

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

EMMANUEL CASTILLOLOPEZ,

Defendant and Appellant.

Case No. S218861

SUPREME COURT
FILED

OCT 6 2015

Frank A. McGuire Clerk

Deputy

Fourth Appellate District, Division One, Case No. D063394
San Diego County Superior Court, Case No. SCD242311
The Honorable Albert T. Harutunian, III, Judge

**RESPONDENT'S OPPOSITION TO CASTILLOLOPEZ'S
REQUEST FOR JUDICIAL NOTICE**

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Appellant Emmanuel Castillolopez filed a Motion on September 23, 2015, seeking judicial notice of a California statute and case. Pursuant to California Rules of Court, rule 8.54, subdivision (a)(3), respondent submits this Opposition, and respectfully requests this court deny Castillolopez's Motion.

THIS COURT SHOULD DENY CASTILLOLOPEZ'S REQUEST FOR JUDICIAL NOTICE OF CALIFORNIA AUTHORITY

Castillolopez requests that this court take judicial notice of Education Code section 48915 and *Scott B. v. Board of Trustees of Orange County High School of Arts* (2013) 217 Cal.App.4th 117 (*Scott*). (Mot. at pp. 1-3, Exhs. 1 & 2.) He argues that the statute and case are proper matters for judicial notice under Evidence Code sections 451, subdivision (a)¹ and 452, subdivision (a)². (Mot. at p. 3.) He also argues that the authority is relevant to the issue presented in this case. (Mot. at pp. 1-3.) This court should deny Castillolopez's request because he should have cited to this

¹ Evidence Code section 451, subdivision (a) states:

Judicial notice shall be taken of the following:

(a) The decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter described in Section 3, 4, or 5 of Article XI of the California Constitution.

² Evidence Code section 452, subdivision (a) states:

Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of Congress of the United States and the Legislature of this state.

authority in his Answer Brief. Further, the authority provides little assistance, if any, to the resolution of this case.

In *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1064, overruled in part on another ground in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276 (*Mangini*), the defendant requested judicial notice of a federal court decision “[a]fter briefing was concluded, a few weeks before oral argument.” (*Id.* at p. 1065.) This court observed that relevant federal decisional law is generally subject to judicial notice under Evidence Code section 451, subdivision (a), but found the defendant “could have, and should have, cited the decision in the briefs, as it cited other federal decisions.” (*Id.* at p. 1065.) This court explained, “Requests for judicial notice should not be used to ‘circumvent[]’ appellate rules and procedures, including the normal briefing process.” (*Ibid.*, brackets in original.) As a result, this court denied the defendant’s request. (*Id.* at p. 1065.)

Here, Castillolopez requests judicial notice of a California statute and case that he could have, and should have, cited in his Answer Brief. For the reasons articulated *Mangini*, this court should deny Castillolopez’s request for judicial notice.

Further, Education Code section 48915 and the *Scott* case are not relevant to the issue before this court. “Although a court may judicially notice a variety of matters (Evid. Code, § 450 et seq.) only *relevant* material may be noticed.” (*Mangini, supra*, 7 Cal.4th at p. 1063, emphasis in original.) Education Code section 48915 lists the circumstances in which school principals or superintendents must recommend expulsion of a student. Castillolopez cites to subdivision (c)(2) of Education Code section 48915, which prohibits brandishing a knife at another person, and subdivision (g), which defines a “knife.” The *Scott* case addressed the issue of whether a knife with a blade shorter than three and one-half inches qualified as a prohibited knife under Education Code section 48915,

subdivision (g). (*Scott, supra*, 217, Cal. App. 4th at pp. 121-122.) The definition of a prohibited knife in the context of Education Code section 48915 is irrelevant to the question here—the meaning of the phrase “locked into position” as used in Penal Code section 16470 to define a dirk or dagger. Thus, Castillolopez’s request for judicial notice should be denied.

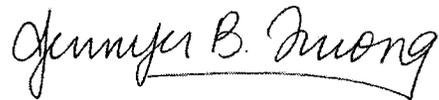
CONCLUSION

For the above stated reasons, respondent respectfully requests this court deny Castillolopez’s Motion for Judicial Notice.

Dated: October 2, 2015

Respectfully submitted,

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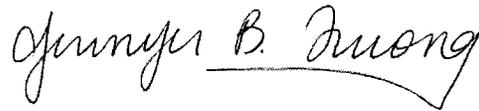
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CERTIFICATE OF COMPLIANCE

I certify that the attached **OPPOSITION TO THE REQUEST FOR JUDICIAL NOTICE** uses a 13 point Times New Roman font and contains 550 words.

Dated: October 2, 2015

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in black ink that reads "Jennifer B. Truong". The signature is written in a cursive style with a horizontal line underlining the name.

JENNIFER B. TRUONG
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Emmanuel Castellolopez**

No.: **S218861**

I declare:

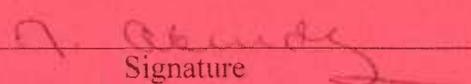
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266.

On October 5, 2015, I served the attached **OPPOSITION TO THE REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

The Honorable Bonnie Dumanis San Diego County District Attorney Hall of Justice 330 West Broadway, Ste 1300 San Diego, CA 92101-3826	Michael M. Roddy Court Executive Officer San Diego County Superior Court 220 West Broadway San Diego, CA 92101-3409
Raymond M. DiGuseppe, Esq. P.O. Box 10790 Southport, NC 28461	Appellate Defenders, Inc. 555 West Beech Street, Suite 300 San Diego, CA 92101
Court of Appeal of the State of California Fourth Appellate District Division One Symphony Towers 750 B Street, Suite 300 San Diego, CA 92101	Frank A. McGuire Clerk/Administrator Supreme Court of California 350 McAllister San Francisco, CA 94102-4797

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 5, 2015, at San Diego, California.

N. Abundez
Declarant



Signature

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