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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JUAN D. ALVAREZ, Defendant and Appellant.	B233540 (Los Angeles County Super. Ct. No. NA086393)

APPEAL from a judgment of the Superior Court of Los Angeles County, Arthur Jean, Jr., Judge. Affirmed.

Joshua L. Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Juan D. Alvarez appeals from the judgment entered following a jury trial that resulted in his convictions for robbery and carrying a concealed dirk or dagger. The trial court sentenced Alvarez to a term of 20 years 4 months in prison. Alvarez contends: (1) the trial court erred by denying his *Pitchess* motion[1] in part without conducting an in camera review; and (2) the evidence was insufficient to support his conviction for carrying a concealed dirk or dagger. He also requests that we review the sealed record of the trial court's *Pitchess* examination of one officer's records to determine whether the court abused its discretion by failing to order sufficient disclosure. (*People v. Mooc* (2001) 26 Cal.4th 1216.) We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

a. *People's case.*

On July 24, 2010, at approximately 5:15 p.m., Mitchell Duran was listening to music on his Blackberry cellular telephone while walking in Long Beach near Sixth and Elm Streets. Appellant Alvarez and Jorge Zuniga rode their bicycles past Duran. As they did so, they looked at the Blackberry in Duran's hand. They turned their bicycles around and approached Duran from behind.

When Duran turned, Alvarez asked, in an aggressive manner, " 'Where is your Iphone?' " Duran replied that he did not have it, and ran toward his house with Alvarez and Zuniga in pursuit on their bicycles. After running for approximately a block and a half, Duran tripped and dropped his phone. When he went to retrieve it, Alvarez dismounted from his bicycle and approached Duran with his fists raised. He lunged toward Duran and said, " 'Get away. You don't want to mess with me ' " and "it is mine now." Alvarez picked up Duran's phone and rode away on his bicycle with it. Duran ran home and telephoned police. When an officer responded shortly thereafter, Duran gave the officer a description of the robber.

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[1] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

Approximately 10 minutes later, Long Beach Police Officer Francisco Vasquez, who was on patrol nearby, saw Alvarez walking on the street. Because Alvarez matched the robber's description, Vasquez drove towards him. Upon seeing Officer Vasquez, Alvarez throw the phone onto the ground. Vasquez detained Alvarez. Vasquez discovered a phone, the phone's backing, and the battery in the area where he saw Alvarez throw the phone.

Long Beach Police Officer John Gibbs searched Alvarez and discovered an X-Acto knife in his right front pocket. The knife was approximately seven inches long, and the blade was "a little less than an inch." The blade was covered by a "green pen cap."

Duran identified Alvarez as the robber in a field showup conducted approximately 25-30 minutes after the robbery. He also identified the phone thrown by Alvarez as the one taken from him.

Officer Vasquez testified at trial that the unexposed X-Acto blade could seriously injure a person.

b. *Defense case.*

Alvarez testified in his own behalf. He denied committing the robbery or knowing Zuniga. On the date of the robbery, he had not been riding a bicycle. However, as he was walking down the street, a Hispanic man riding a bicycle approached him, handed him a cellular telephone, and continued riding past. Alvarez realized the phone must have been stolen and threw it when he saw the patrol car. He admitted possessing the X-Acto knife, which he used to protect himself.

Alvarez admitted suffering convictions for auto burglary in 1995, assault in 1997, and possession of marijuana in 2008.

2. *Procedure.*

Trial was by jury. Alvarez was convicted of second degree robbery (Pen. Code, § 211)[2] and carrying a concealed dirk or dagger (former § 12020, subd. (a)(4)). After a

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[2] All further undesignated statutory references are to the Penal Code.

bench trial on various prior conviction allegations, the trial court found Alvarez had suffered two prior serious or violent felony convictions (§§ 667, subds. (a)(1), (b)-(i), 1170.12, subds. (a)-(d)), and served seven prior prison terms within the meaning of section 667.5, subdivision (b). The court sentenced Alvarez to a term of 20 years 4 months, pursuant to the Three Strikes law. It imposed court security assessments, criminal conviction assessments, a restitution fine, and a suspended parole restitution fine. Alvarez appeals.

DISCUSSION

1. *Pitchess motions.*

a. *Additional facts.*

Prior to trial, Alvarez filed a *Pitchess* motion seeking personnel records of Officers Vasquez and Gibbs. The motion sought information regarding complaints made against the officers related to "lying and dishonesty" and "falsifying reports and/or evidence." Defense counsel's declaration offered in support of the motion stated the following. According to police reports, which were attached to the motion, the victim claimed he was accosted by two male Hispanics on bicycles. While investigating the crime, Officers Vasquez and Gibbs contacted Alvarez's girlfriend, Rachel Perez, at Alvarez's house when they conducted a parole search there. A police report prepared by Officer Vasquez stated that Perez told the officers (1) Alvarez had been using her son's bicycle; and (2) she had last seen Alvarez with a friend named Jorge. Defense counsel's investigation of the case revealed that these statements were untruthful. According to Perez, she never stated Alvarez was using a bicycle belonging to her son, nor did she state that Alvarez was with Jorge. The officers also behaved in a hostile fashion towards Perez and her minor son. Counsel averred on information and belief that "Officer Vasquez and Officer Gibbs are making material misstatements about their contact with Rachel Perez" and therefore were presenting falsified evidence against the defendant. The officers' credibility was "critical" and the defense intended to "contest the officers[']truthfulness regarding their observations of the defendant" as "materially incorrect and

fabricated." To that end, evidence of other complaints against the officers regarding dishonesty was relevant.

The City of Long Beach opposed the motion on behalf of the Long Beach Police Department. At a hearing on the motion, the City conceded that Alvarez was entitled to an in camera review of Officer Vasquez's records on the issue of dishonesty. Accordingly, the court ordered an in camera hearing "with respect to . . . honesty and veracity." Without further discussion, the court denied the motion as to Officer Gibbs.

On April 1, 2011, the trial court conducted the in camera review of Officer Vasquez's personnel records and determined no discoverable information existed.

b. *Relevant legal principles.*

Evidence Code sections 1043 and 1045 establish a two-step procedure for a criminal defendant's *Pitchess* discovery of peace officer records. (*People v. Samuels* (2005) 36 Cal.4th 96, 109; *People v. Gutierrez* (2003) 112 Cal.App.4th 1463, 1472-1473; *California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1019; *City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 9.) "To initiate discovery, the defendant must file a motion supported by affidavits showing 'good cause for the discovery,' first by demonstrating the materiality of the information to the pending litigation, and second by 'stating upon reasonable belief' that the police agency has the records or information at issue. [Citation.]" (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1019.) If a defendant shows good cause, the trial court examines the material sought in camera to determine whether disclosure should be made and discloses "only that information falling within the statutorily defined standards of relevance." (*Ibid*.) The statutory scheme balances the peace officer's claim to confidentiality and the defendant's compelling interest in all information pertinent to the defense. (*People v. Samuels, supra*, at p. 109.)

Warrick v. Superior Court, supra, 35 Cal.4th 1011, clarified the good cause standard. "There is a 'relatively low threshold' for establishing the good cause necessary to compel in camera review by the court. [Citations.]" (*People v. Thompson* (2006) 141 Cal.App.4th 1312, 1316.) To establish good cause, "defense counsel's declaration in

support of a *Pitchess* motion must propose a defense or defenses to the pending charges" and articulate how the discovery sought might lead to relevant evidence. (*Warrick*, at p. 1024.) The defense must present "a specific factual scenario of officer misconduct that is plausible when read in light of the pertinent documents." (*Id*. at p. 1025; *People v. Thompson, supra,* at p. 1316.) "A scenario sufficient to establish a plausible factual foundation 'is one that might or could have occurred. Such a scenario is plausible because it presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charges.' [Citation.]" (*People v. Thompson, supra*, at p. 1316, italics omitted.) Depending on the facts of the case, "the denial of facts described in the police report may establish a plausible factual foundation." (*Ibid*.; *Warrick*, at pp. 1024-1025.) A defendant need not establish that it is reasonably probable his version of events actually occurred, provide corroborating evidence, show that his story is persuasive or credible, or establish a motive for the officer's alleged misconduct. (*Warrick*, at pp. 1025-1026.) Discovery is limited to instances of officer misconduct related to the misconduct asserted by the defendant. (*Id*. at p. 1021.)

Trial courts are vested with broad discretion when ruling on *Pitchess* motions (*Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1086), and we review a trial court's ruling for abuse. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 992; *People v. Hughes* (2002) 27 Cal.4th 287, 330.)

c. *Alvarez failed to establish good cause for an in camera review of Officer Gibbs's records.*

Alvarez contends the trial court abused its discretion by denying the motion as to Officer Gibbs without conducting an in camera hearing. According to Alvarez, his motion established good cause for an in camera review. We disagree. As to Officer Gibbs, Alvarez's motion fell short of the " 'relatively low threshold' " for establishing the good cause necessary to compel in camera review by the court. First, and most fundamentally, the motion did not allege any misconduct by Officer Gibbs. (See *People v. Hill* (2005) 131 Cal.App.4th 1089, 1098, disapproved on other grounds in *People v.*

French (2008) 43 Cal.4th 36, 48, fn. 5.) Officer Vasquez, *not* Officer Gibbs, prepared the police report containing the averments regarding Perez's statements. In the absence of any showing that Officer Gibbs made or adopted the purportedly false statements contained in the police report, they cannot be attributed to him. This is true regardless of whether he was "present for, and involved in, the questioning of Perez" and was a witness at trial. Contrary to Alvarez's argument, Gibbs cannot be impeached with statements he did not make.

Moreover, Alvarez's motion did not provide an alternate version of the facts regarding his actions, or explain the facts of the crime as set forth in the police report. (See *People v. Thompson*, *supra*, 141 Cal.App.4th at p. 1316.) Alvarez's motion did not deny that he possessed the X-Acto knife found by Gibbs, was with Jorge, was riding a bicycle, or threw the telephone when stopped. (See *People v. Hill, supra,* 131 Cal.App.4th at p. 1099.) Perez's account that she never told the officers Alvarez was riding a bicycle or was with Jorge potentially provided exculpatory evidence. But absent any denial in the motion that the crime occurred as described in the police report, her statements were largely tangential and did not suffice to establish good cause for an in camera review. (See *People v. Hill*, *supra*, at pp. 1094, 1099 [where evidence of defendant's identification as a crime participant came from two civilian witnesses, not officers, allegations that merely contradicted the civilian witnesses' statements did not suffice to establish good cause].) In short, Alvarez did not specify any police misconduct by Officer Gibbs that would have supported a defense at trial, and did not explain his own actions in a manner that adequately supported the defense. (*People v. Thompson, supra,* at p. 1317; cf. *Warrick v. Superior Court, supra*, 35 Cal.4th at p. 1027.)

Brant v. Superior Court (2003) 108 Cal.App.4th 100 (*Brant*), and *People v. Johnson* (2004) 118 Cal.App.4th 292, cited by Alvarez, do not assist him. In *Brant,* the defense was that the arresting officers did not have reasonable suspicion to detain the defendant, and obtained his confession without advising him of his *Miranda* rights.[3] To

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3 *Miranda v. Arizona* (1966) 384 U.S. 436.

support that theory, Brant's counsel declared that the arresting officers lied about the volume of Brant's car stereo in order to stop him, whereas the music was actually coming from nearby nightclubs. Counsel's declaration also averred that Brant was questioned and confessed without an advisement of his rights. "In short, Brant challenged the officers' account of the detention, search and manner in which his confession was obtained by providing his own version of the events, thereby making the officers' truthfulness material to the issues in the case. Consequently, Brant demonstrated good cause for discovery of complaints against [the] [o]fficers" for allegations of dishonesty and fabrication of probable cause. (*Brant*, at p. 108.) In *Johnson*, counsel's declaration stated that, contrary to an officer's statements, the defendant never asked the officer for drugs and never took possession of packages of narcotics. This showing sufficiently demonstrated the officers' truthfulness was material to the case. (*People v. Johnson, supra,* at p. 303.) Here, in contrast to these cases, there was no allegation Officer Gibbs––as opposed to Officer Vasquez—made any untruthful statements, and the motion did not deny that Alvarez had ridden a bicycle or was with Jorge. The trial court correctly concluded the motion failed to establish good cause for an in camera review of Officer Gibbs's records.

d. *Review of in camera Pitchess examination of Officer Vasquez's records.*

As Alvarez requests, we have reviewed the sealed transcript of the in camera hearing conducted on April 1, 2011, at which the court reviewed Officer Vasquez's records. The transcript of that hearing constitutes an adequate record of the trial court's review of any documents provided to it, and reveals no abuse of discretion. (See *People v. Mooc, supra,* 26 Cal.4th at p. 1228; *People v. Hughes, supra,* 27 Cal.4th at p. 330.)

2. *The evidence was sufficient to support the conviction for carrying a concealed dirk or dagger.*

Alvarez next contends the evidence was insufficient to support his conviction for possession of a concealed dirk or dagger because the X-Acto knife he possessed "does not fall within the statutory definition of a dirk or dagger." We disagree.

a. *Applicable legal principles.*

When determining whether the evidence was sufficient to sustain a criminal conviction, "we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Snow* (2003) 30 Cal.4th 43, 66; *People v. Carrington* (2009) 47 Cal.4th 145, 186-187; *People v. Halvorsen* (2007) 42 Cal.4th 379, 419.) We presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Medina* (2009) 46 Cal.4th 913, 919.) Reversal is not warranted unless it appears " 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

Former section 12020, subdivision (a)(4) prohibited the carrying of a concealed "dirk or dagger." Subdivision (c)(24) of that statute provided: "As used in this section, a 'dirk' or 'dagger' means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by [former] Section 653k [prohibiting switchblade knives], or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position."[4] A defendant's intended use of the weapon is not an element of the crime. (*People v. Rubalcava* (2000) 23 Cal.4th 322, 331.) Thus, to

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[4] Penal Code section 12020, subdivisions (a)(4) and (c)(24), was repealed effective January 1, 2012. These subdivisions were reenacted without substantive change as sections 21310 and 16470, respectively. Because Alvarez was convicted and sentenced under the former provisions, we hereinafter refer to the former statutes for clarity and convenience.

qualify as a dirk or dagger, the item must be (1) capable of ready use as a stabbing weapon; and (2) if it is a pocketknife, its blade must be exposed and locked.

In interpreting a statute, our objective is to ascertain and effectuate the legislative intent. (*People v. Plumlee* (2008) 166 Cal.App.4th 935, 940; *People v. Tapia* (2005) 129 Cal.App.4th 1153, 1160-1161.) We look first to the words of the statute because they are the most reliable indicator of legislative intent. If the statutory language is clear and unambiguous, the plain meaning of the statute governs. If the language supports more than one reasonable construction, we may consider various extrinsic aids, including the ostensible objects to be achieved and the legislative history. (*People v. Tapia, supra,* at p. 1161; *People v. Plumlee*, *supra,* at p. 940.) In keeping with the usual practice in interpreting criminal statutes, the definition of "dirk or dagger" must be strictly construed and literally applied. (*In re Luke W.* (2001) 88 Cal.App.4th 650, 656; *In re George W.* (1998) 68 Cal.App.4th 1208, 1214.)

"The definition of 'dirk or dagger' . . . has been the subject of frequent legislative attention." (*In re Luke W., supra,* 88 Cal.App.4th at pp. 652-653.) The statute did not define "dirk or dagger" until 1993. (*In re George W., supra,* 68 Cal.App.4th at pp. 1211-1212.) Prior to that time, courts generally looked to whether the weapon was primarily designed and intended for stabbing. (*Id*. at p. 1212.) In 1993 the statute was amended to define the term as " 'a knife or other instrument with or without a handguard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death.' " (*In re Luke W., supra,* at p. 653; *In re George W., supra,* at p. 1212.) The 1993 definition, with its focus on the primary purpose for which the weapon was designed, gave rise to " 'prosecutorial problems.' " (*In re Luke W., supra,* at p. 653; *People v. Rubalcava, supra,* 23 Cal.4th at p. 330.) "Concerned that 'gang members and other[s] who carry lethal knives hidden in their clothing [were] essentially immune from arrest and prosecution' under the 1993 definition" (*Rubalcava, supra,* at p. 330), in 1995 the Legislature redefined " 'dirk or dagger' " as set forth in the first sentence of the current statutory definition, that is, as " 'a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict

great bodily injury or death.' " (*In re Luke W., supra,* at p. 653.) The new language was aimed at "preventing surprise knife attacks by prohibiting the carrying of concealed knives that are particularly suited for stabbing and that are readily accessible to the user." (*Ibid.*) But the 1995 definition again proved problematic; it had "the unanticipated result of including folding knives and pocketknives," a concern for "hunting knife manufacturers and sportsmen." (*Ibid.*; *In re George W., supra,* at p. 1213.) Accordingly, the statute was again amended in 1997 to add the second sentence of the current version, exempting folding knives and pocketknives carried in a closed, secured state. (*In re Luke W., supra,* at pp. 653-654.)

b. *Application here.*

At Alvarez's request, we have examined the knife in question. It is, as described at trial, approximately seven inches long, with a fixed blade at the top, approximately one inch long. The blade is slightly curved and appears relatively sharp. The blade is covered by a green, plastic ballpoint pen cap which obviously was not one of the knife's original components. The cap can be easily removed with a simple push of the thumb and forefinger. It is not difficult to hold the knife and simultaneously remove the cap with one hand. At trial, an officer demonstrated the action of removing the cap without difficulty.

In our view, the knife readily qualifies as a dirk or dagger within the meaning of the statute. It is indisputably a knife. Its handle and point make it easily usable as a stabbing weapon. It could inflict great bodily injury; as an officer testified at trial, it "would do a lot of damage" if jabbed into one's jugular vein. It appears readily able to inflict significant cuts or put out an eye if so employed.

Alvarez advances two arguments in support of his contention that the knife nonetheless does not qualify as a dirk or dagger. First, he contends that the knife falls within the broad definition of a pocketknife, and its blade was not exposed. Second, he urges that because the blade was covered with the pen cap, the knife was not capable of ready use as a stabbing weapon. We disagree with both contentions.

As noted *ante,* the statute's second sentence exempts from the statutory definition nonlocking folding knives, folding knives that do not qualify as switchblades, and pocketknives, *unless* the blade is exposed and locked. The X-Acto knife does not have a folding blade, and therefore obviously does not fall within the first two categories. Contrary to Alvarez's argument, it is also not a pocketknife. The statute does not define "pocketknife," but the dictionary does: "a small knife with one or more blades that fold into the handle." (Random House College Dictionary (rev. ed. 1984) p. 1023, col. 2.) A "pocketknife is most commonly thought of as one in which the blade folds into its attached handle." (*In re Luke W., supra,* 88 Cal.App.4th at pp. 655-656.) The X-Acto knife does not fold, but has a fixed blade, and does not readily fall into the category of a pocketknife.

It is true that *Luke W.* took a broad view of the definition of "pocketknife" on the facts of that case. The knife at issue in *Luke W.* was a unique device. *Luke W.* described it as a "small, rectangular object" that resembled an audiocassette tape or thick credit card emblazoned with " '007' " and " 'Tomorrow Never Dies,' " apparent references to a James Bond film. (*In re Luke W., supra,* 88 Cal.App.4th at pp. 652, 654.) The device contained various "knobs and grips," as well as a ruler, a compass, and a magnifying glass; manipulation of the knobs and grips variously caused tweezers, a toothpick, a can opener, a screwdriver, or a knife to emerge from the housing. (*Id.* at pp. 652, 654-655.) In order to extract the knife, the user had to place the thumb and forefinger of one hand on two ridged circles and pull, while simultaneously holding the left end of the object with the other hand. (*Id.* at pp. 655, 656.) "Given its size and variety of tools," the object was "similar in function, albeit not in appearance, to the familiar Swiss Army pocketknife." (*Id.* at p. 655.) *Luke W.* concluded that the object qualified as a pocketknife, even though the knife blade did not fold into the housing. The court reasoned that if the Legislature had intended the term " 'pocketknife' " to be given its common meaning of "folding knife," use of both terms in the statute was surplusage. (*Id.* at p. 656.) Moreover, the legislative history demonstrated that the intent was to "avoid criminalizing the carrying of knives that are not capable of ready use because they are

carried in a closed, secured state." (*Ibid.*) The Legislature thus intended " 'pocketknife' " to have "a broader definition" than folding knife. (*Ibid.*) The defendant's device fell into that more generous definition: it fit "readily and compactly into the pocket of any article of clothing. And whether housed in a loose or tight-fitting pocket, . . . the knife blade cannot, given its snug fit, be easily extracted from its slot without using both hands: one hand or a substitute vice-like mechanism must hold the container steady, while the finger and thumb of the other hand pull at the designated ridged circles." (*Ibid.*)

We do not disagree with *Luke W.*'s analysis, but the X-Acto knife here has no resemblance to the contraption at issue there, or to a Swiss Army knife. Contrary to the cassette-like multi-function device in *Luke W.,* the X-Acto knife is capable of ready use by simply popping off the pen cap. The device in *Luke W.* was, for all intents and purposes, a Swiss Army knife—perhaps the most familiar type of pocketknife— simply housed in a unique sheath. The X-Acto knife here is not analogous to a pocketknife. Contrary to Alvarez's argument, we do not agree that an X-Acto knife is "obviously designed to be carried in a pocket." Because the X-Acto knife did not qualify as a pocketknife, the requirement in the statute's second sentence—that the blade be exposed––did not apply. The X-Acto knife was of a sort that could easily have been concealed and readily accessible for use in a surprise attack, the evil sought to be eliminated through the statutory amendments. (See *In re Luke W., supra*, 88 Cal.App.4th at p. 653.)

We also hold that the knife was capable of ready use as a stabbing weapon regardless of the fact a pen cap covered the blade. *People v. Plumlee, supra,* 166 Cal.App.4th 935, is instructive. There, the defendant was found with a concealed, closed switchblade knife. It was equipped with a button that could be pushed with the thumb, causing a spring-loaded knife to pop open within a fraction of a second. (*Id.* at p. 937.) *Plumlee* held that a switchblade could qualify as a dirk or dagger, and fell outside the exemption for folding knives contained in the statute's second clause. (*Id.* at pp. 937, 940.) Thus, the knife was a dirk or dagger if it was capable of ready use as a stabbing weapon. (*Id.* at p. 941.) *Plumlee* reasoned that it was, even though it had been closed when carried on the defendant's person and discovered by police. (*Id.* at pp. 937, 941.)

Because the knife could be opened in a fraction of a second, with the push of a button, it was capable of ready use as a stabbing weapon even when closed. (*Id.* at p. 941.) Similarly, here, the green pen cap could be removed in a fraction of a second, with the same hand holding the handle and removing the cap, rendering it capable of ready use as a stabbing weapon.

The X-Acto knife is unlike the unusual cassette knife in *Luke W.*, or the "gizmo" at issue in *People v. Sisneros* (1997) 57 Cal.App.4th 1454, 1457. The device at issue in *Sisneros* was a cylinder which, when unscrewed, revealed a blade, which then had to be screwed back into the cylinder. (*Id.* at p. 1455.) *Sisneros* held that a device that requires assembly before it can be used does not qualify as a dirk or dagger. (*Id.* at p. 1457.) The cylinder knife had to be "unscrewed a full five revolutions to expose the blade, then screwed five revolutions to attach the blade to the handle[.]" (*Ibid.*) It was therefore not capable of ready use as a stabbing weapon: "[t]he most deft of individuals will require several seconds to convert the gizmo from a benign cylinder into an instrument of death. [While being assembled], the device is useless as a stabbing weapon." (*Id.* at p. 1457.) As we have already discussed, the device in *Luke W.* required manipulation by both hands to extract the knife. (*In re Luke W.*, *supra*, 88 CalApp.4th at p. 657.) In contrast to the devices in *Sisneros* and *Luke W.*, and similar to the knife in *Plumlee*, the X-Acto knife's blade can be exposed, and the knife readied for use, in a fraction of a second using one hand. Accordingly, it falls within the statutory definition of a dirk or dagger.

Alvarez argues that interpreting the statute to hold the X-Acto knife is a dirk or dagger is unreasonable. He urges, "If respondent's broad interpretation of Penal Code section 12020, subdivision (c)(24), were to be accepted, then any person who purchased an X-Acto knife at their local office supply store, and carried it home in their pocket, would be subject to prosecution for carrying a dirk or dagger." He warns that such commonplace objects as ballpoint pens, letter openers, scissors, or silverware "would fall within the definition of a dirk or dagger" merely because they could harm another if jabbed at the jugular.

Alvarez's examples do not persuade us. It is likely an X-Acto knife purchased at the store would be packaged in such a fashion as to prevent it from being readily capable of use as a stabbing weapon, and a trier of fact is unlikely to conclude a ballpoint pen may cause great bodily injury or death. Nonetheless, we are not unsympathetic to Alvarez's argument that the statute has a very broad sweep. However, this issue has been addressed and rejected by our Supreme Court in *Rubalcava*. *Rubalcava* observed that in enacting the statute, "the Legislature recognized that the new definition may criminalize the 'innocent' carrying of legal instruments such as steak knives, scissors and metal knitting needles, but concluded 'there is no need to carry such items concealed in public.' [Citation.]" (*People v. Rubalcava, supra,* 23 Cal.4th at p. 330.) The defendant in *Rubalcava* contended that without a specific intent requirement, the statute was unconstitutionally overbroad and vague; he posited that surely the Legislature "could not have intended to make a felon out of '[t]he tailor who places a pair of scissors in his jacket[,] . . . the carpenter who puts an awl in his pocket' [citation], 'the auto mechanic who absentmindedly slips a utility knife in his back pocket before going out to lunch[,] . . . the shopper who walks out of a kitchen-supply store with a recently purchased steak knife "concealed" in his or her pocket, . . . the parent who wraps a sharp pointed knife in a paper towel and places it in his coat to carry into a PTA potluck dinner, or . . . the recreational user who tucks his "throwing knives" into a pocket as he heads home after target practice or a game of mumblety-peg' [citation]." (*Id.* at p. 331.) These issues did not render the statute unconstitutional. (*Ibid.*) The court "echo[ed] the concerns over the breadth of the statute raised by Rubalcava," and observed that section 12020, subdivisions (a) and (c)(24) may "criminalize seemingly innocent conduct." (*Rubalcava*, at p. 333.) Nonetheless, *Rubalcava* concluded that while the "wisdom" of the statute "may certainly be questioned," the " 'role of the judiciary is not to rewrite legislation to satisfy the court's, rather than the Legislature's, sense of balance and order.' [Citation.] We must therefore leave it to the Legislature to reconsider the wisdom of its statutory enactments." (*Ibid*.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.