

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re H. W. a Person Coming Under the
Juvenile Court Law

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiffs and Respondents

v.

H. W.

Defendant and Appellant

SUPREME COURT CASE NO: S237415



SUPREME COURT
FILED

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Deputy

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

APPELLANT'S REPLY BRIEF ON THE MERITS

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By Appointment of the Supreme Court of the
State of California
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APPELLANT'S REPLY BRIEF ON THE MERITS

INTRODUCTION

Penal Code¹ section 466 prohibits the possession of specific tools with the felonious intent to break or enter into a building or vehicle. In addition to the tools enumerated in the statute, section 466 criminalizes the possession of any "other instrument or tool" - with the requisite felonious intent. (§ 466.)

On October 13, 2014, appellant, H. W., (hereafter "H. W.") used a pair of pliers to remove an anti-theft device from a pair of blue jeans at a Sears Department store. In Count II of its April 14, 2015, juvenile wardship petition, the

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

Sacramento District Attorney charged H. W. with possession of burglar's tools, pursuant to section 466.

To sustain a true finding for possession of burglary tools, in violation of section 466, the prosecution must establish three elements: (1) possession by the minor 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. (see § 466; *People v. Southard* (2007) 152 Cal. App. 4th 1079, 1084 – 1085.) (*Southard*)

Pliers are not specifically enumerated in section 466. Pliers also do not fall within the scope of the statute's "other instrument or tool" provision because they are not similar to the tools enumerated in the statute. Furthermore, H. W. did not possess the pliers with the requisite "felonious intent" or "burglary purpose." Instead, he used the pliers to commit misdemeanor shoplifting as defined in section 459.5.

Nevertheless, on July 1, 2015, the Sacramento County Juvenile Court sustained Count II of the April 14, 2015, wardship petition. The Third Appellate District, in a published opinion (*In re H. W.* (2016) 2 Cal. App. 5th 937), subsequently affirmed the juvenile court's judgment. The Third Appellate District erred when it determined H. W. possessed a "burglary tool", within the meaning of section 466, with the requisite felonious intent.

Respondent disagrees and asserts: "pliers constitute an 'other instrument or tool' under Section 466" and "sufficient evidence demonstrates appellant harbored

the necessary intent under section 466.” (Respondent’s Answer Brief on the Merits, hereafter “ABM”, pp. 12, 22.) In support of its position, respondent makes a number of points. However, its position can be reduced to four essential arguments:

A. Section 466 is not ambiguous and its plain meaning should control. Because pliers are commonly understood to be a tool, they fall within the “other instrument or tool” provision of section 466. (ABM, pp. 14 – 17);

B. Even if the language of section 466 is ambiguous, pliers serve the same function and purpose as the tools enumerated in the statute. Thus, pliers are sufficiently similar to qualify as an “other instrument or tool” within the meaning of section 466. (ABM, pp. 18 – 21);

C. H. W. violated section 466 because he possessed pliers with the intent to commit a theft. Accordingly, it was unnecessary to prove he possessed the pliers with a “felonious intent” or “burglariious purpose.” (ABM, pp. 22 – 26); and

D. The passage of Proposition 47, and the ensuing enactment of section 459.5, are not properly before this Court. Moreover, section 459.5 has no bearing upon the issue of H. W.’s intent. (ABM, pp. 26 – 40).

Respectfully, as discussed more fully below, each of respondent’s arguments lacks merit. First, H. W.’s pliers did not qualify as a “burglary tool”, within the meaning of section 466, merely because they can be broadly defined as a “tool” or “instrument”. Second, the meaning of “other instrument or tool”,

within the context of section 466, is ambiguous and H. W.'s pliers were not "similar" to the tools enumerated in the statute. Third, H. W. did not violate section 466 because he possessed the pliers with the intent to commit misdemeanor shoplifting – not felony burglary. Finally, to properly determine whether H. W. possessed the requisite "felonious intent" or "burglarious purpose", this Court must consider the impact of the recently enacted section 459.5.

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 DID NOT QUALIFY AS A "BURGLARY TOOL", WITHIN THE MEANING OF SECTION 466, MERELY BECAUSE THEY CAN BE BROADLY DEFINED AS A "TOOL" OR "INSTRUMENT"

Respondent acknowledges "pliers do not fall within the specific devices listed in section 466." (ABM, p. 12.) Nevertheless, it contends pliers "constitute an 'other instrument or tool' as defined in the statute" because they are "similar to the

enumerated devices in both function and purpose.” (ABM, p. 12.) Respectfully, respondent is incorrect.

Section 466 prohibits the possession of “burglary instruments or tools” and 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 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....

(emphasis added)(§ 466.)

It is undisputed H. W. used pliers to remove an anti-theft device from a pair of jeans at a Sears department store, during store hours. (CT, p. 34; RT, pp. 27 – 35, 42 – 43, 50, 54.) However, ordinary pliers are not specifically identified in section 466. Instead, the statute specifically refers to “vise grip pliers” and “water pump pliers” (§ 466.) There is no evidence the tool recovered from H. W. was identified as either “vise grip pliers” or “water pump pliers.”

As discussed more fully in Appellant’s Opening Brief on the Merits, water pump pliers and vise grip pliers are not the same as ordinary pliers. (see Appellant’s Opening Brief on the Merits, hereafter “OBM” p. 12.) Vise grip and water pump pliers are specialized tools designed to perform different tasks than ordinary pliers. Pliers are “small pincers” used for holding small objects, bending and cutting wire and “handling things.” Unlike vise grip or water pump pliers, ordinary pliers do not have a locking mechanism and cannot be used to create

leverage. (OBM, pp. 12 – 13.) Accordingly, contrary to respondent’s claim, ordinary pliers are not “similar in both function and purpose” to vise grip and water pump pliers. (ABM, p. 12.)

Respondent’s position rests upon the premise the phrase “other instrument or tool” is not ambiguous and the plain meaning of section 466 should control. (ABM, p. 15.) Respondent then concludes, based upon this faulty premise, pliers automatically fall within the “other instrument of tool” provision in section 466 merely because they are commonly understood to be a tool. (ABM, pp. 15 – 17.)

However, in light of its disparate appellate interpretations, the meaning of the phrase “other instrument or tool” – within the context of section 466 - is ambiguous. (*People v. Leiva* (2013) 56 Cal. 4th 498, 510 [“split between the Courts of Appeal reflects uncertainty”]); see *People v. Gordon* (2001) 90 Cal. App. 4th 1409, 1412 (*Gordon*), superseded by statute as stated in *People v. Diaz* (2012) 207 Cal. App. 4th 396, 401, 403 – 404 (*Diaz*) [“other instrument or tool” provision 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”]; *People v. Kelly* (2007) 154 Cal. App. 4th 961, 967 – 968 (*Kelly*) [“other instrument or tool” includes any tool “the evidence shows are possessed with the intent to be used for burglary.”].)

Thus, as discussed more fully in Argument I-B, below, this Court must look beyond the plain language of the statute to determine the Legislature’s intent. (*People v. Leiva, supra*, 56 Cal. 4th at p. 510; *People v. Woodhead* (1987) 43 Cal. 3d 1002, 1008.) A careful review of the legislative history, statutory context and

appellate construction of section 466, reveals the Legislative intent to limit the scope of the items included within statute to tools or instruments used to break into or gain access to property. (see pp. 10 - 16, *infra*.)

Furthermore, respondent's reliance on the reasoning in *People v. Harris* (1950) 98 Cal. App. 2d 662, is misplaced. (ABM. pp. 15 – 16.) The defendant in *Harris, supra*, was a prisoner found in possession of a “metal wood chisel ... with a sharpened point.” (*Id.* at p. 663.) He was charged with, and subsequently convicted of, violating former Penal Code section 4502². (*Id.* at p. 663.) At that time, section 4502 prohibited “any prisoner committed to a state prison” from possessing, carrying, having in his custody, “... any dirk or dagger or sharp instrument ...” (*Id.* at p. 663.) On appeal, the defendant argued the term “sharp instrument” was ambiguous. (*Id.* at p. 666.)

The Court of Appeal flatly rejected the defendant's theory:

² Current section 4502 provides, in relevant part: “(a) Every person who, while at or confined in any penal institution, while being conveyed to or from any penal institution, or while under the custody of officials, officers, or employees of any penal institution, possesses or carries upon his or her person or has under his or her custody or control any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles, any explosive substance, or fixed ammunition, any dirk or dagger or sharp instrument, any pistol, revolver, or other firearm, or any tear gas or tear gas weapon, is guilty of a felony(b) Every person who, while at or confined in any penal institution, while being conveyed to or from any penal institution, or while under the custody of officials, officers, or employees of any penal institution, manufactures or attempts to manufacture any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles, any explosive substance, or fixed ammunition, any dirk or dagger or sharp instrument, any pistol, revolver, or other firearm, or any tear gas or tear gas weapon, is guilty of a felony....(§ 4502.)

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. [Citation] The present defendant obviously knew what the statute meant, and knew that he was violating it. His flight upon the request of the guard to produce the object in his pocket, amply demonstrates this...The chisel was clearly a 'sharp instrument' within the meaning of section 4502. ...This section of the Penal Code was passed 'to protect inmates and officers of state prisons from the peril of assaults with dangerous weapons perpetrated by armed prisoners.' [Citation] The statute should be reasonably construed to accomplish this beneficent purpose.

(*Id.* at pp. 666 – 667.)

The distinctions between the reasoning in *Harris* and the facts and circumstances of this case are readily apparent. Former and current section 4502 prohibit prisoners from possessing dangerous weapons. (§ 4502.) A "sharp instrument" is an inherently dangerous weapon and an obvious safety threat within a penal institution – particularly when possessed by a prisoner. Furthermore, any reasonable inmate would know possession of a sharpened metal chisel would violate section 4502.

Here, possession of pliers by an individual – without more – is neither dangerous nor illegal. Instead, section 466 criminalizes the possession of specifically enumerated tools and instruments only when the person harbors an intent to use them with a "felonious intent" or for a "burglary purpose." The countless workmen and private citizens who possess a pair of ordinary pliers would be surprised to learn they are - based upon the respondent's reasoning - in violation of section 466.

Contrary to respondent's claim, pliers do not automatically qualify as an

item prohibited by the “other instrument or tool” provision of section 466. Instead, pliers can only fall within the scope of section 466 if they are similar to those tools and instruments enumerated in the statute.

B.

THE MEANING OF “OTHER INSTRUMENT OR TOOL”, WITHIN THE CONTEXT OF SECTION 466, IS AMBIGUOUS AND H. W.’S PLIERS WERE NOT “SIMILAR” TO THE TOOLS ENUMERATED IN THE STATUTE

Respondent recognizes the latent ambiguity of the phrase “other instrument or tool” and argues, in the alternative:

...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.

(ABM, pp. 17 – 18.) Respondent’s construction of section 466 is incorrect.

As discussed more fully above in Argument I-A, the meaning of “other instrument or tool”, within the context of section 466 is ambiguous. (pp. 6 - 7, *supra*.) “When a term or phrase in a statute is unclear or contains a latent ambiguity” a reviewing court must look to:

...a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.’

(*People v. Leiva, supra*, 56 Cal. 4th at p. 510; *People v. Woodhead, supra*, 43 Cal. 3d at p. 1008.) Here, to properly discern the Legislature’s intent, this Court should

carefully consider section 466's Legislative history, statutory context, and the *ejusdem generis* canon of construction. (see pp. 14 – 15, *infra*.)

Legislative History of Section 466

The evolution of section 466 provides important insight into the Legislature's intent with respect to the statute's scope. (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.) Each time the Legislature amended section 466 since 1984, it added tools specifically designed for the purpose of "breaking or entering" to the list of prohibited items. (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.) Indeed, when the Legislature enacted A. B. 2015 in 2002, it unequivocally excluded "other common objects such as rocks or pieces of metal that can be used to break windows." (Stats. 2002 Ch. 335 § 2 (A.B. 2015).)

Respondent attempts to counter this argument by pointing to the Legislature's 2002 addition of an apparently dissimilar item - "ceramic or porcelain spark plug chips or pieces" - to section 466. (ABM, p. 19.) Respondent's argument does not succeed. As the *Diaz* Court noted, the 2002 amendment was a

clarification - not a repudiation - of the *Gordon* Court's limited interpretation of the statute³:

When the Legislature added 'ceramic or porcelain spark plug chips or pieces' in 2002 in response to *Gordon*, legislative analyses noted the bill was intended to resolve a conflict between *Gordon* and another opinion, subsequently superseded by the Supreme Court's grant of review, which held ceramic chips *could* constitute a burglary tool. One analysis noted *Gordon* 'found that an instrument is not a burglar tool just because it can accomplish the same purpose as the listed tools, but that the device must be similar to those specifically listed.... *This bill resolves the conflict ... by adding ceramic or porcelain spark plugs [or pieces] to the enumerated list of 'burglar's tools' within...[s]ection 466.'* [Citation]⁴

(emphasis in original) (*Diaz, supra*, 207 Cal. App. 4th at p. 403.) Indeed, the amendment was consistent with the *Gordon* Court's *ejusdem generis* construction of "other instrument or tool":

Another analysis noted the Supreme Court will likely 'consider the effect of the general reference to 'other instrument or tool' in the burglary tool statute, in light of the very specific items that are defined as burglary tools.' [Citation]⁵ Additionally, another analysis noted, 'AB 2015 will allow justice to be served *without opening section 466 to include an overly broad range of generic objects, such as rocks or pieces of tile, that could be used to break windows.*' [Citation]⁶ The legislation and associated analyses demonstrate the Legislature accepted *Gordon*'s application of *ejusdem generis* in interpreting section 466. The Legislature did not resolve the conflict concerning section 466 by amending the statute to eliminate

³ In *Gordon, supra*, determined a ceramic piece from a spark plug did not fall within the meaning of "other instrument or tool." (*Gordon, supra*, 90 Cal. App. 4th at p. 1412.) Instead, the Court determined the meaning of the phrase "was restricted to a form of device similar to those expressly set forth in the statute." (*Ibid.*)

⁴ (Assem. Com. On Pub. Safety Rep. on Assem. Bill No. 2015 (2001 – 2002 Reg. Sess.) April 2, 2002, pp. 2 – 3.)

⁵ (Sen. Com. On Pub. Safety Rep. on Assem. Bill No. 2015 (2001 – 2002 Reg. Sess.) June 11, 2002, p. F.)

⁶ (Sen. Rules Com. Off. Of Sen. Floor Analyses, 3d reading analyses of Assem. Bill No 2015 (2001 – 2002 Reg. Sess.) as amended June 25, 2002, p. C.)

Gordon's requirement of similarity of purpose and design. Rather, it added an item to the list without supplanting the usual *ejusdem generis* canon that applies when specific and general words are used together in a statute.

(emphasis in original) (*Diaz, supra*, 207 Cal. App. 4th at pp. 403 – 404.)

The Legislature’s decision - over the course of several decades - to selectively and carefully expand the list of prohibited items, to respond to changing circumstances, evinces its intent to limit the scope of section 466 to tools or instruments designed to break, enter or gain access into property. (*Id.* at pp. 403 – 404.) There is no indication the Legislature intended “other instrument or tool” as a catch-all provision to expand the list of prohibited tools to include any common item which could potentially be used to “effectuate a theft.” (see *In re H. W.*, *supra*, 2 Cal. App. 5th at p. 944.)

Statutory Context of Section 466

Current section 466 is found within Part 1, Title 13, Chapter 3 (“Burglariious and Larcenous Instruments and Deadly Weapons”) of the Penal Code. The other statutes set forth in Chapter 3 of Title 13 prohibit the possession, sale, manufacture or duplication of enumerated tools designed for “gaining access” into property (see *Diaz, supra*, 207 Cal. App. 4th at p. 404; § 466.1; § 466.3; § 466.5; § 466.6; § 466.65; § 466.7; § 466.8; § 466.9 and § 469.)

Contrary to respondent’s assertion, these statutes do not “contemplate more than just gaining access into property.” (ABM, pp. 20 – 21.) Each of the statutes within Title 13 of Chapter 3 prohibit the possession, manufacture or use of key or key replacement tools specifically designed to unlawfully gain access into

property – not any random tool or instrument which could potentially be employed for a “burglarious purpose” or to “effectuate” a “theft.”⁷ (see *In re H. W.*, *supra*, 2 Cal. App. 5th at p. 944.) Given its placement within the statutory context of Chapter 3 of Title 13, it is reasonable to conclude the Legislature intended to limit the scope of section 466 to tools designed to break or enter into property. (see *Renee J. v. Superior Court* (2001) 26 Cal. 4th 735, 743; *People v. Albillar* (2010) 51 Cal. 4th 47, 55; *People v. Gray* (2014) 58 Cal. 4th 901, 906.)

Appellate Court Interpretation of Section 466

As discussed more fully in Appellant’s Opening Brief on the Merits, two lines of cases interpreting the phrase “other instrument or tool”, within the context of section 466, have emerged. (OBM, pp. 8 – 10, 20 - 27.)

Here, the Third Appellate District adopted the “burglarious purpose” interpretation of “other instrument or tool” propounded by the First Appellate District in *Kelly*, *supra*, 154 Cal. App. 4th at pp. 967 - 968 [“other instrument or tool,’ includes tools that the evidence shows are possessed with the intent to be

⁷ § 466.1 “Sale or provision of lock pick, tension bar, lock pick gun, tubular lock pick, or floor-safe door puller”; § 466.3 “Possession of tool, device, etc., designed to open, break into, tamper with or damage coin-operated machine with intent to commit theft”; § 466.5 “Motor vehicle master key; motor vehicle wheel lock master key; unlawful possession”; § 466.6 “Keys capable of operating motor vehicle or personal property registered under Vehicle Code; making other than by duplication of existing key”; § 466.65 “Possession of device, ignition or tools designed to bypass factory-installed ignition, start motorcycle”; § 466.7 “Motor vehicle keys; possession; knowledge of making without consent”; § 466.8 “Keys capable of opening entrance to residence or commercial establishment”; § 466.9 “Code grabbing devices; possession or use”; § 469 “Unauthorized making, duplicating or possession of key to public building.”

used for burglary”.] (*In re H. W.*, *supra*, 2 Cal. App. 5th at pp. 944 – 955.) In doing so, the Third Appellate District rejected the “*ejusdem generis*” construction of “other instrument or tool” advanced by the Fourth Appellate District in *Gordon*, *supra*, 90 Cal. App. 4th at p. 1412, and *Diaz*, *supra*, 207 Cal. App. 4th at pp. 401 – 402, 404. [“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.”] (*In re H. W.*, *supra*, 2 Cal. App. 5th at pp. 944 – 945.)

As discussed more fully below, the Fourth Appellate District’s “*ejusdem generis*” construction of the phrase “other instrument or tool” is more consistent with section 466’s Legislative intent.

In *Gordon*, *supra*, Division One of the Fourth Appellate District held a ceramic piece from a spark plug did not fall within the meaning of “other instrument or tool.” (*Gordon*, *supra*, 90 Cal. App. 4th at p. 1412.) The Court determined the meaning of the phrase “other instrument or tool” in section 466 “was restricted to a form of device similar to those expressly set forth in the statute.” (*Ibid.*)

In making its determination, the Court was guided by the *ejusdem generis* rule of statutory construction - which applies when general terms follow a list of specific items or categories, or vice versa. (*Ibid.*; *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal. 4th 116, 141, superseded by statute on other grounds as stated in *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 977.) Under this rule, application of the general term is “restricted to those things that are similar to

those which are enumerated specifically.” (*Gordon, supra*, 90 Cal. App. 4th at p. 1412; *Harris v. Capital Growth Investors XIV* (1991) 52 Cal. 3d 1142, 1160, fn. 7, superseded by statute on other grounds as stated in *Munson v. Del Taco* (2009) 46 Cal. 4th 661, 689 - 690.) The *ejusdem generis* canon:

...presumes that if the Legislature intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be surplusage.

(*Kraus v. Trinity Mgmt. Services, Inc., supra*, 23 Cal. 4th at p. 141.)

In *Diaz, supra*, Division Three of the Fourth Appellate District reversed the defendant’s conviction because the latex gloves and large bag found in her possession did not qualify as burglar’s tools, under section 466. (*Diaz, supra*, 207 Cal. App. 4th at p. 400, 405.) The Court of Appeal decision relied, in part, upon the *Gordon* Court’s “*ejusdem generis*” analysis:

A bag containing latex gloves is not similar to the items enumerated in section 466. As exemplified in *Gordon*, the *ejusdem generis* canon of construction presumes that if the Legislature intends a word or words to be used in an unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would constitute surplusage.

(*Id.* at p. 401.)

The *Diaz* Court narrowed the scope of burglary tools countenanced by section 466 and concluded:

...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...

(italics in original) (*Id.* at p. 404.)

Through application of these extrinsic aids, it is apparent section 466's "other instrument or tool" provision includes only items *similar* to the tools designed for breaking or entering specifically enumerated in the statute. (see *Gordon, supra*, 90 Cal. App. 4th at pp. 1412 – 1413; *Southard, supra*, 152 Cal. App. 4th at p. 1090; *Diaz, supra*, 207 Cal. App. 4th at pp. 403 – 404.)

H. W.'s Pliers did not Qualify as an "Other Instrument or Tool"

Contrary to respondent's assertion, H. W.'s pliers were not "similar" to the tools listed in section 466. (ABM, pp. 18 – 19.) Notwithstanding any theoretical utility posited by the respondent, there was no evidence H. W.'s pliers could be used for the purpose of "breaking, entering or otherwise gaining access" *into* a building, vehicle or other type of property. (ABM, p. 18; *Diaz, supra*, 207 Cal. App. 4th at p. 404; *Gordon., supra*, 90 Cal. App. 4th 1412 – 1413.)

Instead, the record established pliers were "commonly" used to remove anti-theft security devices from items of clothing. (RT, pp. 32 – 33, 52.) The anti-theft device is not a "lock" to prevent a person from gaining access into property. Instead, the device is designed to discourage theft by irreparably damaging the merchandise with ink - if it is "released by force." (RT, p. 43.) Accordingly, pursuant to the *ejusdem generis* canon of construction, H. W.'s pliers are not similar to the items enumerated in section 466 – and do not fall within the scope of the statute's "other instrument or tool" provision. (*Diaz, supra*, 207 Cal. App. 4th at p. 404; *Gordon., supra*, 90 Cal. App. 4th 1412 – 1413.)

If the Third Appellate District/*Kelly* construction of section 466 prevails, the statute's language, specifically itemizing prohibited tools, would be rendered mere surplusage. (see *People v. Smith* (2000) 81 Cal. App. 4th 630, 641 [a statute should generally not be interpreted in a manner which renders portions thereof mere surplusage]; *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.) Indeed, there would be no need to list any of the various tools and instruments. Section 466 could simply be re-written to prohibit the possession of any tools or instruments "that the evidence shows are possessed with the intent to be used for burglary." (*In re H. W.*, *supra*, 2 Cal. App. 5th at p. 945.)

By accepting the *Kelly* Court's overly 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 "burglary 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. (see Stats. 2002 Ch. 335 §1 (A.B. 2015); Sen. Rules Com. Off. Of Sen. Floor Analyses, 3d reading analyses of Assem. Bill No 2015 (2001 - 2002 Reg. Sess.) as amended June 25, 2002, p. C.)

Finally, it is important to consider the "evils to be remedied" by section 466 and the public policy goals it seeks to achieve. (*People v. Leiva*, *supra*, 56 Cal. 4th at p. 510.) Respondent claims the Third Appellate District's construction of

section 466 will not lead to the prohibition of “common objects like rocks or sticks” because they are not “instruments or tools as those terms are commonly understood.” (ABM, pp. 21 – 22.)

Respondent is incorrect. Under its theory of construction, any tool or instrument which could conceivably be used to effectuate a theft would automatically fall within the definition of “other instrument or tool.” The broad net respondent wants to cast could potentially criminalize the possession of items as diverse as hammers, saws, axes, drills or wrenches. Indeed, the list of items contemplated by section 466 could be expanded to include “tools” used to break into computer networks to commit cybercrimes (i.e. piracy software, flash drives). The Legislature did not intend such an unwarranted expansion of the statute.

Instead, the statute was enacted and subsequently amended to identify specific tools which a burglar employs to break or enter into a building or vehicle. Thus, the “other instrument or tool” provision can only be construed to include tools and instruments “similar” to those items enumerated in the statute. This Court should reject the Third Appellate District’s expansive construction of “other instrument or tool” and limit the statute’s scope to items *similar* to the “breaking or entering” tools already enumerated in section 466. (*Diaz, supra*, 207 Cal. App. 4th at p. 404.)

There is simply no evidence in the record to suggest pliers are similar to the burglary tools identified in the statute. H. W.’s pliers were not a burglary tool within the meaning of section 466. Indeed, as discussed more fully below in

Argument I-C, the evidence established the pliers were - if anything - a shoplifting tool.

C.

H. W. DID NOT VIOLATE SECTION 466 BECAUSE HE POSSESSED THE PLIERS WITH THE INTENT TO COMMIT MISDEMEANOR SHOPLIFTING – NOT FELONY BURGLARY

Respondent argues H. W. “possessed the requisite intent under section 466” because the “only intent required under section 466 is the intent to use the burglary tool to commit any theft or felony...” (ABM, pp. 22 - 23.) In effect, respondent claims it is unnecessary to establish a defendant’s felonious intent or burglarious purpose to support a true finding under section 466. Instead, respondent asserts, a defendant need only possess a tool or instrument, within the purview of section 466, with the intent to commit any theft – including misdemeanor larceny.

To Violate Section 466 a Person Must Harbor the Requisite Felonious Intent

Respondent asks this Court to ignore the plain meaning of section 466 and re-write the statute to expand its scope to include tools used to effectuate any theft. This interpretation fails because it directly contradicts the statute’s plain language and eliminates proof of the defendant’s felonious intent as a necessary element to establish a violation of section 466.

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, supra*, 43 Cal. 3d at p. 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, supra*, 26 Cal. 4th at p. 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 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)

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, supra*, 51 Cal. 4th at p. 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, supra*, 58 Cal. 4th at p. 906.)

To support a conviction under section 466, the defendant must possess a burglary tool with the “intent *feloniously* to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle...” (emphasis added) (§ 466; *Southard, supra*, 152 Cal. App. 4th at p. 1084.) There is nothing ambiguous

about the words “intent feloniously.” The statute does not state a person violates section 466 when he possesses a tool, within the scope of the statute, with the intent to commit larceny. Instead, the statute explicitly requires an intent “feloniously” to “break or enter.” Thus, to violate section 466, a person must harbor a felonious intent or burglarious purpose. (*Id.* at p. 1090.)

By way of example, the decisions in *Southard* and *Kelly* hinged upon the existence of sufficient evidence to establish the defendants’ felonious intent or burglarious purpose. (*Southard, supra*, 152 Cal. App. 4th at p. 1084; *Kelly, supra*, 154 Cal. App. 4th at p. 968.)

In *Southard*, the Court of Appeal affirmed the defendant’s conviction for violating section 466 based upon his possession of myriad enumerated and non-enumerated tools because the arresting officer opined:

....the items were for possible use in a *burglary*. While acknowledging on cross-examination that the individual items also had legitimate purposes, [The arresting officer] explained on redirect that although none of the individual items was illegal to possess, the sum of items made them suspicious because, collectively, *the tools would be useful for breaking into a building*.

(emphasis added) (*Southard, supra*, 152 Cal. App. 4th at p. 1084.) The Court noted additional evidence in the record, to confirm the defendant’s felonious intent to use the tools for a “burglarious purpose”, based upon his flight from law enforcement, transportation of the suspect items in his vehicle and “request for the return of his ‘burglary tools’” (*Id.* at pp. 1090 - 1092.)

Meanwhile, in *Kelly, supra*, 154 Cal. App. 4th at p. 968 the Court of Appeal found sufficient evidence of the defendant's felonious intent and burglarious purpose, based upon his apprehension in close proximity to the crime scene, evasive action upon seeing police, possession of an unrelated woman's driver's license and resemblance to the description of the person seen *breaking into* the victim's van. (*Ibid.*)

Thus, both the *Southard* and *Kelly* Courts recognized the prosecution must prove something more than the defendant's intent to commit larceny to support a conviction under section 466. (*Southard, supra*, 152 Cal. App. 4th at p. 1084, 1090 – 1092; *Kelly, supra*, 154 Cal. App. 4th at p. 968.)

Respondent argues the intent required to sustain a violation under section 466 is no different than the intent required to support a conviction for burglary. (ABM, pp. 23 – 24.) In doing so, respondent conflates larceny with burglary and ignores the plain language of section 466. Pursuant to the statute's explicit terms, it is not enough for the prosecution to establish the defendant possessed a tool which could help him effectuate a theft. Rather, section 466 plainly states the tool must be possessed with the felonious intent to commit a burglary. If the Legislature intended to expand the scope of section 466 to encompass a defendant's possession of a tool with the intent to commit misdemeanor larceny or shoplifting – it would have done so.

Respondent's attempt to re-write section 466 and extend its reach to shoplifting tools directly contradicts the statute's plain meaning and seeks to add

language to section 466 which simply does not exist. (*Vasquez v. California, supra*, 45 Cal. 4th at p. 253 [It is inappropriate to read into a statute language it does not contain or elements that do not appear on its face.]) Contrary to respondent's contention, substantial evidence to establish the defendant's "felonious intent" to use the tools for a "burglarious purpose" is an essential element of section 466.

H. W. did not Harbor a Felonious Intent or Burglarious Purpose

The constitutionally mandated test to determine a claim of insufficiency of the evidence in a criminal case is whether, on the entire record, a rational trier of fact could find a defendant guilty beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal. 3d 557, 576 - 578; *Jackson v. Virginia* (1979) 443 U. S. 307, 318 - 319.)

In making this determination, the appellate court must view the evidence in the light most favorable to the prosecution and presume, in support of the judgment of conviction, the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Johnson, supra*, 26 Cal. 3d at p. 578.) The appellate court must resolve the issue of sufficiency of the evidence in light of the whole record and determine whether the evidence of each of the essential elements of the offense, of which the defendant stands convicted, is substantial and of solid value. (*Ibid.*; *People v. Barnes* (1986) 42 Cal. 3d 284, 303; *People v. Hernandez* (1988) 47 Cal. 3d 315, 345 - 346; *People v. Ochoa* (1994) 6 Cal. 4th 1199, 1206.)

Here, the record did not disclose substantial evidence to establish H. W.'s felonious intent or burglarious purpose. There was no evidence his pliers could be used to break, enter or otherwise gain access into any building or vehicle. (see *Diaz, supra*, 207 Cal. App. 4th at p. 404.) Instead, the testimony of Nealy and Jackson established pliers were “commonly” used to remove anti-theft tags from items of clothing. (RT, pp. 32- 33, 52.) Thus, H. W. possessed the pliers to effectuate misdemeanor petit larceny – not felony burglary.

Unlike the defendants in *Kelly* and *Southard*, H. W. did not carry any other tools or devices which could be used, in conjunction with the pliers, to commit a burglary. (*Southard, supra*, 152 Cal. App. 4th at pp. 1084, 1090 [myriad tools identified in section 466]; *Kelly, supra*, 154 cal. App. 4th at p. 964, 968 [slingshot, box cutters and flashlight].) The possibility pliers, like the box cutter in *Kelly* or the latex gloves in *Diaz*, could be used to facilitate a theft - after breaking, entering or gaining access into property - does not elevate them to the status of a burglary tool. (§ 466; *Diaz, supra*, 207 Cal. App. 4th at p. 404.)

Furthermore, unlike *Southard* and *Kelly*, there was no related evidence, based upon H. W.'s conduct or statements, to support an inference he possessed the pliers with a “burglarious purpose.” (*Southard, supra*, 152 Cal. App. 4th at pp. 1082 – 1084, 1088; *Kelly, supra*, 154 cal. App. 4th at p. 968.)

Finally, unlike *Gordon* and *Kelly*, there was no evidence linking H. W. to an actual or attempted burglary. (*Gordon, supra*, 90 Cal. App. 4th at p. 1411; *Kelly, supra*, 154 Cal. App. 4th at p. 963.) Instead, H. W.'s conduct fell squarely with the

parameters of misdemeanor shoplifting – not felony burglary. (see §§ 459, 459.5, subd. (a)(b).)

There was insufficient evidence H. W. possessed the requisite “felonious intent” to sustain a true finding under section 466.

D.

TO PROPERLY DETERMINE WHETHER H. W. POSSESSED THE REQUISITE “FELONIOUS INTENT” OR “BURGLARIOUS PURPOSE”, THIS COURT MUST CONSIDER THE IMPACT OF THE RECENTLY ENACTED SECTION 459.5

Respondent argues the enactment of “the shoplifting statute in section 459.5 under Proposition 47” is “not properly before this Court.” (ABM, p. 26.) Respondent further argues the Legislature’s addition of a statute specifically prohibiting misdemeanor shoplifting “does not negate or invalidate appellant’s adjudication for possession of burglary tools.” (ABM, p. 26.) Both of respondent’s arguments miss the mark.

This Court May Properly Consider the Impact of Section 459.5

Respondent mistakenly claims this Court may not consider section 459.5’s impact on this case, with respect to the “felonious intent” element of section 466 because:

...the Court of Appeal did not address the Proposition 47 issue, appellant did not file a petition for rehearing, and appellant failed to include this issue in his petition for review in this Court.

(ABM, pp. 26 – 30.) Respondent’s mistake stems from its misunderstanding of this Court’s definition of the specific issue presented in this case. In its Answer Brief on the Merits, respondent incorrectly identified the issue as follows:

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?

(ABM, p. 10.)

However, after ordering review, this Court exercised its power under California Rules of Court, rule 8.516 (a)(1), to “specify the issues to be briefed or argued” more broadly:

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 Cal. Rules of Court, rules 8.516 (a)(1); 8.520(b)(2)(A).)

Moreover, contrary to respondent’s contention, the scope of this Court’s review is not limited by the parameters of the Third Appellate District’s opinion or H. W.’s Petition for Review. (ABM, pp. 26 – 30.) Indeed, pursuant to California Rules of Court, rule 8.516 (b)(1) and (2), this Court may:

(1)...decide any issues that are raised or fairly included in the petition or answer. (2) The court may decide an issue that is neither raised nor fairly included in the petition or answer if the case presents the issue and the court has given the parties reasonable notice and opportunity to brief and argue it.

(Cal. Rules of Court, rule 8.516 (b)(1)(2); *People v. Perez* (2005) 35 Cal. 4th 1219, 1228 [while the precise issue was not raised in petition for review the Court “may consider all issues fairly embraced in the petition.”])

This Court did not limit the issues to whether H. W.'s pliers qualified as a burglary tool under section 466. Rather, based upon the scope of its order granting review, this Court elected to consider the overall merits of the Third Appellate District's opinion. This Court cannot properly resolve the "issue presented" without considering whether there was substantial evidence to establish H. W. felonious intent or burglarious purpose. Thus, the issue of H. W.'s intent – and the impact of section 459.5 – is squarely before this Court.

Curiously, respondent claims H. W. did not properly raise the impact of section 459.5 in its opening brief. (ABM, p. 28.) This is simply not the case. In his opening brief, H. W. argued he "*...did not Possess the Pliers with the Intent to Commit Burglary.*" (Appellant's Opening Brief, hereafter "AOB, p. 31.) H. W. specifically asserted he "possessed the pliers with the intent to commit misdemeanor theft - not burglary." (AOB, p. 33.) On pages 33 and 34 of his opening brief, H. W. specifically addressed the impact of recently enacted section 459.5 – with respect to his lack of felonious intent - and stated:

....it would appear Hadrian's conduct at the Yuba City Sears on October 13, 2014, fell squarely within the parameters of Penal Code section 459.5. Pursuant to statute's plain language, the prosecution could not have properly charged Hadrian with burglary. Hadrian lacked the requisite felonious intent to support the court's jurisdictional finding under Penal Code section 466.

(AOB, pp. 34 – 35.) Even respondent acknowledges H. W. "re-raise[d] the Proposition 47 issue" in his Opening Brief on the Merits. (ABM, p. 29.)

Furthermore, contrary to respondent's assertion, H. W. did not argue in the Court of Appeal and is not arguing here, the "prosecution erred in charging him with possession of burglary tools when it could only have charged him with shoplifting after the passage of Proposition 47." (ABM, p. 29.) Instead, H. W. continues to assert the enactment of section 459.5 defined his conduct as misdemeanor shoplifting and - thereby - negated any finding he possessed the requisite felonious intent to support an adjudication under section 466.

Section 459.5 Negated a Felonious Intent/Burglarious Purpose Finding

On November 4, 2014 - five months prior to the juvenile wardship petition in this case - the voters enacted Proposition 47 - which went into effect the next day. (*People v. Rivera* (2015) 233 Cal. App. 4th 1085, 1089; *People v. Martin* (2016) 6 Cal. App. 5th 666, 672 [review granted (Feb. 15, 2017)].) The Act reclassified certain theft-and drug-related crimes from felonies to misdemeanors unless they were committed by ineligible defendants. (*People v. Rivera, supra*, 233 Cal. App. 4th at p. 1091; *People v. Martin, supra*, 6 Cal. App. 5th at p. 672.)

Among its reclassifying provisions, Proposition 47 added a new crime: "shoplifting." (§ 459.5). Shoplifting is a misdemeanor offense "that punishes conduct that previously would have qualified as a burglary." (*People v. Martin, supra*, 6 Cal. App. 5th at p. 672.) Section 459.5, subdivision (a) defines "shoplifting" and provides:

(a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the

property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary...

(§ 459.5, subd. (a).) Moreover, under section 459.5, subdivision (b):

(b) *Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting.* No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

(emphasis added) (§ 459.5, subd. (b).) Therefore:

...in the typical case, if the conduct leading to a defendant's burglary conviction would qualify as 'shoplifting' under Proposition 47, he or she would have been charged with a misdemeanor had section 459.5 been in place at the time, instead of being charged with burglary. Indeed, one guilty of shoplifting could not have been charged with burglary at all.

(*People v Martin, supra*, 6 Cal. App. 5th at p. 673.)

It is undisputed H. W. entered the Sears store on October 13, 2014, during store hours, with the intent to commit larceny. (CT, p. 34; RT, pp. 27 – 33, 42.) He used pliers to effectuate a petty theft. (CT, p. 34; RT, pp. 27 – 33, 42.) Accordingly, his actions can only be classified as misdemeanor "shoplifting." (§ 459.5, subd. (b); *People v. Martin, supra*, 6 Cal. App. 5th at pp. 673, 679.) Thus, H. W. could not have possessed the pliers with either a "felonious intent" or a "burglarious purpose." He should benefit from "lessened punishment" resulting from the enactment of section 459.5. (*People v. Vieira* (2005) 35 Cal. 4th 264, 305 – 306; *In re Estrada* (1965) 63 Cal. 2d 740, 748.)

Respondent disagrees and mischaracterizes H. W.'s position:

Adopting appellant's argument that Proposition 47 requires proof of the defendant's intent to not only commit a theft or a felony, but that the property stolen must be valued over \$950.00 would drastically narrow the

category of offenses under section 466 and greatly limit the prosecution's ability to prosecute such an offense.

(ABM, p. 36.)

To clarify, H. W. does not accept respondent's claim the elements of section 466 are satisfied by proof the defendant intended to commit any theft. (see ABM, p. 37.) On the contrary, as the statute itself plainly states, to violate section 466, the defendant must possess the appropriate tool or instrument with the requisite felonious intent.

Furthermore, there is no evidence section 466 was enacted to deter shoplifting or other acts of misdemeanor larceny. (see ABM, pp. 37 – 38.) Instead, as the *Kelly* Court specifically noted, the statute was designed to prohibit the possession of tools designed for gaining access into property and - thereby – “deter and prevent burglaries.” (*Kelly, supra*, 154 Cal. App. 4th at p. 967.) The possibility section 466 cannot be used by law enforcement to interdict shoplifters is, thus, not inconsistent with the statute's legislative intent.

To the extent any gap in the law exists with respect to deterring misdemeanor larceny, the Legislature is free to enact a criminal statute which specifically prohibits the possession of tools designed to effectuate theft. However, until such time, this Court should not employ section 466 as a catch-all statute to criminalize the possession of any tool or instrument which, like H. W.'s pliers, can only be used to facilitate misdemeanor shoplifting.

Finally, respondent attempts to bootstrap the intent of a separate criminal charge, within section 466, to assert a person may violate section 466 without harboring a felonious intent. (ABM, p. 38.) Specifically, respondent points to the following portion of section 466:

Every person... 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...

(emphasis added) (§ 466.) Respondent concludes:

...it is only reasonable to read section 466 as prohibiting the possession of a burglary tool with the intent to commit a felony or *any theft*, regardless of the value of the property stolen.

(emphasis added)(ABM, p. 38.)

In making this argument, respondent ignores the fact section 466 specifically identifies three categories of culpable individuals: (1) every person who possesses a burglar's tool "with intent feloniously to break or enter..."; (2) every person who makes or alters any key or instrument enumerated in the statute; and (3) every person who makes, alters or repairs "any instrument or thing" knowing it is intended to be used in the commission of any crime. (§ 466.) The statute contemplates three distinct and separate criminal offenses with different elements. However, the only portion of the statute, connected in any way to the

conduct at issue in this case, requires the person to possess a burglary tool with a felonious intent.

Respondent's attempt to circumvent the plain meaning of section 466 and re-write the statute to negate the "intent feloniously" element cannot stand. (ABM. pp. 39 – 40.) H. W. was a shoplifter – not a burglar. He did not possess the pliers with either a "felonious intent" or "burglarious purpose." (*Southard, supra*, 152 Cal. App. 4th at pp. 1082 – 1084, 1088; *Kelly, supra*, 154 Cal. App. 4th at p. 968.) Accordingly, H. W. lacked the requisite intent to sustain a true finding under section 466.

CONCLUSION

H. W.'s pliers were not a burglary tool within the meaning of section 466. Accordingly, the Third Appellate District erred when it affirmed the juvenile court's order sustaining Count II of the April 14, 2015, juvenile wardship petition.

WHEREFORE, H. W. respectfully requests this Court reverse the Third Appellate District's published decision affirming the juvenile court's order sustaining Count II of the April 14, 2015, juvenile wardship petition.

Dated: April 24, 2017

Respectfully submitted,

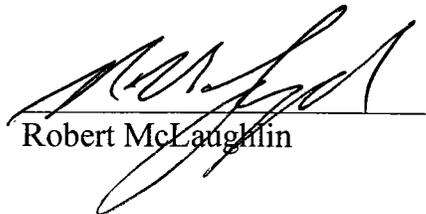

Robert McLaughlin, Esq.
Attorney for Appellant

WORD COUNT CERTIFICATION

I, Robert McLaughlin, certify that, based on the word count of the computer program used to prepare this document, there are 8,131 words in Appellant's Reply Brief on the Merits in the case *In re H. W.*, case number S237415, excluding the tables.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at East Longmeadow, Massachusetts.

Dated: April 24, 2017



Robert McLaughlin

Case Name: People v. H. W.

No: S237415

DECLARATION OF SERVICE

I, the undersigned say: I am over 18 years of age, employed in the County of Orange, California, and am not a party to the subject cause. My business address is 31441 Santa Margarita Parkway, Suite A-135, Rancho Santa Margarita, California 92688. I served Appellant's Reply Brief on the Merits, of which a true and correct copy is affixed, by placing a copy thereof in a separate envelope for the addressee named hereafter by regular U. S. mail addressed and mailed as follows:

Central California Appellate Program
2150 River Plaza Drive, Suite 300
Sacramento, CA 95833

H. W. [appellant]
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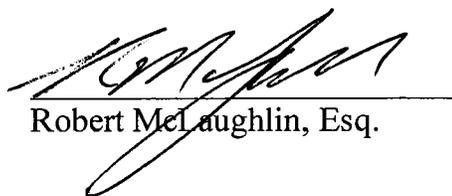
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The envelope was then sealed and, with the postage thereon fully prepaid, deposited in the United States mail by me at East Longmeadow, Massachusetts, on April 24, 2017

I additionally declare that I electronically served a copy of this document with the Third Appellate District on April 24, 2017, before 5:00 p.m. PST via True Filing, in compliance with the Court's Terms of Use, as shown on its website.

I further declare that I electronically submitted a copy of this document with the California Supreme Court on April 24, 2017, before 5:00 p.m. PST via True Filing, in compliance with this Court's Terms of Use, as shown on its website.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed by me on April 24, 2017, at East Longmeadow, Massachusetts.



Robert McLaughlin, Esq.