this purpose.

3 The appellant was arrested on 16 July 2017 and charged with an offence under s.139(1) of the Act. Following a summary trial, he was convicted by the magistrates. He appealed against his conviction to Aylesbury Crown Court. On 23 March 2018 the appeal was heard by Mr Andrew Marshall sitting as a Recorder of the Crown Court with two lay justices. They dismissed the appeal. The Recorder subsequently granted an application to state a case for the opinion of the High Court. The question posed is this:

"Having found that the subject knife had a blade length less than 3 inches long but was capable of locking the blade in position, and where the locking mechanism was a combination of overlapping plastic hinged panels and compressed small moulded connectors which snapped together, were we correct (a) to conclude that the subject knife was not a folding pocketknife within the meaning of s.139(2) and (3) of the Criminal Justice Act 1988, and explained in *Harris v DPP* simply because one part of its locking mechanism operated by a process of unfolding; (b) accordingly, to hold that the subject knife was an article to which s.139(1) of the Act applied?"

4 The case of *Harris v DPP* [1993] 1 WLR 82, to which reference is made in this question, involved two conjoined appeals to this court. In each case the appellant had been convicted under s.139 of having in his possession in a public place a knife which had the following characteristics: (1) the cutting edge of the blade was less than 3 inches; (2) the blade was capable of being folded; (3) when the blade was fully opened, it automatically locked in that position; and (4) to fold the blade back into the

handle, it was necessary to activate a mechanism triggered by pressing a button. The appeals were dismissed. McCowan LJ, with whose judgment Popplewell J agreed, said (at 87F):

"To be a folding pocketknife the knife has to be readily and indeed immediately foldable at all times, simply by the folding process. A knife of the type with which these appeals are concerned is not in this category because, in the first place, there is a stage, namely, when it has been opened, when it is not immediately foldable simply by the folding process and, secondly, it requires that further process, namely, the pressing of the button."

- 5 The decision in *Harris* was approved and followed by the Court of Appeal Criminal Division in *R v Desmond Garcia Deegan* [1998] 2 Cr App R 121, a case where the article in question was described (at 122F) as "a pocketknife which was capable of being opened and locked into an open position, and equally capable of being folded once the mechanism had been operated to unlock the blade." Waller LJ, who gave the judgment of the court, said (at 128G):

"...it seems to us that 'folding' in its ordinary meaning, means 'foldable' at all times without the intervention of some further process, namely the pressing of a button or release of a catch, and that if any form of 'lock knives' are to be brought outside the legislation, that will need clearer definition."

- 6 In the present case, the case stated by the Crown Court contains a most full and helpful explanation of the nature of the knife which the appellant was charged with having in his possession. We have also been provided with photographs and have had the opportunity, at this hearing, to inspect the article itself.
- 7 In summary: (1) the article is similar in size and shape to a credit card and, as such, could readily be carried in a wallet; (2) when the blade, which is 2½ inches long, is folded away, it lies diagonally across the card and there is an indentation in the plastic to accommodate it; (3) the blade is unfolded by pivoting it 180 degrees up from the flat surface of the card and then over and down to the horizontal plane again – this approximately doubles the length of the whole item; (4) when unfolded, the blade lies on the same diagonal as before but pointing out from the corner of the card; (5) when the blade has been unfolded, two triangular-shaped parts of the card on each side of the centre can then be folded inwards to meet each other and cover the base of the knife, forming a handle; (6) when the two sides are folded over, a number of tiny plastic studs or poppers can be pressed into matching holes so that they snap together to secure the blade in position; (7) once the handle of the blade has been secured in this way, the blade cannot be pushed back into the handle – the user holding the knife maintains it in a snapped locked position which prevents its collapse; (8) to fold the blade away, the two sides of the card which form the handle have to be unsnapped and unfolded, and the blade then rotated back 180 degrees.
- 8 Ms Lykourgou, who represents the appellant, accepts that the law is correctly stated in the cases of *Harris* and *Deegan* to which I have referred. She submits, however, that when in those cases reference is made to the requirement that the knife should be immediately foldable at all times, simply by the folding process, that should not be understood to refer solely to the blade of the knife but rather to the article as a whole.

She submits that the article in this case satisfies that description because, even though the blade of the knife is not immediately foldable without the intervention of any other process, the knife as a whole is. The flaps, first of all, can be folded away and then, after that, the blade of the knife can be folded back into the closed position.

- 9 In relation to the snapping mechanism, Ms Lykourgou submits that there is no material difference between the amount of pressure required to unsnap the handle of the knife in this case and the amount of pressure that would be required in the case of an ordinary Swiss Army knife, which it is common ground comes within the definition of a folding pocketknife, where pressure has to be applied in order to fold away the blade.
- 10 Ms Lykourgou also makes the point that the knife at issue in this case is weak from front to back when the knife is in its locked or fixed position. She submits that that makes it similar to an ordinary pocketknife which is weak on the underside of the blade and can be closed simply by applying pressure, unlike a lock knife which cannot be bent in any direction when it has been locked.
- 11 Although the judgments in the cases of *Harris* and *Deegan* refer to it being necessary that the “knife” should be readily and immediately foldable at all times simply by the folding process, I have no doubt that the court in those cases had in mind the blade of the knife which is, after all, the relevant part for the purpose of the offence of carrying a bladed article. Giving a sensible and purposive interpretation to s.139, the requirement that the blade should be immediately foldable at all times reflects the mischief at which the provision is aimed because an article with a blade which is capable of being secured in position so that it cannot be immediately folded simply by pressing the blade clearly in general has a greater potential to be used as a weapon than one whose blade is immediately foldable in that way.
- 12 In the case of the knife at issue on this appeal, the blade is not immediately foldable and for that reason, in my view, does not satisfy the established test of a folding pocketknife.
- 13 Even apart from that, there is an additional reason why the knife does not satisfy the test – which is that, before even the sides of the card that form the handle of the knife can be folded away, it is necessary to unsnap the small studs or poppers. That may not require a great deal of strength or pressure and is a simple mechanism, but then so too is the pressing of the button which was required before the knives in issue in the cases of *Harris* and *Deegan* could be folded away. So for that further reason too the knife which is the subject of this case is not immediately foldable.
- 14 I would accept the point made by Ms Lykourgou that, when the knife is in its locked position, it does not appear to be very robustly secured in place and that may well make this knife less of a potential threat than a typical lock knife. However, what is meant by a “folding pocketknife” cannot reasonably depend on judgments about the strength or otherwise of the relevant mechanism. The interpretation that has been given to this expression in the case law is clear and straightforward and turns, in my view, on whether the blade of the knife was immediately foldable at all times simply by applying pressure to the blade. That is not true of the knife in this case. I therefore have no doubt that the Crown Court was correct to conclude that it was not a folding pocketknife within the meaning s.138(2) and (3) of the Criminal Justice Act 1988 and

hence that it was an article to which s.139(1) applied. Accordingly, I would dismiss the appeal.

MRS JUSTICE ELISABETH LAING: I agree.

---

**CERTIFICATE**

Opus 2 International Ltd. Hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

*Transcribed by **Opus 2 International Ltd.**  
(Incorporating **Beverley F. Nunnery & Co.**)  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
[admin@opus2.digital](mailto:admin@opus2.digital)*

This transcript has been approved by the Judge.