

# ALBUQUERQUE CRIMINAL LAWYER BLOG

PUBLISHED BY  
**COLLINS & COLLINS, P.C.**  
ATTORNEYS AT LAW

September 27, 2010

## **Deadly Weapon Charges May Rely on Intent**

The Zero Tolerance policy for schools was implemented in New Mexico to halt the growth of school related violence. There is no disputing that the policy has for the most part been both necessary and beneficial to New Mexico schools. However, on occasion, the enforcement of the policy at the local enforcement level can get a little carried away.

In the 2009 case of *State v. Nick R.*, the New Mexico Supreme Court addressed the prosecution of a sixteen-year-old Taos High School student for possession of a deadly weapon on school premises, a fourth degree felony. The problem with the case was the fact that the so-called deadly weapon was a simple pocket-knife that the child used at work in his dad's furniture business, and had forgotten to remove from his pocket before school. It was agreed by all that the child never intended to use the pocket-knife as a deadly weapon. In fact, after a brief suspension, the high school reinstated the child.

On the other hand, the local prosecutor would not let it go and the case proceeded to trial. The child's lawyer argued that evidence showing that the child had no deadly intent should be admitted to the jury. The court denied the evidence stating that the child had committed the crime as a matter of law. In short, the trial court stated that intent was irrelevant, the fact of possession was enough. The court did this despite the fact that "pocket-knife" is not among the weapons named in the statutes defining deadly weapon under New Mexico law.

The child appealed the ruling by the court that intent was irrelevant arguing evidence of intent should have been presented to the jury. The New Mexico Court of Appeals sided with trial court upholding the ruling and the conviction. The Supreme Court reversed.

The Supreme Court went through a lengthy analysis and discussion of the history of the statute and the cases since its enactment in law during New Mexico's territorial days and its amendment in 1953 to add two additional weapons of switchblade knives and brass knuckles. Interestingly the Court fell back on common dictionary definitions of deadly weapon. The Court even referenced Mark Twain and "the ubiquitous Barlow pocketknives in his classic Tom Sawyer and Huckleberry Finn books." The statute defining deadly weapon and the cases applying it simply did not include pocket-knives.

Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958

<http://www.albuquerquecriminallawyerblog.com/>

Following its analysis, the Court came to the common sense conclusion that a pocket-knife is no more a deadly weapon than a rock, both of which can be used to inflict deadly harm. The key to analysis in any particular case is the intent of the party possessing the pocket-knife or other potentially deadly weapon not specifically identified in the statutory definition. The court recognized that many objects, lamps, chairs, rocks, dishes, bottles and yes pocket-knives may and have become deadly weapons with the requisite intent. However and most importantly to the ruling, the Court stated that the issue of intent must go to the jury.

Zero Tolerance has led in the past to many similar such charges. The Court in Nick R. has introduced some common sense to ongoing enforcement. There are some things that should be left to the schools and parents. Hopefully, in the future, a simple and innocent mistake like Nick's will be left to the school and parents to address without the unnecessary and heavy-handed intervention of law enforcement.

Parrish Collins  
Albuquerque Attorney  
[www.CollinsAttorneys.com](http://www.CollinsAttorneys.com)

**Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958**

<http://www.albuquerquecriminallawyerblog.com/>