IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re MARTIN M., A Person Coming Under The Juvenile Law	)	Case No. S177704
PEOPLE OF THE STATE OF CALIFORNIA Petitioner/Respondent, v. MARTIN M., Minor/Appellant	)	

APPELLANT'S ANSWER ON THE MERITS

Fourth Appellate District, Division Two, Case No. E045714
Superior Court of San Bernardino, Case No. J220179
The Honorable Michael A. Knish

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PEOPLE OF THE STATE OF CALIFORNIA	)	
Petitioner/Respondent,	)	
v.	)	
MARTIN M.,	)	
Minor/Appellant	)	

ISSUE PRESENTED

Is a campus security officer employed by a public school district a "public officer" for purposes of a change of willfully resisting, delaying, or obstructing a "public officer" in violation of penal Code section 148?

STATEMENT OF THE CASE

In a petition filed on March 10, 2008, it was alleged that the minor, Martin M., came within the Welfare and Institutions Code section 602 based on one felony count of vandalism in violation of Penal Code section 594, subdivision (b)(1). (CT 1-3)[1] On April 25, 2008, the prosecution amended the petition by adding a misdemeanor count of resisting arrest in violation of section 148, subdivision (a)(1). (CT 14-16) After a trial commencing April 30, 2008, the court dismissed the vandalism charge under count one for lack of evidence and found count two for misdemeanor resisting arrest true. (CT 19; RT 44) The trial court declared the minor a ward of the court and placed him on probation in the custody of his mother. (Supp CT 17; RT Supp RT 3)[2]

Appellant's Opening Brief was filed on or about November 7, 2008 raising one substantive issue: whether there was sufficient evidence to support the minor's conviction for resisting arrest since the arresting officer was neither a peace officer, EMT, nor public officer as required by section 148. Oral argument was heard on June 2, 2009.

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1 All other statutory references shall refer to the Penal Code unless otherwise indicated. "CT" shall refer to clerk's transcript and "RT" shall refer to reporter's transcript.

2 "Supp CT" shall refer to the supplemental clerk's transcript and "Supp RT" shall refer to the supplementary reporters transcript.

On September 24, 2009, the Court of Appeal, Fourth Appellate District, Division Two, filed a published opinion reversing the minor's conviction. The Court of Appeal held that a school security officer is not a "public officer" under section 148 and that any attempt to expand the application of section 148 should be made by the Legislature. (*In re M.M* (2009) 99 Cal.Rptr.3d 813.)

On January 21, 2010, this Court granted the Attorney General's petition for review.

STATEMENT OF FACTS

On January 30, 2008, Karen Craig, the principal at Arroyo Valley High School, broadcast a call to campus security regarding possible vandalism on the north end of campus near the baseball field. (RT 20, 36) Three campus security officers and one peace officer with the San Bernardino City Unified School District, assigned as a school resource officer, responded. (RT 10, 36)

Security officers Ramos, Butts, and Meyer bicycled directly to the baseball field while Officer Yanez drove his patrol car around the perimeter of campus. (RT 10, 37) The security officers saw a group of approximately ten students scatter as they approached the baseball field. (RT 10) Since the group scattered in different directions, the security officers pursued a group of three or four students, including the minor. (RT 10, 11, 21)

As Bryan Butts, one of the three campus security officers, followed the minor to the campus border on Baseline Street, he told the group of students to stop over seven times yelling, "Security, stop." (RT 11-12, 19-20, 25, 27, 34) Butts testified that he called out to the minor by name more than once demanding that he stop. (RT 25) Although the minor looked back at Butts seeming to understand his command, the minor kept running. (RT 27)

Butts saw the minor throw a white container, believed to be a spray can, on the ground as the minor jumped over the field gate and headed off campus.

(RT 12, 18, 23, 24) When Butts returned to the area to investigate, he realized the container was a water bottle not a spray can. (RT 16, 17, 25)

As the minor exited campus, he saw Police Officer Yanez in his patrol car. (RT 37) When Officer Yanez asked the minor to stop, the minor complied. (RT 37) Officer Yanez then arrested the minor. (RT 37)

LEGAL ARGUMENT

I. RESISTING ARREST FROM A SCHOOL SECURITY GUARD IS NOT A CRIME UNDER PENAL CODE SECTION 148 BECAUSE WELL ESTABLISHED LAW DEFINES "PUBLIC OFFICERS" IN A MANNER WHICH EXCLUDES SCHOOL SECURITY GUARDS.

Minor, Martin M., was criminally prosecuted and punished when he disobeyed a school security guard's command to stop. The security guard mistakenly believed that Martin and his friends were vandalizing the school's baseball field. (RT 10, 20, 36) However, it turned out that what the security guard assumed to be a spray paint can was, in fact, only a water bottle. (RT 16, 17, 25) Therefore, the only issue in this case is whether Martin's teenage challenge to authority constituted a crime.

Under Penal Code section 148 it is a crime to resist arrest from a public officer, peace officer, or emergency medical technician ("EMT"). Specifically, section 148 provides, in relevant part,

> Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician . . . in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(§ 148, subd. (a)(1).) Respondent concedes that a school security guard is neither a peace officer nor an EMT. (ROB[3] 1) Respondent also concedes that a school security guard does not qualify as a "public officer" under the existing legal definition of "public officer." (ROB 15-16) Respondent, instead, asks this Court to broaden the definition of "public officer" to include school security guards along with a plethora of other government employees. (ROB 15-16) Since expanding the law in this fashion circumvents and undermines the legislative process, this Court should decline respondent's invitation to redefine the meaning of "public officer."

A. To Qualify As A "Public Officer" One Must Hold A Tenured Office In Which Incumbents Succeed One Another And Exercise A Sovereign Government Function.

As acknowledged by respondent, the Court of Appeal defined the term "public officer" for purposes of Penal Code section 148 in *People v. Olsen* (1986) 186 Cal.App.3d 257, 265-266 wherein it was held that an EMT is not a "public officer." (ROB 13-14) According to *Olsen*,

> one of the prime requisites [of a public office] is that it be created by the *constitution* or authorized by some *statute*. And it is essential that the incumbent be clothed with some portion of the sovereign functions of government, either legislative, executive, or judicial to be exercised in the interest of the public. There must also be a duty or service to be performed, and it is

---

3 "ROB" shall refer to Respondent's Opening Brief on the Merits filed March 19, 2010.

> the nature of this duty, not is extent, that bring into existence a public office an a public officer. [Citation.] Thus, an office, as a general rule, is based on some *law* that defines the duties appertaining to it and fixes the tenure, and it exists independently of the presence of a person in it.

(*Ibid.*)

Respondent emphasizes that *Olsen's* definition of a "public officer" was derived approximately a century ago from this Court's decision in *Coulter v. Pool* (1921) 187 Cal. 181, 186 and has been consistently reaffirmed by California case law in both civil and criminal contexts. (ROB 14-16) In this regard, respondent recognizes that *Coulter* includes "a fixed tenured position" and performance of a political "governmental function" as generally endemic to the definition of a "public officer." (ROB 14; *see also Id.* at 186-187.) Respondent also acknowledges that, in addition to *Olsen*, this two prong definition has been implemented in *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1211 and *People v. Rosales* (2005) 129 Cal.App.4th 81, 86. (ROB 15-16) In *Dibb*, this Court held,

> "[T]wo elements now seem to be almost universally regarded as essential" to a determination of whether one is a "public officer" "First, a tenure of office which is not transient, occasional or incidental, "but is of such a nature that the office itself is an entity in which incumbents succeed one another . . . and, second, the delegation to the officer of some portion of the sovereign functions of government, either legislative, executive, or judicial." [Citations omitted.]

(*Dibb v. County of San Diego, surpa,* 8 Cal.4th at p. 1211; ROB 15) Similarly, in *Rosales*, the Court of Appeal defined a "public officer" as follows:

> A public office is ordinarily and generally defined to be the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with the power to perform a public function for the benefit of the public. [Citation.] The most general characteristic of a **public officer**, which distinguishes him from a mere employee, is that a public duty is delegated and entrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting. . . . [Citations.]

(*Rosales, supra,* 129 Cal.App.4th at 86, emphasis added.)

Rather than follow this well established precedent, respondent asks this Court to deviate from a century old definition of "public officer" and find that, for purposes of section 148, public officer "is any person delegated a duty under law, the performance of which is an exercise of a part of governmental functions" not requiring "tenure, oath, or a bond." (ROB 16) Respondent argues this broader definition is consistent with *Coulter* and with the legislative history of Penal Code section 148. (ROB 16) Both these propositions are misguided.

First, as discussed above, *Coulter's* definition of a "public officer" includes a requirement of tenure and sovereign governmental function. Respondent cannot simply ignore this part of the *Coulter* holding because it

inconveniently undermines its position. This type of linguistic cherry picking is wholly unpersuasive. Second, contrary to respondent's argument, section 148's legislative history supports *Olsen's* definition of "public officer." Principles of statutory construction dictate that "when the Legislature amends a statute without changing those portions of the statute that have previously been construed by the courts, the Legislature is presumed to have known of and to have acquiesced in the previous judicial construction." (*People v. Blakeley* (2000) 23 Cal.4th 82, 89-90.) Therefore, contrary to respondent's position, section 148's legislative history establishes that the Legislature adopted *Coulter's* and *Olsen's* two prong definition of "public officer" requiring a tenured position and a sovereign governmental function. Under this definition, a school security guard is not a public officer.

This Court should also uphold *Olsen's* two prong definition of a "public officer" because it is consistent with traditional tenets of statutory construction and public policy.

B. *Olsen's* Definition Of A "Public Officer" Best Serves To Harmonize Section 148 Internally And With Related Statutes.

Where a statute is arguably ambiguous, these ambiguities "may be resolved by examining the context in which the language appears and adopting the construction which best serves to harmonize the statute internally and with

related statutes." (*People v. Arias* (2008) 45 Cal.4th 169, 177, citing *Woods v. Young* (1991) 53 Cal.3d 315, 323; *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871.) Specifically, this Court has held that, "we must harmonize code sections relating to the same subject matter and avoid interpretations that render related provisions nugatory." (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1325.) Moreover, statutory construction requires giving "significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose, and avoiding a construction that renders some words surplusage." (*People v. Sisuphan* (2010) 181 Cal.App. 4th 800, 806.) And, "a specific provision relating to a particular subject will govern that subject as a against a general provision." (*Elliot v. Workers' Compensation Appeals Board* (2010) 182 Cal.Ap.4th 355, 365.)

Under respondent's proposed definition of a "public officer," section 148's language referring to peace officers and EMTs would be rendered surplusage or nugatory. Unlike *Olsen's* definition of "public officer" which excludes peace officer and EMT, the adoption of respondent's definition of "pubic officer" would include peace officers and EMTs. Both peace officers and EMTs are persons "delegated a duty under law, the performance of which is an exercise of a part of governmental functions" not requiring "tenure, oath, or a bond." (ROB 16) Therefore, if respondent's definition is adopted the

terms peace officer and EMT will be rendered surplusage in section 148. This result counsels in favor of rejecting respondent's interpretation.

Similarly, respondent's proposed interpretation of section 148, is inconsistent with other related statutes. Specifically, Government Code section 24000 lists those positions deemed to be county public officers within the State of California. Under this statute, school security guard is not listed as a public officer. (Gov. Code § 24000.) In addition, Government Code section 36501 provides for the governing officers and employees of a city or local government. Like Government Code section 24000, school security guard is not included as a city public officer. (Gov. Code § 36501.) Therefore, to best harmonize Penal Code section 148 with other related statutes, namely Government Code sections 24000 and 36501, respondent's proposed interpretation of section 148 should be rejected. Under these rules of statutory construction, section 148 should be narrowly construed consistent with the Court of Appeal's holding in *Olsen.*

C. The Rule Of Lenity Requires This Court To Reject Respondent's Proposed Interpretation Of Section 148.

In construing a criminal statute, a defendant must be given the benefit of every reasonable doubt as to whether the statute was applicable to him. (*People v. Baker* (1968) 69 Cal.2d 44, 46.) This rule of strict construction for criminal statutes, also referred to as the rule of "lenity," applies where "two

reasonable interpretations of the statute stand in relative equipoise." (*People v. Soria* (2010) 48 Cal.4th 58, 65.)

Here, there is no doubt that appellant's interpretation of "public officer" is at least as reasonable as respondent's interpretation of "public officer" for purposes of section 148. Appellant is simply asking this Court to adopt the definition of "pubic officer" articulated in *Coulter, Olsen, Dibb,* and *Rosales* established over an approximately 100 year period. In contrast, respondent asks this Court to embrace a new broader definition of "public officer" for purposes of section 148 because it believes a broader definition will make schools safer. (ROB 2-7) Therefore, even if it is assumed that respondent's interpretation of a "public officer" is equally reasonable to appellant's interpretation, the rule of lenity requires that appellant be given the benefit of the doubt requiring a continued adoption of the *Olsen* definition of "public officer."

According to the United States Supreme Court, the "application of the rule of lenity ensures that criminal statutes will provide fair warning concerning conduct rendered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability." (*People v. Superior Court* (1996) 14 Cal.4th 294, 312-313, citing *Liparota v. United States* (1985) 471 U.S. 419, 427.) This sense of heightened

due process for criminal statutes is necessary because criminal statutes are "particularly serious and opprobrious." (*Id.* at 313.)

This concern articulated by the United States Supreme Court is particularly applicable to this case. Absent this "fair warning," the minor had no idea it was a crime to ignore a security guard. Moreover, in this case, the security guard mistook the minor's innocent behavior for vandalism. Nothing in section 148 makes it clear that resisting the command of a security guard is a crime. "A penal statute must define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in manner that does not encourage arbitrary and discriminatory enforcement." (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 542.) This level of statutory vagueness and the rule of lenity counsel in favor of interpreting section 148 as excluding school security guards as "public officers."

In sum, a "public officer" is someone who holds a tenured position and exercises sovereign governmental power. (*People v. Rosales, supra,* 129 Cal.App.4th at p. 86; *Dibb v. County of San Diego, supra,* 8 Cal.4th at p. 1211; *People v. Olsen, surpa,* 186 Cal.App.3d at pp. 265-266; *Coulter v. Pool, supra,* 187 Cal. at p. 186.) Under this definition, a school security guard is not a "public officer," because a school security guard does not hold a tenured

position and does not exercise sovereign governmental authority. In addition, the Government Code excludes security guards from a list of government positions it expressly defines as "public officers." (Gov. Code §§ 24000, 36501.) Therefore, while respondent's concern for school safety is noble, it should lobby the Legislature to include security guards as part of section 148 and properly present its statistical analysis about "gangs, drugs, and weapons" (none of which is part of the record on appeal) for legislative analysis. (ROB 2) As concisely stated by this Court,

> Fixing the penalty for crimes is the province of the Legislature, which is in the best position to evaluate the gravity of different crimes and to make judgments among different penological approaches. Phrased differently: The only definition of crime and the determination of punishment are foremost among those matters that fall within the legislative domain. [Citations omitted.]

(*People v. Feyrer* (2010) 48 Cal.4th 426, 442.) Therefore, since a campus security officer employed by a public school district is not a "public officer" the Court of Appeal's opinion should be upheld and the minor's conviction should be reversed without retrial.

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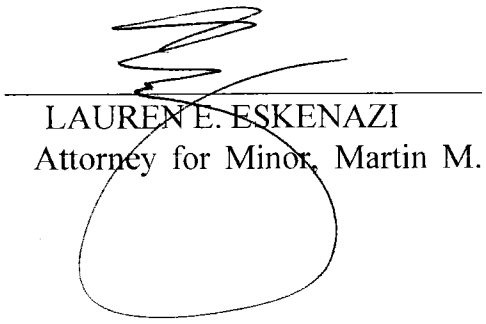
CONCLUSION

For the foregoing reasons, the minor respectfully requests this Court to reverse his misdemeanor conviction for resisting arrest.

DATED: May 21, 2010

Respectfully submitted,



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Counsel for appellant hereby certifies that this brief on the merits contains 3,148 words, as counted by the word count function of counsel's word processing program.

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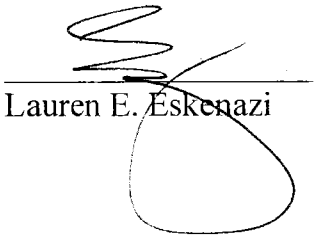

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I, the undersigned, declare that I am a resident of Los Angeles County, California; that my business address is the Law Office of Lauren E. Eskenazi, 11693 San Vicente Blvd. #510, Los Angeles, California 90049; that I am over the age of eighteen years; that I am not a party to the above-entitled action; and that I served by mail the document described herein to the following:

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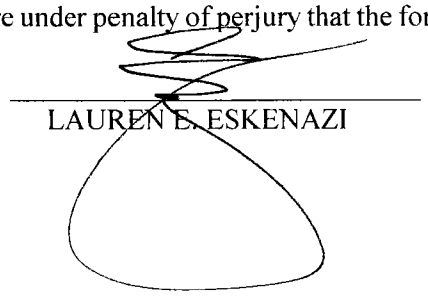

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