IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re H. W. a Person Coming Under the Juvenile Court Law	SUPREME COURT CASE NO: S237415
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiffs and Respondents v. H. W. Defendant and Appellant	SUPREME COURT FILED FEB 06 2017 Jorge Navarrete Clerk Deputy

THIRD APPELLATE DISTRICT CASE NO: C079926
SACRAMENTO COUNTY SUPERIOR COURT CASE NO: JV137101
THE HONORABLE STACY BOULWARE EURIE, JUDGE

APPELLANT'S OPENING BRIEF ON THE MERITS

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APPELLANT'S OPENING BRIEF ON THE MERITS

ISSUE PRESENTED

This case presents the following issue:

Did the Court of Appeal err in holding that a pair of pliers, which the defendant used to remove an anti-theft device from a pair of blue jeans in a department store, qualified as a burglary tool within the meaning of Penal Code section 466?

(see California Rules of Court, rule 8.520(b)(2)(A).)

INTRODUCTION

Penal Code[1] section 466 prohibits the possession of specific tools with the felonious intent to break or enter into a building or vehicle. (§ 466.) In addition to

[1] All further statutory references are to the Penal Code unless otherwise indicated.

the tools enumerated in the statue, section 466 criminalizes the possession of any "other instrument or tool" - with the requisite felonious intent.

On October 13, 2014, appellant, H. W. (hereafter "H. W."), was arrested after he used a pair of pliers to remove an antitheft tag from a pair of jeans at a Sears department store in Yuba City, California. He was subsequently charged in Count II of an April 14, 2015, juvenile wardship petition, with violating section 466. On July 1, 2015, the Sacramento County Juvenile Court found Count II true beyond a reasonable doubt.

H. W.'s pliers are not specifically enumerated in section 466. The pliers also do not fall within the scope of the statute's "other instrument or tool" provision. Furthermore, H. W. did not possess the pliers with the requisite "felonious intent" or "burglarious purpose." Nevertheless, the Third Appellate District affirmed the juvenile court's judgment sustaining Count II.

As discussed more fully below, the Third Appellate District erred when it held H. W possessed a "burglary tool", within the meaning of section 466, with the requisite felonious intent. Accordingly, H. W. respectfully requests this Court reverse the Third Appellate District's published opinion in case number C079926 – subsequently cited as *In re H. W.* (2016) 2 Cal. App. 5th 937.

STATEMENT OF THE CASE

On April 14, 2015, the Sacramento County District Attorney (hereafter "the prosecution") filed a three-count juvenile wardship petition alleging H. W. violated sections 484, subdivision (a) (Count I - misdemeanor), 466 (Count II -

misdemeanor) and 602.5 (Count III - misdemeanor). (Clerk's Transcript, Volume I[2], hereafter "CT", pp. 32 – 37.) With respect to Count II, the petition specifically alleged:

> On or about October 31, 2014, [H. W.] did commit a misdemeanor namely: a violation of Section 466 of the Penal Code of the State of California, in that [H. W.] did unlawfully have in his/her possession a picklock, crow, keybit, crowbar, screwdriver, vice grip pliers, water pump pliers, slidehammer, slim jim, tension bar, lockpick, floor safe door puller, master key, and other instrument or tool with intent feloniously to break and enter a building, car, aircraft, vessel, trailer coach, and vehicle.

(CT, p. 34.)

On July 1, 2015, the juvenile court held the contested jurisdiction/disposition hearing. (CT, p. 68.) At the conclusion of the hearing, the juvenile court sustained Counts I and II of the April 14, 2015, wardship petition and found Count III had "not been proven beyond a reasonable doubt." (Reporter's Transcript Vol. I[3], hereafter "RT", p. 102; CT, p. 69.) The juvenile court declared H. W. a ward, placed him on juvenile probation, committed him to juvenile hall for two days - with credit for time served of two days - and set his maximum confinement time at eight months. (RT, pp. 108 – 110; CT, p. 70.)

On August 4, 2015, H. W. filed a timely notice of appeal, contesting the juvenile court's findings and judgment at the July 1, 2015, jurisdiction/disposition

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[2] There is only one volume of the Clerk's Transcript in the appellate record. Accordingly, the Clerk's Transcript will be referred to as "CT" throughout this brief.

[3] There is only one volume of the Reporter's Transcript in the appellate record. Accordingly, the Reporter's Transcript will be referred to as "RT" throughout this brief.

hearing. (CT, pp. 86 – 87.) On November 19, 2015, H. W. filed his opening brief. Respondent filed its brief on January 13, 2016. On February 1, 2016, H. W. filed his reply brief. Both parties waived oral argument.

On August 9, 2016, the Third Appellate District, in an unpublished opinion, affirmed the juvenile court's judgment, sustaining Count II of the April 14, 2015, wardship petition. (*In re H. W., supra,* 2 Cal. App. 5th at p. 946.) On August 22, 2016, respondent filed a request for publication of the Third Appellate District's Opinion. On August 25, 2016, the Third Appellate District granted respondent's request and certified its opinion for publication.

On September 27, 2016, H. W. filed his petition for review, pursuant to California Rules of Court, rule 8.500(b)(1), to "secure uniformity of decision." On November 22, 2016, this Court granted H. W.'s petition.

STATEMENT OF THE FACTS

Jurisdiction/Disposition

The juvenile court held the contested jurisdiction/disposition hearing on July 1, 2015. (CT, p. 68.) Marcus A. Nealy (hereafter "Nealy"), Yuba City Police Officer Joseph William Jackson (hereafter "Jackson"), Yuba City Police Officer Brian Thornton (hereafter "Thornton"), Yuba City Police Officer Todd Wolfe (hereafter "Wolfe") and Jorge Madrigal (hereafter "Madrigal") testified. (CT, p. 69.)[4]

[4] Thornton, Wolfe and Madrigal's testimony related solely to the allegations set forth in Count III of the April 14, 2015, wardship petition. Accordingly, their

Testimony of Nealy

On October 13, 2014, Nealy was employed as a loss prevention agent at the Sears department store in Yuba City, California. (RT, pp. 25 – 26.) His duty that day was "to observe and apprehend thieves, theft, shoplifting." (RT, p. 26.) The store's loss prevention manager, Stephanie Garza, (hereafter "Garza") worked with Nealy that day. (RT, p. 26.)

At 4:30 p. m., Nealy and Garza watched the sales floor, in Nealy's office, via the store's closed-circuit television (hereafter "CCTV".) (RT, p. 26.) Nealy and Garza saw H. W. in the men's department with an apparently empty backpack, "looking around very suspiciously." (RT, p. 27.) Garza and Nealy split up and went to the sales floor. (RT, p. 27.)

Nealy was positioned at the end of the men's department. (RT, p. 28.) He maintained contact with Garza via cell phone. (RT, p. 28.) Garza told Nealy she saw H. W. use a pair of pliers to remove an antitheft ink tag from a pair of jeans. (RT, pp. 28 – 29, 32, 42.) Garza told Nealy H. W. "rolled" the jeans up and put them in his backpack. (RT, p. 29.) Nealy did not personally observe H. W. "conceal anything" when Nealy was on the floor. (RT, p. 44.)

H. W. went to the store bathroom. (RT, p. 29.) Shortly thereafter, H. W. left the bathroom. (RT, p. 30.) Nealy subsequently checked the bathroom and did not find either the jeans or the anti-theft ink tag. (RT, pp. 30 - 31.)

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testimony is irrelevant to the issue before this Court and will not be referenced any further herein.

H. W. walked out of the store. (RT, pp. 30 - 31.) He did not stop at any of the cash registers, or attempt to pay for the jeans he carried. (RT, p. 31.) H. W. passed "all points of sale without paying." (RT, p. 31.)

Garza told Nealy H. W. was leaving the store. (RT, p. 31.) Nealy pursued H. W. (RT, p. 31.) Nealy confronted H. W. when he left the store. (RT, p. 31.) Nealy identified himself, told H. W. he "knew about the jeans that were concealed" and asked H. W. to come with him. (RT, p. 31.)

Nealy brought H. W. to his office. (RT, p. 31.) He did not search H. W. (RT, p. 31.) Nealy did not recall whether he or Garza called the police. (RT, pp. 31 - 32.)

Nealy told the court when an antitheft ink tag is "released by force without the unlocking device, the ink sprays out." (RT, p. 43.) He added the tags are not "easy to cut off." (RT, p. 32.) In fact, Nealy believed it was impossible for a person to remove an antitheft tag with his or her bare hands. (RT, p. 32.) In his experience, it is common for people who steal items with "antitheft tags...to bring tools to remove the ink tag." (RT, p. 32.) Nealy opined H. W. had to use the pliers to remove the tag from the jeans. (RT, pp. 32 – 33.)

After the police arrived, H. W.'s backpack was opened. (RT, p. 33.) Nealy saw a $68.00 pair of Levi 501 jeans in the backpack. (RT, p. 33.) He was not certain where the pliers were discovered. (RT, p. 33.) H. W. had no form of payment on his person. (RT, pp. 33 – 34.) H. W. did not have permission to take the jeans. (RT, pp. 34 – 35.) Nealy gave the pliers and the CCTV DVD of the

incident to the police. (RT, p. 35.)

After the incident, Nealy watched H. W.'s actions on the store's CCTV. (RT, pp. 29, 44, 46.) He saw H. W. select the jeans and enter the restroom. (RT, pp. 29 – 30, 47.) H. W. entered the restroom, carrying the jeans outside of his backpack. (RT, p. 30.) Nealy did not see the jeans when H. W. left the restroom. (RT, pp. 30, 43.) Nealy searched the men's restroom and did not find any jeans. (RT, pp. 30 - 31.) Nealy concluded H. W. "concealed the jeans." (RT, p. 30.)

The CCTV DVD was then played for the court. (RT, p. 36.) Nealy described the images depicted on the DVD. (RT, pp. 36 - 38.) H. W. held a "balled up" pair of jeans. (RT, pp. 36 – 37.) H. W. entered the men's bathroom. (RT, p. 37.) H. W. exited the bathroom. (RT, p. 38.) The jeans were not visible. (RT, p. 38.) H. W. exited the store without attempting to pay for the jeans. (RT, p. 38.) Nealy followed H. W. (RT, p. 38.)

Testimony of Jackson

Jackson was employed by the Yuba City Police Department. (RT, p. 48.) He was on patrol on October 13, 2014. (RT, p. 48.) Jackson was dispatched to the Sears store in Yuba City "to a call of a shoplifter who was in custody." (RT, p. 49.) He contacted Garza and Nealy. (RT, p. 49.)

Jackson searched H. W. (RT, p. 50.) H. W. had no wallet or money on his person. (RT, pp. 50, 53.) Jackson received a CCTV DVD, a receipt for the jeans, an empty backpack and a pair of pliers from loss prevention. (RT, pp. 50, 54.) In his experience, pliers are "commonly used as a tool to remove tags from clothing

items that have a metal pin-type securing device." (RT, p. 52.) Jackson issued H. W. a citation for possession of burglary tools and petty theft. (RT, p. 53.)

ARGUMENT

I.

THE THIRD APPELLATE DISTRICT ERRED WHEN IT AFFIRMED THE JUVENILE COURT'S JURISDICTION ORDER, SUSTAINING COUNT II OF THE WARDSHIP PETITION, BECAUSE H. W. DID NOT POSSESS A "BURGLARY TOOL", WITHIN THE MEANING OF SECTION 466, WITH THE REQUISITE "FELONIOUS INTENT" OR "BURGLARIOUS PURPOSE"

A.

H. W.'S PLIERS WERE NOT ENUMERATED IN SECTION 466 AND DID NOT QUALIFY AS AN "OTHER INSTRUMENT OR TOOL" WITHIN THE MEANING OF THE STATUTE

H. W. did not possess a tool specifically enumerated in section 466. Accordingly, to qualify as a "burglary tool", within the meaning of section 466, H. W.'s pliers must fall within the scope of the statute's "other instrument or tool" provision.

In its August 9, 2016, opinion, the Third Appellate District erroneously determined H. W.'s pliers qualified as an "other instrument or tool" within the

meaning of section 466 because he used them for a "burglarious purpose":

> We...conclude 'the plain import of 'other instrument or tool,' and the only meaning that effectuates the obvious legislative purpose of section 466 includes tools that the evidence shows are possessed with the intent to be used for burglary.' [Citation] Such an interpretation is consistent with the purpose of the statute which is to prevent the crime regardless of whether the tool is used to gain entry, to break into the building, or to effectuate the theft....a person need not use the tool or instrument he or she possesses to break into the building so long as he or she procured that tool or instrument intending to use it 'for a burglarious purpose.' [Citation].

(*In re H. W., supra,* 2 Cal. App. 5th at p. 944 – 945.) The Third Appellate District's opinion expressly adopted the "burglarious purpose" interpretation of "other instrument or tool" propounded by the First Appellate District in *People v. Kelly* (2007) 154 Cal. App. 4th 961, 967 - 968 [""other instrument or tool,' includes tools that the evidence shows are possessed with the intent to be used for burglary".] (*Kelly*). (*In re H. W., supra,* 2 Cal. App. 5th at p. 944.)

In doing so, the Third Appellate District rejected the "*ejusdem generis*" construction of "other instrument or tool" advanced by the Fourth Appellate District in *People v. Gordon* (2001) 90 Cal. App. 4th 1409, 1412, superseded by statute as stated in *People v. Diaz* (2012) 207 Cal. App. 4th 396, 401 - 402 [Division One] (*Gordon*) and *People v. Diaz, supra,* 207 Cal. App. 4th at pp. 403 – 404 [Division Three] (*Diaz*)[5]. The *Diaz* Court specifically disapproved of the *Kelly* Court's reasoning and held:

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[5] The *ejusdem generis* canon of construction applies when general terms follow a list of specific items or categories, or vice versa. (*Gordon, supra,* 90 Cal. App. 4th at p. 1412.) Under this rule, application of the general term is "'restricted to those things that are similar to those which are enumerated specifically.'" (*Ibid.*)

> ...section 466 is limited to instruments and tools used to break into or gain access to property in a manner similar to using items enumerated in section 466. That the perpetrator breaks into or enters property, or attempts to do so, *and* happens to have access to a tool that may be used in the course of the burglary is not enough. The tool must be for the purpose of breaking, entering, or otherwise gaining access to the victim's property.

(emphasis in original) (*Diaz, supra,* 207 Cal. App. 4th p. 404.)

There was no evidence H. W.'s pliers could be used to "break into or gain access to property in a manner similar to the items enumerated in section 466." (*Ibid.*) Thus, the pliers were not "similar" to the tools listed in section 466. (*Ibid.*) Pursuant to the *ejusdem generis* cannon of construction, the pliers cannot be included within the definition of "other instrument or tool." (*Ibid; Gordon, supra,* 90 Cal. App. 4th at p. 1412.) Accordingly, they did not qualify as a "burglary tool" within the meaning of section 466.

By accepting the *Kelly* Court's broad interpretation of "other instrument or tool", the Third Appellate District expanded the reach of section 466 far beyond the Legislature's intent and criminalized the possession of virtually any common object – including a stick or a rock – so long as it could potentially be used for a "burglarious purpose." By contrast, the *Gordon* and *Diaz* decisions clearly and concisely define the scope of section 466 and are more consistent with the statute's Legislative intent.

Section 466

Section 466 prohibits the possession of "burglary instruments or tools" and provides:

> Every person having upon him or her in his or her possession a picklock, crow, keybit, crowbar, screwdriver, vise grip pliers, water-pump pliers, slidehammer, slim jim, tension bar, lock pick gun, tubular lock pick, bump key, floor-safe door puller, master key, ceramic or porcelain spark plug chips or pieces, *or other instrument or tool*[6] with intent feloniously to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle as defined in the Vehicle Code, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument named above so that the same will fit or open the lock of a building, railroad car, aircraft, vessel, trailer coach, or vehicle as defined in the Vehicle Code, without being requested to do so by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of a misdemeanor. Any of the structures mentioned in Section 459 shall be deemed to be a building within the meaning of this section.

(emphasis added) (§ 466.)

To sustain a conviction for possession of burglary tools, in violation of section 466, the prosecution must establish three elements: (1) possession by the defendant; (2) of a tool within the purview of the statute; (3) with the intent to use the tool for the felonious purpose of breaking or entering into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle. (§ 466; *People v. Southard* (2007) 152 Cal. App. 4th 1079, 1084 – 1085.) (*Southard*)

The items specifically listed as burglary tools in section 466 are typically keys, key replacements or "tools that can be used to pry open doors, pick locks, or

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[6] As relevant here, the Merriam-Webster's Dictionary defines "instrument" as: an "implement...designed for precision work." (*Merriam-Webster.com.* Merriam-Webster, n.d. Web. <https://www.merriam-webster.com/dictionary/instrument> (as of January 19, 2017.) Meanwhile, Merriam-Webster defines "tool" as "a handheld device that aids in accomplishing a task." (*Merriam-Webster.com.* Merriam-Webster, n.d. Web <https://www.merriam-webster.com/dictionary/tool> (as of January 19, 2017.)

pull locks up or out." (*Gordon, supra,* 90 Cal. App. 4th at p. 1412.) The offense is a "general intent" crime, meaning it is not necessary to prove the defendant specifically intended to use the burglar tools in "'a particular place, or for a special purpose, or in any definite manner.'" (*Southard, supra,* 152 Cal. App. 4th at p. 1088.) Instead, "'[t]he offense is complete when tools...[are] procured with intent to use them for a burglarious purpose.'" (*Ibid.*)

It is undisputed H. W. possessed pliers when he was arrested.[7] Ordinary pliers are not specifically identified in section 466. The statute specifically refers only to "vise grip pliers"[8] and "water pump pliers"[9] (§ 466.) There is no evidence

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[7] The Merriam Webster Dictionary offers three definitions of "pliers": (1) "small pincers for holding small objects or for bending and cutting wire"; (2) "a tool that is used for holding small objects or for bending or cutting wire" and (3) "small pincers with long jaws used for bending or cutting wire or handling things." (*Merriam-Webster.com.* Merriam-Webster, n.d. Web. <https://www.merriam-webster.com/dictionary/pliers> (as of January 19, 2017.)

[8] The Merriam Webster Dictionary does not offer a definition of "vise grip pliers. However, Wikipeida defines "vise grip pliers" as "...pliers that can be locked into position, using an over-center action. One side of the handle includes a bolt that is used to adjust the spacing of the jaws, the other side of the handle (especially in larger models) often includes a lever to push the two sides of the handles apart to unlock the pliers. 'Mole' and 'Vise-Grip' are trade names of different brands of locking pliers." (Locking pliers, https://en.wikipedia.org/w/index.php?title=Locking_pliers&oldid=756988180 (last visited Dec. 28, 2016).)

[9] The Merriam Webster Dictionary does not offer a definition of "water pump pliers." However, Wikipedia defines "water pump pliers" as follows: "Tongue and groove pliers also known as water pump pliers, adjustable pliers, groove-joint pliers, arc joint pliers, Multi-Grips, tap or pipe spanners, gland pliers and Channellocks - are a type of slip-joint pliers They have serrated jaws generally set 45 to 60 degrees from the handles. The lower jaw can be moved to a number of positions by sliding along a tracking section under the upper jaw. An advantage of this design is that the pliers can adjust to a number of sizes without the distance in

the tool recovered from H. W. was identified as either "vise grip pliers" or "water pump pliers." Accordingly, to qualify as a burglary tool under section 466, H. W.'s pliers must fall within the scope of the statute's "other instrument or tool" provision. (§ 466.) As set forth more fully below, they did not.

Standard of Review

"As in any case involving statutory interpretation" a reviewing court's "fundamental task is to determine the Legislature's intent so as to effectuate the law's purpose." (*People v. Cole* (2006) 38 Cal. 4th 964, 974.) Statutory interpretation begins with an analysis of the language of the governing statute. (*Beal Bank SSB v. Arter & Hadden, LLP* (2007) 42 Cal. 4th 503, 507; see also, *People v. Woodhead* (1987) 43 Cal. 3d 1002, 1007.) Words are afforded their ordinary and usual meaning, as the words the Legislature chose to enact are the most reliable indicator of its intent. (*Vasquez v. California* (2008) 45 Cal. 4th 243, 251.)

The reviewing court: must consider the statutory language in the context of the entire statute and the statutory scheme of which it is a part. (*Renee J. v. Superior Court* (2001) 26 Cal. 4th 735, 743.) "Significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose." (*Ibid.*) The elements of a statute should be harmonized by consideration

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the handle growing wider. These pliers often have long handles - commonly 9.5 to 12 inches long for increased leverage." (Tongue-and-groove pliers, https://en.wikipedia.org/w/index.php?title=Tongueandgroove_pliers&oldid=674735526 (last visited Aug. 5, 2015).

of the particular clause or section in the context of the statutory framework as a whole. (*Ibid;* see *Valov v. Tank* (1985) 168 Cal. App. 3d 867, 874)

Furthermore, a statute should generally not be interpreted in a manner which renders portions thereof mere surplusage. (*People v. Smith* (2000) 81 Cal. App. 4th 630, 641; *Dyna-Med Inc. v. Fair Employment and Housing Com.* (1987) 43 Cal. 3d 1379, 1386 - 1387; see also *In re Jerry R.* (1994) 29 Cal. App. 4th 1432, 1437.) It is also inappropriate to read into a statute language it does not contain or elements that do not appear on its face. (*Vasquez v. California, supra,* 45 Cal. 4th at p. 253)

If the text evinces an unmistakable plain meaning, an appellate court need go no further. (*Beal Bank SSB v. Arter & Hadden LLP, supra*, 42 Cal. 4th at p. 508; *Microsoft Corp. v. Franchise Tax Board* (2006) 39 Cal. 4th 750, 758; *People v. Traylor* (2009) 46 Cal. 4th 1205, 1212. As this Court stated in *People v. Albillar* (2010) 51 Cal. 4th 47, 55:

> If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.' [Citation]

(*Ibid*; *People v. Gray* (2014) 58 Cal. 4th 901, 906.)

However, in light of its disparate appellate interpretations, the meaning of the phrase "other instrument or tool" – within the context of section 466 - is inherently ambiguous. (see *Gordon, supra,* 90 Cal. App. 4th at p. 1412; *Diaz, supra,* 207 Cal. App. 4th at p. 401, 403 – 404; *Kelly, supra*, 154 Cal. App. 4th at pp. 967 – 968.) Accordingly, to properly discern the Legislature's intent, it is

necessary to consider section 466's Legislative history, statutory context, and the *ejusdem generis* canon of construction. (see *Gordon, supra,* 90 Cal. App. 4th at p. 1412; *Diaz, supra,* 207 Cal. App. 4th at p. 401, 403 – 404.)

Reviewing courts employ a de novo analysis when considering questions of statutory construction. (*People v. Blackburn* (2015) 61 Cal. 4th 1113, 1123; *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal. 4th 381, 387.)

Legislative History

After its original enactment in 1872, the Legislature amended section 466 seven times. (Code Am.1873-74, c. 178, p. 463 § 1; Stats.1977, c. 725, p. 2309, § 1; Stats.1977, c. 1147, p. 3685, § 2; Stats.1984, c. 82 (A.B. 1895), § 1; Stats.2001, c. 854 (S.B.205), § 28; Stats.2002, c. 335 (A.B.2015), § 1; Stats.2008, c. 119 (S.B.1554), § 1.) As relevant here, the Legislature amended section 466 four times since 1984.

In 1984, the Legislature enacted A. B. 1895 to add "various tools and devices" to the category of "specified" tools used for the "intent of breaking or entering a building, car, railroad car, etc." (Stats.1984, c. 82, § 1; Legis. Analyst Rep. to Assem. Finance Department Analysis of Assem. Bill No. 1895, (1983 - 1984 Reg. Sess.); Sen. Democratic Caucus, Analysis of Assem. Bill No. 1895 p. 1 (1983 - 1984 Reg. Sess.).)[10] The Legislature specifically expanded the list of

[10] Prior to the Legislature's 1984 amendment, former section 466 read, in pertinent part: "Every person having upon him or in his possession a picklock, crow, keybit, or other instrument or tool with intent to feloniously break or enter into any building, railroad car, aircraft, or vessel, trailer coach or vehicle defined in the

enumerated tools and devices proscribed by section 466 to include: "screwdrivers, vice grip pliers, water-pump pliers, slidehammers, slim jims, tension bars, lock pick guns, floor-safe door pullers and master keys." (Sen. Jud. Comm., Rep. on Assem. Bill 1895 p. 1 (1983 - 1984 Reg. Sess.).)

Significantly, despite adding two specific types of pliers, the Legislature did not add generic "pliers" to the list of prohibited items. (Stats.1984, c. 82, § 1; see *Brown v. Kelly Broadcasting Company* (1989) 48 Cal. 3d 711, 725, citing *Ford Motor Company v. County of Tulare* (1983) 145 Cal. App. 3d 688, 691 ["It is a well-recognized principle of statutory construction that when the Legislature has carefully employed a term in one place and has excluded it another, it should not be implied where excluded."].)

In 2001, the Legislature enacted S. B. 250 to modify section 466 by correcting the spelling of "vise grip pliers." (Stats. 2001 Ch. 854 §28 (S.B. 205).)

One year later, in response to the Court of Appeal's decision in *Gordon, supra,* the Legislature enacted A. B. 2015, to add "ceramic or porcelain spark plug chips or pieces" to the prohibited list of tools enumerated in section 466. (Stats. 2002 Ch. 335 §1 (A.B. 2015).) The Legislature specifically identified its intent when it amended section 466:

> Existing law makes it a misdemeanor for any person to have upon him or her in his or her possession any specified instrument or tool with the intent to break or enter into any building, railroad car, aircraft or vessel, trailer coach, or vehicle, as defined. This bill would add to the list of instruments

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Vehicle Code...is guilty of misdemeanor." (§ 466.)