

**HB**

**33**

<TARGET><BILL>HB 33</BILL><SUBJECT>HB  
33</SUBJECT><COMM>HJUD28</COMM></TARGET>

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 16, 2013

FURTHER REFERRALS:

Date of Committee Action: 2/27/13

The JUDICIARY Committee considered:

HB 33

**HOUSE BILL NO. 33**

"An Act adding definitions of 'gravity knife' and 'switchblade' to the criminal law; and relating to reserving the authority to regulate knives to the state with limited exceptions for municipalities to regulate knives."

**HB 33-KNIVES, GRAVITY KNIVES, & SWITCHBLADES**

Recommends it be replaced with  HCS or  CS for \_\_\_\_\_ (\_\_\_\_\_)  
 For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

- List of Abbrev for Depts.:
- ADM
  - CED
  - COR
  - CRT
  - EED
  - DEC
  - DFG
  - GOV
  - DHS
  - LWF
  - LAW
  - LEG
  - MVA
  - DNR
  - DPS
  - REV
  - DOT
  - UA

<u>NEW FISCAL NOTES</u>				
*FN# is assigned by Chief Clerk's Office				
*FN#	List by Dept(s):	Fiscal	Indet.	Zero
	ADM~OPA			✓
	ADM~PDA			✓
	CED			✓
	LAW			✓

<u>PREVIOUS FISCAL NOTES</u>				
FN#	List by Dept(s):	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Miller	X			
	Steven H.	✓			
	LYNN LeDOUT	X			
	Keller	X			
Chair:	Keller	X			
Chair:					

# ALASKA STATE LEGISLATURE

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**Chair:**  
House Budget Sub Committees on:  
- Department of Health & Social Services  
- Department of Transportation & Public  
Facilities



**Session:**  
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Juneau, AK 99801-1182  
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## ***Representative Mark Neuman***

Rep.Mark.Neuman@akleg.gov

February 18, 2013

Dear Representative Wes Keller

Subject: HB 33 "An Act adding definitions of 'gravity knife' and 'switchblade' to the criminal law."

Attached is a committee package for House Bill 33, please consider scheduling this legislation at your earliest convenient in the House Judiciary Committee. It is my goal to have a national expert from "Knife Rights Inc." available to answer questions and provide testimony on this issue.

I look forward to discussing HB 33 with you and the members of the Alaska House of Representative Judiciary Committee.

Included are the following:

- Letter of request
- Sponsor statement.
- Current version of the bill.
- Supporting documents

Please feel free to contact me or my aide Rex Shattuck (465-2696) with any questions.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Mark Neuman".

Representative Mark Neuman

# ALASKA STATE LEGISLATURE

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## ***Representative Mark Neuman***

Rep.Mark.Neuman@akleg.gov

### **Sponsor Statement HB 33**

***"An Act adding definitions of 'gravity knife' and 'switchblade' to the criminal law."***

In Alaska, spring loaded knives are an important tool used by hunters, anglers, and craftsmen. According to the American Knife and Tool Institute, there are over 35.6 million Americans who carry and use some type of utilitarian knife which opens with one hand. In the United States, assisted-opening and one-hand-opening knives now make up 80 percent of all knives sold.

In recent years some jurisdictions have acted to restrict the type of knives individuals may carry. In a number of instances this has been done by attempting to define common pocketknives as switchblades, gravity knives, or other knives.

Frequently that switchblade definition is assigned to a knife capable of being opened with one hand and having a "bias towards closure". A "bias toward closure" simply means it has a spring, detent, or other mechanism, which maintains the knife in a closed position until the bias is overcome with applied pressure.

A knife of this configuration falls short of the definition of switchblade used in other states and by the federal government: "...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."

Presently Alaskan's are able to purchases these knives in Alaska and online. They are used in the work environment and in recreation. This bill simply clarifies that one handed hunting and utility knives do not qualify as a switchblade and as such are legally owned.

I would appreciate your support

# Knife Definitions

## Introduction

In an effort to limit the type of knives that can be legally imported into the United States, the Department of Homeland Secretary proposed revocation of the admissibility of certain knives with spring assisted opening mechanisms. This proposal would establish a new definition for qualifying switchblade knives.

Under the Switchblade Knife Act of 1958, a switchblade is defined as any knife with a blade which opens automatically by hand pressure applied to a button or other device in the handle of the knife, or by operation of inertia, gravity, or both. The proposed regulation would designate one-hand and assisted opening knives as being switchblades, even though the federal law does not declare these knives as switchblades.

## Issue

Spring loaded knives are an important tool for hunters and anglers. According to the American Knife and Tool Institute, there are over 35.6 million Americans, including many who are hunters and anglers, who carry and use some type of utilitarian knife which opens with one hand. In the United States, assisted-opening and one-hand-opening knives are 80 percent of all knives sold. Spring loaded hunting knives should not qualify as switchblade knives.

## Language

The Texas State Legislature passed H.B. No. 4456. This bill provided the state definition for qualifying switchblade knives.

1. "Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath that opens automatically by pressure applied to a button or other device located on the handle, or opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.
2. The term (Switchblade) does not include a knife that has a spring, detent, or other mechanism designed to create a bias toward closure that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure and open the knife.

## Points of Interest

- Court cases in several states such as California, Illinois, Michigan, and Texas, have all ruled in favor of assisted-opening and one-hand opening knives. These knives are not considered switchblades because they do not possess the activating button or device on the handle of the knife.

## Explanation (see picture in package)

**Switchblade** – is a pocket knife whose blade is operated by activating a multi- position switch on the handle. By moving the switch in one direction it extends the blade, by moving it in the opposite direction it retracts the blade.

**One handed bias closed knife** – the knives this legislation address are ones that can be opened by one hand - but typically need two to close. Like most knives (except gravity knives) they have some spring to them. Initially that causes a bias to staying closed. However, once you reach a certain point there is an inertia that assists in their opening. Many have something designed into the blade to help in their opening.

# HB55 - Definitions: Gravity Knife & Switchblade

Examples of bias-towards-closure knives:



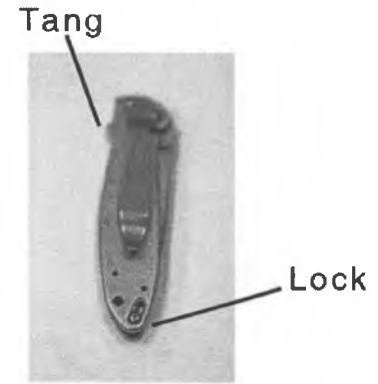
Closed



Prone



Fully-opened



Bias-towards Closed with a tang

Example of a switchblade:



Closed

Switch mechanism



Fully-opened

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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## MEMORANDUM

February 26, 2013

**SUBJECT:** HB 33 - Definition of "Gravity Knife" and "Switchblade";  
Municipal Regulation of Knives  
(Work Order No. 28-LS0194\U)

**TO:** Representative Mark Neuman  
Attn: Rex Shattuck

**FROM:** Kathleen Strasbaugh  
  
Legislative Counsel

HB 33 provides definitions for "gravity knife" and "switchblade." The bill also limits municipal regulation of knives.

As you know, the absence of definitions of the terms "switchblade" and "gravity knife" was discussed in the Alaska Court of Appeals. The Court upheld a weapons crime conviction in one case, finding that the term "gravity knife" is not improperly vague but has a readily ascertainable and consistent definition. According to the court, in that case, a gravity knife is one in which the blade opens, falls into place, or is ejected into position by the force of gravity or by centrifugal force. *State v. Weaver*, 736 P.2d 781 (Alaska Ct. App. 1987). A few years later, the Court affirmed a lower court's dismissal of a weapons charge, reasoning that butterfly knives and balisong knives do not fit within the common definition of "gravity knife." *State v. Strange*, 785 P.2d 563 (Alaska Ct. App. 1990). See also *Jacobson v. State*, 786 P.2d 388 (Alaska App. 1990). I've enclosed copies of the *Weaver* and *Strange* cases for your information.

If I may be of further assistance, please advise.

KJS:lnd  
13-114.lnd

Enclosures

*State v. Strange*, 785 P.2d 563 (1990)

**STATE of Alaska, Appellant, v. John E. STRANGE, and Rudy Kempen, Appellees.**

**STATE of Alaska, Appellant, v. John E. STRANGE, Christopher A. Stading, and Troy Gonzales, Appellees.**

Nos. A-2637, A-2638.

**Court of Appeals of Alaska.**

January 19, 1990.

564\*564 Robert D. Bacon, Asst. Atty. Gen., Office of Sp. Prosecutions and Appeals, Anchorage, and Grace Berg Schaible and Douglas B. Baily, Attys. Gen., Juneau, for appellants.

Marcia E. Holland, Asst. Public Defender, Fairbanks, and John B. Salemi, Acting Public Defender, Anchorage, for appellees Strange and Kempen.

Nancy J. Nolan, Asst. Public Defender, and John B. Salemi, Public Defender, Anchorage, for appellees Strange, Stading, and Gonzales.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.  
SINGLETON, Judge.

Each of these defendants was indicted by a grand jury for first-degree misconduct involving weapons, a class C felony, in violation of AS 11.61.200(a)(3). This statute makes it a felony to possess a "prohibited weapon." "Prohibited weapon" is defined in AS 11.61.200(e)(1)(D) to include a "switchblade or gravity knife." Neither "switchblade" nor "gravity knife" is specifically defined in the statutes. *See State v. Weaver*, 736 P.2d 781, 782 (Alaska App. 1987). Each of these defendants possessed a "butterfly knife" which is also known as a "balisong knife." The sole question presented by these appeals is whether a butterfly or balisong knife is a prohibited switchblade or gravity knife.

Two evidentiary hearings were held: the first, in Fairbanks before Judge Jay Hodges involved John E. Strange and Rudy Kempen; the second, in Anchorage before Judge Mark C. Rowland involved Strange, again, Christopher A. Stading, and Troy Gonzales. Judge Hodges and Judge Rowland independently determined that a butterfly knife is not a prohibited weapon and therefore dismissed the charges against the defendants and the state appeals. We affirm.

Because neither gravity knife nor switchblade knife are defined in Alaska statutes, we must look to general usage for their meaning. AS 01.10.040. In determining the meaning of words in common usage, we generally look to the dictionary. *See Walker v. State*, 742 P.2d 790, 791

(Alaska App. 1987). The dictionary defines a switchblade knife or switchblade "as a pocketknife having the blade spring-operated so that pressure on a release catch causes it to fly open." *Webster's Third New International Dictionary of the English Language Unabridged*, 2314 (1966) (hereinafter *Webster's*). The butterfly or balisong knives which were seized in this case are identical to those described in *People v. Quattrone*, 211 Cal. App.3d 1389, 260 Cal. Rptr. 44, 45 (1 Dist. 1989) as follows:

The butterfly knife sold by defendant has a fixed blade over two inches long. When not in use, a two-part handle is folded around the blade as a sheath and is secured by a latch at the base of the knife. To open, the latch is released, allowing the two halves of the sheath to swing down on pivots to form a handle exposing the blade. The handle may be 565\*565 secured manually or closed with the latch.

The knives introduced in evidence and demonstrated in the videotapes prepared at the evidentiary hearing satisfy this definition. It is not seriously contended that the butterfly or balisong knives are switchblade knives as we have defined that term. Rather, the contention is that they are gravity knives. In *Weaver*, we addressed the definition of gravity knives. We said:

The term [gravity knife] has a readily ascertainable and consistent definition. As commonly understood, a gravity knife is one in which the blade opens, falls into place, or is ejected into position by the force of gravity or by centrifugal force....

Furthermore, in the Alaska Statute on prohibited weapons, the term "gravity knife" is used in conjunction with "switchblade knife." AS 11.61.200(e)(1)(D). The ordinary person is therefore put on notice that a "gravity knife" must be similar to a switchblade in operating automatically or semi-automatically. The pertinent characteristics which a switchblade and a gravity knife have in common are that they are easily concealed and quickly brought to bear. These characteristics are indicative of knives which are used as weapons rather than tools. Some utility knives are quickly brought to bear, such as a fishing knife or hunting knife in a sheath, but are not easily concealed. Indeed, it is only when these utility knives are concealed that their possession is unlawful. AS 11.61.220(a)(1). An ordinary pocket knife may be concealed upon the person. AS 11.61.220(a)(1). However, an ordinary pocketknife is incapable of being quickly brought to bear. *Weaver*, 736 P.2d at 782-83 (footnote omitted).

The two evidentiary hearings produced essentially the same evidence. At the first hearing in Fairbanks, the defendants called Wayne Ross, a local attorney, as a weapons expert to testify that the terms switchblade and gravity knife have a commonly accepted meaning in the weapons trade and that balisong or butterfly knives do not fall within either meaning. He testified that gravity knives, like switchblade knives are released by a button, but differ from switchblade knives in that they do not have a spring. Ross testified that gravity knives were developed by German paratroopers in World War II as a utility knife to cut parachute shrouds.

The state called Alaska State Trooper Jeffrey Hall at the first hearing in Fairbanks to show how easily butterfly knives could be brought to bear. He testified that butterfly knives were primarily used in the martial arts and in combat. He also testified that a butterfly knife was not within his understanding of the term switchblade knife or gravity knife. The defense also put on a number

of witnesses to testify that butterfly knives were readily available in commercial stores in Anchorage and Fairbanks.

Testimony before Judge Rowland at the second hearing in Anchorage paralleled testimony before Judge Hodges with one exception. Trooper Hall who had been called as a prosecution witness in Fairbanks was called as a defense witness in Anchorage. The state introduced a videotape of Alaska State Trooper John Johnston demonstrating the use of three of the butterfly knives which had been seized from defendant Strange. Trooper Johnston showed that the knives could be easily concealed on the body and could quickly be brought to bear by a series of wrist movements utilizing centrifugal or inertial force. He indicated that he had only had about ten minutes experience with butterfly knives before making the videotape. He was able to bring the knives to bear quickly even though he took them as he found them without oiling them or working them to make them loose and easier to open.

Trooper Johnston's demonstration paralleled one given in *Quattrone*, where the officer was also able to rapidly open and lock the butterfly knife with one hand using three wrist movements. In that case, the officer testified that he needed only half an hour to perfect his technique. *Quattrone*, 260 Cal. Rptr. at 45.

566\*566 A number of courts have considered whether butterfly or balisong knives qualify as prohibited switchblade or gravity knives. See, e.g., *Taylor v. United States*, 848 F.2d 715 (6th Cir.1988); *Precise Imports Corporation v. Kelly*, 378 F.2d 1014 (2d Cir.1967), cert. denied, 389 U.S. 973, 88 S.Ct. 472, 19 L.Ed.2d 465 (1967); *Quattrone*, 260 Cal. Rptr. 44; *People v. Dolson*, 142 Misc.2d 779, 538 N.Y.S.2d 393 (N.Y. Co. Ct. 1989); *People v. Mott*, 137 Misc.2d 757, 522 N.Y.S.2d 429 (N.Y. Co. Ct. 1987). The courts, which disagree on whether butterfly knives are switchblades or gravity knives, have not been particularly helpful because of differences in statutory language. In *Quattrone*, the court dealt with California Penal Code § 653k which "defines an illegal switchblade as `a springblade knife, snap-blade knife, gravity knife or any other similar type knife, [having a blade or blades] which can be released automatically ... by any type of mechanism whatsoever.'" *Quattrone*, 260 Cal. Rptr. at 46. In *Taylor*, the court dealt with the Switchblade Knife Act which defines a switchblade knife at 15 U.S.C. § 1241(b) as follows: The term "switchblade knife" means 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.

*Taylor*, 848 F.2d at 716 n. 1. Both of these definitions are broader than the definitions in our statute which simply uses the terms without further defining them. *Taylor* is also distinguishable because the court there relied heavily on an administrative interpretation of the Act in determining that balisong or butterfly knives were covered.

The New York cases dealt with New York Penal Code § 265.00(5) which stated that:

"Gravity knife" means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.

The New York cases held balisong or butterfly knives not to be gravity knives because they were not locked in place by means of a button, spring, lever or other device when released. *Dolson*, 538 N.Y.S.2d 393; *Mott*, 522 N.Y.S.2d 429. Our statute does not have similar language.

Having carefully reviewed the statutes and the knives introduced into evidence and bearing in mind that criminal statutes should be strictly construed against the government, *see State v. Andrews*, 707 P.2d 900, 907 (Alaska App. 1985), *aff'd*, 723 P.2d 85 (Alaska 1986), we conclude that butterfly knives and balisong knives are not gravity knives.

A number of considerations lead us to this conclusion. First, butterfly knives are not "switchblade knives in which the blade is sprung by a downward snap of the wrist." *Webster's* at 993. As we have seen, these knives do not meet the definition of switchblade knives. Nor are they sprung by a downward snap of the wrist. In fact, a number of motions, albeit quickly performed, are necessary to bring the knives to bear. These knives also do not fit the definition of automatic or semi-automatic. Finally, these knives do not appear to fit the common understanding of the term gravity knife or the way that the term is used in common usage. *See, e.g., Quattrone*, 260 Cal. Rptr. at 47-48. It is instructive that the expert testimony in *Quattrone* apparently paralleled the expert testimony given at the two evidentiary hearings in this case regarding the meaning of the term "gravity knife."

The judgment of the superior court is AFFIRMED.

*State v. Weaver*, 736 P.2d 781 (1987)

**STATE of Alaska, Appellant,**

**v.**

**Mark A. WEAVER, Appellee,**

**Mark A. WEAVER, Appellant**

**v.**

**STATE of Alaska, Appellee.**

A-1584, A-1616.

Court of Appeals of Alaska.

May 8, 1987.

Rehearing Denied June 1, 1987.

782\*782 Robert D. Bacon, Asst. Atty. Gen., Office of Special Prosecutions and Appeals, Anchorage, and Harold M. Brown, Atty. Gen., Juneau, for the State of Alaska.

William A. Davies, Asst. Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for appellee and appellant Weaver.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

OPINION

COATS, Judge.

A grand jury indicted Mark Weaver for first-degree misconduct involving weapons. AS 11.61.200(a)(3). The indictment charged Weaver with possessing a gravity knife. He moved to dismiss the indictment, contending that the statute was unconstitutionally vague. Superior Court

Judge Gerald J. Van Hoomissen granted the motion and the state appeals. We reverse on the issue of the statute's constitutionality, but remand for further proceedings.

A statute is impermissibly vague and violates due process if it is so indefinite that a person of ordinary intelligence would have to guess what conduct it prohibits. *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983); *Williford v. State*, 674 P.2d 1329, 1330 (Alaska 1983). Our courts consider three factors in evaluating a statute's vagueness. First, we examine whether the statute provides adequate notice of the prohibited conduct. Second, we consider the statute's potential for arbitrary enforcement. Third, we determine whether the statute infringes on the first amendment right of freedom of expression. *Summers v. Anchorage*, 589 P.2d 863, 866-67 (Alaska 1979); *Stock v. State*, 526 P.2d 3, 7-9 (Alaska 1974). Weaver has conceded that there are no first amendment considerations at issue here.

Alaska Statute 11.61.200(a)(3) makes it a felony to possess a "prohibited weapon." "Prohibited weapon" is defined in AS 11.61.200(e)(1)(D) to include a "switchblade or gravity knife." Neither "switchblade" nor "gravity knife" is defined in the criminal law statutes.

We find that the term "gravity knife" is not improperly vague. The term has a readily ascertainable and consistent definition. As commonly understood, a gravity knife is one in which the blade opens, falls into place, or is ejected into position by the force of gravity or by centrifugal force. Webster's Third New International Dictionary defines a "gravity knife" as "a switchblade knife in which the blade is sprung by a downward snap of the wrist." Webster's Third New International Dictionary of the English Language Unabridged, 993 (1963). Statutes of other states defining the term "gravity knife" are consistent with this straightforward definition. See, e.g., Colo. Rev. Stat. § 18-12-101(l)(e) (1986); N.J. Stat. Ann. § 2C:39-1(h) (West Supp. 1986); N.Y. Penal Law § 265.00(5) (McKinney 1980).

Furthermore, in the Alaska Statute on prohibited weapons, the term "gravity knife" is used in conjunction with "switchblade knife." AS 11.61.200(e)(1)(D). The ordinary person is therefore put on notice that a "gravity knife" must be similar to a switchblade in operating automatically or semi-automatically. The pertinent characteristics which a switchblade and a gravity knife have in

common are that they are 783\*783 easily concealed and quickly brought to bear. These characteristics are indicative of knives which are used as weapons, rather than tools. Some utility knives are quickly brought to bear, such as a fishing or hunting knife in a sheath, but are not easily concealed. Indeed, it is only when these utility knives are concealed that their possession is unlawful. AS 11.61.220(a)(1).[1] An ordinary pocket knife may be carried concealed upon the person. AS 11.61.220(a)(1). However, an ordinary pocket knife is incapable of being quickly brought to bear.

Finally, we will not generally find a statute vague on the grounds that it is subject to arbitrary or discriminatory enforcement where there is no history of selective or arbitrary prosecution. *Summers v. Anchorage*, 589 P.2d 863, 868 (Alaska 1979); *Levshakoff v. State*, 565 P.2d 504, 507 (Alaska 1977); *Morrow v. State*, 704 P.2d 226, 233 (Alaska App. 1985). Weaver has presented no evidence that the statute has a history of being discriminatorily enforced.

Weaver also seems to argue that a statute which makes the possession of a gravity knife in one's home a crime, violates the right to privacy under the Alaska Constitution, article 1, section 22. The legislature may properly prohibit the possession of an object which "interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare." *State v. Erickson*, 574 P.2d 1, 21 (Alaska 1978). "No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely." *Ravin v. State*, 537 P.2d 494, 504 (Alaska 1975). The legislative commentary to AS 11.61.200, discussing the definition of "prohibited weapon," states:

Such weapons have little or no legitimate function, are unnecessary for protection and are not commonly used for commercial or recreational purposes. Substantial risk of harm to others and the furtherance of crime result from private possession of such weapons.

Commentary on the Alaska Revised Criminal Code, Senate Journal Supp. No. 47 at 101, 1978 Senate Journal 1399. The legislature could reasonably conclude that gravity knives have no legitimate purpose and are too dangerous to be casually possessed.

Apparently, Judge Van Hoomissen never made a factual finding concerning whether or not the knife seized from Weaver was a gravity knife within the statute's meaning. We therefore remand for further proceedings.

The superior court's judgment is REVERSED and this case is REMANDED for further proceedings consistent with this opinion.[2]

[1] Alaska Statute 11.61.220(a)(1) states:

Misconduct involving weapons in the third degree. (a) A person commits the crime of misconduct involving weapons in the third degree if the person

(1) knowingly possesses a deadly weapon, other than an ordinary pocket knife, that is concealed on the person.

[2] Weaver also appeals the trial court's denial of his suppression motion which alleged that the search, during which the knife was seized, was illegal. Since the trial court dismissed the charges resulting from the search, the only "final judgment" in the case favored Weaver and we have no jurisdiction to hear this issue. AS 22.07.020; Alaska R.App. P. 202(b). Should the charges be reinstated and result in a conviction, Weaver may then appeal the denial of his suppression motion.