In the Supreme Court of the State of California

In re H.W., a Person Coming Under the Juvenile Court of Law.
THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,**
v.
H.W., **Defendant and Appellant.**

Case No. S237415

Third Appellate District, Case No. C079926
Sacramento County Superior Court, Case No. JV137101
The Honorable Stacy Boulware Eurie, Judge

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED

Do pliers, used to remove the anti-theft device from a pair of jeans inside a Sears store, constitute a burglary tool under Penal Code section 466?

INTRODUCTION

Appellant H.W., a minor, appeals from an order adjudicating him a ward of the juvenile court. In October 2014, appellant entered a Sears department store in Yuba City with an empty backpack and a pair of pliers. He used the pliers to remove the anti-theft device from a pair of jeans before entering a restroom to hide the jeans inside the backpack. A loss prevention agent stopped him when he exited the store with the backpack without attempting to pay for the jeans.

In a wardship petition, it was alleged that appellant possessed burglary tools within the meaning of Penal Code section 466.[1] The juvenile court found the allegation to be true and adjudged appellant a ward of the court. The Court of Appeal affirmed the juvenile court's order. This Court granted review.

STATEMENT OF THE CASE

On April 14, 2015, the District Attorney of Sacramento County filed a petition under Welfare and Institutions Code section 602, alleging that appellant committed the following misdemeanors: in count I, theft (§ 484, subd. (a)); in count II, possession of burglary tools (§ 466); and in count III, trespass (§ 602.5). (CT 32-35.)

On July 1, 2015, the juvenile court held a contested jurisdiction hearing and sustained the petition on count I (theft) and count II (possession of burglary tools). (CT 69.) However, it found that count III had not been

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

proven beyond a reasonable doubt. (CT 69.) Appellant was adjudged a ward of the juvenile court, placed on juvenile probation, committed to juvenile hall for two days with two days credit for time served, and given a maximum term of confinement of eight months. (CT 69-70.)

On August 9, 2016, the Court of Appeal affirmed the juvenile court's order, finding that sufficient evidence sustained the finding that appellant possessed a burglary tool within the meaning of section 466. (Slip Opinion at p. 10.) On September 27, 2016, appellant filed a petition for review in this Court, which was granted on November 22, 2016. (Cal. Supreme Ct. No. S237415.)

SUMMARY OF THE ARGUMENT

The Court of Appeal below properly affirmed the juvenile court's judgment that appellant's pliers, used to remove an anti-theft device from a pair of jeans inside a Sears store, constituted burglary tools under section 466. The plain and ordinary meaning of the statute demonstrates it clearly contemplates the inclusion of pliers as burglary tools. Additional extrinsic aids, including the doctrine of *ejusdem generis*, also support this conclusion. A consideration of the statute in light of the crime of burglary in California further demonstrates the only requisite intent under section 466 is that a defendant intend to use a burglary tool to commit any theft or felony inside the building.[2] And finally, although this Court's grant of review does not encompass the issue of Proposition 47's potential effect on section 466, nothing in Proposition 47 demonstrates the voters' intent to reduce or otherwise affect convictions under the statute for possession of burglary tools, which is already a misdemeanor. Therefore, the juvenile court

[2] For brevity, respondent refers to "buildings" as encompassing the other structures and/or vehicles enumerated in section 466.

properly adjudged appellant a ward of the court for possession of burglary tools.

ARGUMENT

I. PLIERS CONSTITUTE AN "INSTRUMENT OR TOOL" UNDER SECTION 466

Appellant contends that pliers are not burglary tools within the meaning of section 466. (AOBM[3] 2, 8-30.) Specifically, he contends that pliers are not among the devices enumerated in section 466 and also do not qualify as an "instrument or tool" within that section. (AOBM 8-30.) Respondent disagrees. While the pliers in this case do not fall within the specific devices listed in section 466,[4] they do constitute an "other instrument or tool" as defined in the statute; pliers are contemplated under the plain meaning of "instrument or tool" and are similar to the enumerated devices in both function and purpose.

Although appellant argues the evidence is insufficient to support his conviction for possession of burglary tools, his argument essentially contests the appellate court's interpretation of section 466. As such, the issue before this Court is one of statutory interpretation. Questions of statutory interpretation are reviewed de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.)

Section 466 provides in relevant part:

> 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

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[3] Appellant's Opening Brief on the Merits.

[4] *Particular* types of pliers are named in the list of enumerated devices in section 466 ("vise grip pliers, water-pump pliers"), but no evidence in the record demonstrates that the pliers appellant used were either vise grip or water-pump pliers.

> puller, master key, ceramic or porcelain spark plug chips or pieces, or other instrument or tool 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, . . . is guilty of a misdemeanor.

(§ 466.) Thus, to prove a violation for possession of burglary tools under section 466, the prosecution must prove: "(1) possession by the defendant; (2) of tools within the purview of the statute; (3) with the intent to use the tools for the felonious purposes of breaking or entering." (*People v. Southard* (2007) 152 Cal.App.4th 1079, 1085 (*Southard*).)

In interpreting a statute, this Court applies well-settled canons of statutory construction. (*People v. Arias* (2008) 45 Cal.4th 169, 177 (*Arias*).) The goal is to "ascertain the Legislature's intent in order to effectuate the law's purpose." (*Ibid.*, internal citations omitted.) "We begin by examining the words of the respective statutes; if the statutory language is not ambiguous, then we presume the Legislature meant what it said, and the plain meaning of the language governs." (*In re Young* (2004) 32 Cal.4th 900, 906, citing *People v. Walker* (2002) 29 Cal.4th 577, 581 (*Walker*).) The statute's words are given their "usual and ordinary meaning." (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601.) "All [Penal Code] provisions are to be construed according to the fair import of their terms . . . ." (§ 4.) In giving meaning to the statute's words, this Court may draw from sources including dictionaries and the common language of the people. (*Nix v. Hedden* (1893) 149 U.S. 304, 307 ["Beyond the common knowledge which we have on this subject, very little evidence is necessary, or can be produced"].) However, a literal construction should not be adopted if it is contrary to the legislative intent apparent in the statute. (*People v. Shabazz* (2006) 38 Cal.4th 55, 67, internal citations omitted.)

If a statute's language is unambiguous, it may still have "latent ambiguity" if the plain meaning would result in absurd consequences. (See

People v. Leiva (2013) 56 Cal.4th 498, 510 [while plain meaning of the word "toll" in section 1203.2 appears "unambiguous on its face," it has a "latent ambiguity" where the plain meaning would result in "absurd consequences"]; *Stanton v. Panish* (1980) 28 Cal.3d 107, 115 [language that appears unambiguous on its face may be shown to have a latent ambiguity when the plain meaning would lead to unreasonable results].) Language of a statute is also ambiguous when it is "susceptible to more than one reasonable construction" (*Diamond Multimedia Systems v. Superior Ct.* (1999) 19 Cal.4th 1036, 1055) or "amenable to two alternative interpretations" (*Arias*, *supra*, 45 Cal.4th at p. 177). Ambiguity may otherwise exist where appellate courts have reached differing interpretations of the statute. (See *People v. Leiva*, *supra*, 56 Cal.4th at p. 510 [reviewing legislative history, statute objectives, and public policy after noting "the split between the Courts of Appeal reflects uncertainty" in interpreting statute].)

If this Court determines that a statute is ambiguous or lacks clarity, it "may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history." (*Walker*, *supra*, 29 Cal.4th at p. 581.) In considering extrinsic sources, this Court "strive[s] to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purposes." (*Ibid.*) "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.) The provisions of the Penal Code are construed "with a view to effect its objects and to promote justice." (§ 4.)

Here, contrary to appellant's contention (AOBM 14, 27), the phrase "other instrument or tool" in section 466 is unambiguous and includes

pliers like the ones appellant possessed in this case. "Instrument," as used in context here, is commonly understood as an "implement," especially "one designed for precision work." (Merriam-Webster's Dict. (10th college ed. 1998) p. 606, col. 2.) Likewise, "tool" is defined as "a handheld device that aids in accomplishing a task." (*Id.* at p. 1243, col. 1.) In the context of the enumerated items listed in section 466, which are all commonly understood as instruments or tools, the phrase "other instrument or tool" is "not amenable to two alternative interpretations." (*Arias*, *supra*, 45 Cal.4th at p. 177.) As the appellate court in *People v. Kelly* (2007) 154 Cal.App.4th 961, 967 (*Kelly*), properly noted, "We do not consider the language proscribing possession of 'any instrument or tool' with the specified felonious intent to be inherently ambiguous."

"Pliers" fall within the unambiguous phrase "other instrument or tool." The modern definition of "pliers" is "a small pincers for holding small objects or for bending and cutting wire." (Merriam-Webster's Dict., *supra*, at p. 894, col. 2.) It is commonly understood that "pliers" constitute tools. (See, *e.g.*, *People v. Osborne* (2009) 175 Cal.App.4th 1052, 1058-1059 [officer observed "several tools (screwdrivers, pliers, etc.)"]; *People v. Griffith* (1971) 19 Cal.App.3d 948, 950 ["numerous tools" included "primarily pliers and screwdrivers"].) By definition and its understanding in common language, pliers constitute tools. Thus, because pliers are commonly understood to constitute an "instrument or tool" in the unambiguous terms of section 466, appellant's pliers constitute burglary tools within the meaning of the statute.

People v. Harris (1950) 98 Cal.App.2d 662 (*Harris*) is instructive. There, the defendant was found in possession of "a steel wood chisel . . . about six inches long, three-quarters of an inch wide, an eighth of an inch thick, and ha[d] a sharpened point." (*Id.* at p. 663.) He was charged and convicted for unlawfully possessing a "sharp instrument" under section

4502. (*Ibid.*) At that time, section 4502 prohibited a prisoner in state prison from possessing, carrying upon his person, or having under his custody, among other things, "any dirk or dagger or sharp instrument." (*Ibid.*) On appeal, the defendant argued that the statute was invalid because it did not define the phrase "sharp instrument" and was thus ambiguous. (*Id.*, at p. 666.)

In rejecting the defendant's argument, the appellate court observed, "Criminal statutes are not to be strictly construed, but all the provisions of the Penal Code are to be construed according to the fair import of their terms, with a view to effect is objects and to promote justice." (*Harris*, *supra*, 98 Cal.App.2d at p. 666, internal citations omitted.) It noted, "The Legislature was not required to list every type of sharp instrument in the statutory prohibition. All that is required is that the crime must be clearly defined so that any reasonable person will know what constitutes a violation." (*Ibid.*) Section 4502 "was passed to protect inmates and officers of state prisons from the perils of assaults with dangerous weapons perpetrated by armed prisoners." (*Ibid.*, internal citations omitted.) In light of the circumstances, the defendant "obviously knew what the statute meant, and knew that he was violating it." (*Ibid.*) Other California Courts of Appeal have similarly found the phrase "sharp instrument" unambiguous. (See *People v. Crenshaw* (1946) 74 Cal.App.2d 26; *People v. Morales* (1967) 252 Cal.App.2d 537, 539-541 [rejecting contention that statute is unconstitutionally broad and vague]; *People v. Custodio* (1999) 73 Cal.App.4th 807, 811-813 [statute not unconstitutionally vague].)

Similarly here, the phrase "other instrument or tool" is unambiguous. Both "instrument" and "tool" have well-established definitions and meanings in common language. As in section 4502, the statute prohibiting possession of burglary tools also enumerates specific devices that are unlawful to possess. (§ 466.) The Legislature is not required to list *every*

type of instrument or tool that qualifies as a burglary tool under section 466. (*Harris*, *supra*, 98 Cal.App.2d at p. 666.) Like section 4502, the burglary tools statute serves a clear purpose—to deter burglaries by affording law enforcement officers the ability to apprehend would-be burglars before they have the opportunity to commit the offense. (Annot., Validity, Construction, and Application of Statutes Relating to Burglars' Tools (1970) 33 A.L.R.3d 798, 805, § 2[a]; 3 Wharton's Criminal Law (15th ed., updated Sept. 2016) § 333 ("Wharton's Criminal Law").) Thus, similar to the phrase "sharp instrument" following "dirk or dagger" in section 4502, the phrase "other instrument or tool" following an enumerated list of devices in section 466 is unambiguous.

Additionally, the phrase "other instrument or tool" does not create latent ambiguity when read in context of section 466. A direct reading of the burglary tool statute reflects the Legislature's intent to punish those who possesses an enumerated object or "other instrument or tool with intent feloniously to break or enter" into a building. (§ 466.) It does not take any stretch of the imagination to believe that someone could (and would) use pliers to effectuate a burglary.[5] Therefore, reading "other instrument or tool" to include pliers does not result in "absurd" or "unreasonable" consequences or results. (*Leiva*, *supra*, 56 Cal.4th at p. 510; *Stanton*, *supra*, 28 Cal.3d at p. 115.)

However, even if this Court determines that the phrase "other instrument or tool" is ambiguous, the application of extrinsic aids demonstrates that pliers qualify as a burglary tool under section 466. One such extrinsic source used to interpret statutes is the doctrine of *ejusdem generis*. (*Arias*, *supra*, 45 Cal.4th at p. 180.) This is the same doctrine

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[5] The issue of whether the "instrument or tool" must be used for the actual "breaking or entering" of a building is discussed *post*.

applied by the Courts of Appeal in interpreting section 466. (See generally *People v. Gordon* (2001) 90 Cal.App.4th 1409, 1412-1413 (*Gordon*), superseded by statute as stated in *People v. Diaz* (2012) 207 Cal.App.4th 396 (*Diaz*); *Kelly*, *supra*, 154 Cal.App.4th at p. 967.) This doctrine "applies when general terms follow a list of specific items or categories, or vice versa." (*Gordon*, at p. 1412.) Under this doctrine, "application of the general term is 'restricted to those things that are similar to those which are enumerated specifically.'" (*Ibid.*, citing *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1160, fn. 7.) As applied here, "the meaning of the words 'or other instrument or tool' in section 466 is restricted to a form of device similar to those expressly set forth in the statute." (*Gordon*, *supra*, at p. 1412.)

"Pliers" are similar to the devices expressly enumerated in section 466 because they are also instruments or tools with similar uses and functions. The enumerated tools in section 466 are ones that may be used to forcibly gain access to property; more specifically, they may be used to force open or bypass entryways and locks. As appellant notes, the listed "vise grip pliers" and "water pump pliers" are simply pliers that serve additional functions, such as having the ability to lock into position or adjust without the distance in the handle growing wider. (AOBM 12, fns. 8 & 9.) It is not difficult to imagine the ways in which a pair of pliers may similarly be used to gain access to property, by forcibly holding something in place or providing the force necessary to pull something up or out. Under the reasoning provided in *Gordon*, pliers have the same "function," accomplish the "same general purpose," are "similar," and surely "resemble[]" the devices listed in section 466. (*Gordon*, *supra*, 90 Cal.App.4th at pp. 1412-1413.) Under the doctrine of *ejusdem generis*, pliers constitute an "instrument or tool" within the meaning of section 466.

Appellant argues that pliers are dissimilar from the enumerated devices in section 466, relying on *Gordon*'s analysis of the devices as "keys or key replacements, or tools that can be used to pry open doors, pick locks, or pull locks up and out." (AOBM 20, 28, citing *Gordon*, *supra*, 90 Cal.App.4th at p. 1412.) But this interpretation of the listed devices is too narrow and improperly restricts the characteristics and functions of the devices. Indeed, in response to *Gordon*, the Legislature specifically added "ceramic or porcelain spark plug chips or pieces" among the enumerated burglary tools. (*Kelly*, *supra*, 154 Cal.App.4th at p. 966.) Unlike devices that pry open doors, pick locks, or pull locks up and out, ceramic spark plug pieces are used to "shatter" car windows for the purpose of burglarizing the vehicle. (*Gordon*, at p. 1411.) As the Court in *Kelly* explained, "The legislative response to *Gordon* undermines its conclusion that section 466 was intended to encompass only items that can be used to unlock, pry, or pull something open." (*Kelly*, at pp. 966-967.) Even the appellate court in *Southard*, which appellant relies upon, recognized that the defendant there "was found in possession of numerous tools that *clearly fall within the scope of section 466*," including "multiple pairs of *pliers*" and "a large pair of *bolt cutters*." (*Southard*, *supra*, 152 Cal.App.4th at p. 1090, italics added.) This conclusion, reached without any difficulty, further undermines appellant's reliance on *Gordon* in arguing that section 466 was not intended to include pliers or any instrument or tool capable of cutting.

In any event, to the extent vise-grip or water-hose pliers may clamp and hold something in place to either pry something open, pick locks, or pull locks up and out (*Gordon*, *supra*, 90 Cal.App.4th at p. 1412), pliers function similarly. (See AOBM 12, fns. 7-9 [defining "pliers," "vise-grip pliers," and "water pump pliers"].) The fact that generic pliers may *additionally* be used to "cut" does not detract from its similarity in function to enumerated devices like vise grip or water pump pliers.

Relying on *Diaz*, *supra*, 207 Cal.App.4th at page 404, for a limited interpretation of section 466 that includes only those tools used to gain access *into* a building, appellant further argues: "There was no evidence [his] pliers could be used for the purpose of 'breaking, entering or otherwise gaining access' *into* a building . . . ." (AOBM 28, original italics.) He continues that an anti-theft device does not "prevent a person from gaining access *into* property." (AOBM 28, italics added.) However, a burglary tool is used "to break into *or gain access to*" a victim's property. (*Diaz*, at pp. 396, 404, italics added.) Such a tool "must be for the purpose of breaking, entering, *or otherwise gaining access to* the victim's property." (*Id.* at p. 404, italics added.) Because appellant used the pliers with the felonious intent to gain unlawful access *to* the jeans, property belonging to Sears, the reasoning of *Diaz* does not preclude his adjudication for possession of burglary tools.[6]

Appellant also relies on other statutes found in chapter three, title 13, of the Penal Code, which he contends "prohibit the possession, sale, manufacture or duplication of enumerated tools designed for 'gaining access' *into* property." (AOBM 18, italics added.) Appellant's interpretation is too narrow. Many, if not most, of these statutes contemplate more than just gaining access *into* property. For example, section 466.3 expressly prohibits certain devices "designed to open, break into, *tamper with, or damage* a coin-operated machine." (§ 466.3, subd. (a),

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[6] Appellant also contends that an anti-theft device is not a "lock" to prevent a person from gaining access to property—rather, the device "is designed to discourage theft by irreparably damaging the merchandise with ink." (AOBM 28.) But, by its own name and definition, an "anti-theft device" is one that seeks to prevent theft. There is no reason why an anti-theft device that may damage merchandise when forcefully removed may not also serve its intended purpose to prevent and deter theft, much like a lock.

italics added.) Section 466.5 prohibits possession of a vehicle master key "with the intent to use it in the *commission of an unlawful act*" or with the intent to use such a key to "operate the ignition switch of any motor vehicle . . . or . . . to open a *wheel lock* on any motor vehicle." (§ 466.5, subds. (a) & (b), italics added.) Section 466.6 prohibits manufacture of a key "capable of *operating the ignition* of a motor vehicle or *personal property* registered under the Vehicle Code." (§ 466.6, subd. (a), italics added.) Section 466.65 similarly prohibits devices "designed to bypass the factory-installed ignition of a motorcycle in order to start the engine." (§ 466.65, subd. (a).) Sections 466.7 and 466.9 also refer only to the intent "to use [the prohibited device] . . . in the commission of an unlawful act." (§§ 466.7, 466.9, subds. (a) & (b).) In other words, the statutes in chapter three, title 13, of the Penal Code expressly contemplate possessing certain devices with an intent *other than* to use the device for "gaining access into property." (AOBM 18.) Appellant's reliance on these statutes is misplaced.

Appellant's fear that the inclusion of "pliers" in the burglary tools statute will lead to unintended expansion of that statute to include "common objects such as rocks or pieces of metal" (AOBM 29), "any common item" (AOBM 18), and even "a stick" (AOBM 10), is similarly groundless. As appellant himself acknowledges (AOBM 17, citing Stats. 2002, ch. 335, § 1), the Legislature made it abundantly clear that it did not intend for such objects to fall within the statute. (*Kelly*, *supra*, 154 Cal.App.4th at p. 968, fn. 2 [noting that "the Legislature expressly clarified its intent not to include rocks or pieces of metal"].) And, as discussed above, "pliers" fall within the phrase "instrument or tool" as it is used in section 466. In stark contrast, common objects like rocks and sticks are neither instruments or tools as those terms are commonly understood. In addition to the Legislature's clear and express intent that common objects are not included under section 466, appellant's argument that the inclusion

of "pliers" in section 466 will permit prosecution based on the possession of common objects such as sticks and rocks is unfounded and should be rejected.

In sum, the common understanding of the term "pliers" fits within the unambiguous phrase "instrument or tool" in section 466. Appellant's argument should be rejected by this Court.

II. SUFFICIENT EVIDENCE DEMONSTRATES APPELLANT HARBORED THE NECESSARY INTENT UNDER SECTION 466

Appellant argues insufficient evidence supports a finding he possessed the requisite intent under section 466. (AOBM 30-36.) Specifically, he contends his intent to use the pliers to commit theft inside Sears was insufficient under the statute because: (1) he did not intend to or, in fact, use the pliers to "break, enter or otherwise gain access into Sears"; and (2) under Proposition 47, his offense constituted shoplifting, a misdemeanor, and thus insufficient evidence demonstrated "felonious intent." (AOBM 30-36.) Respondent disagrees. As a threshold matter, appellant's Proposition 47 claim is not properly before this Court because this Court's grant of review does not encompass that issue. In any event, the only intent required under section 466 is that a defendant possess the burglary tool with the intent to use the tool to commit any theft or felony inside a building; a "burglarious" intent.

A. Appellant Possessed the Requisite Intent under Section 466—the Intent to Use a Burglary Tool to Commit Any Theft or Felony Inside a Building—Because He Intended to Use the Pliers to Effectuate the Theft of the Jeans inside Sears

Appellant concedes that he possessed the pliers with the intent to commit theft inside the Sears store. (AOBM 35.) He further concedes that he "used [the] pliers to effectuate a petty theft" of the jeans. (AOBM 35.) Because the only intent required under section 466 is the intent to use the