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SUPREME COURT COPY



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December 26, 2018

**SUPREME COURT
FILED**

DEC 26 2018

Jorge Navarrete Clerk

Honorable Jorge E. Navarrete, Clerk
Supreme Court of California
350 McAllister Street, First Floor
San Francisco, California 94102-4797

Deputy

RE: *In re H. W.*
Court of Appeal of the State of California, Third Appellate District, Case No. C079926 /
S237415

Dear Mr. Navarrete:

Pursuant to the Notice to Counsel sent by the Court on December 13, 2018, respondent submits the following additional authorities:

- *People v. Lopez* (2018) 26 Cal.App.5th 382 (rev. granted Nov. 20, 2018 [S250829].)

In granting review in *Lopez*, this Court ordered additional briefing on various issues, including whether the defendant had forfeited his argument, that he could not have been charged with both shoplifting (Pen. Code, § 459.5) and theft (Pen. Code, § 666, subd. (a)), by failing to object in the trial court. That particular forfeiture issue is potentially relevant here, in *In re H. W.*, given appellant's claim that the shoplifting statute "explicitly precluded a burglary charge." (AOB¹ 36.)

- *People v. Shaw* (2017) 18 Cal.App.5th 87

Decided after briefing was complete in *In re H. W.*, the First District Court of Appeal in *Shaw* held that a foil-lined bag used to steal jeans from a department store does not constitute a burglary tool under Penal Code section 466 because the bag was not intended to be used to gain access into property. This conclusion implicates the same issue presented to this Court in *In re H. W.*

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¹ Appellant's Opening Brief on the Merits.

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Thus, respondent respectfully requests this Court take notice of the two additional authorities included above.

Sincerely,



F. MATT CHEN
Deputy Attorney General

For XAVIER BECERRA
Attorney General

FMC: fc
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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **In re H. W.**

No.:

C079926 / S237415

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On December 26, 2018, I electronically served the attached **Notice of Additional Authorities** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on December 26, 2018, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Robert McLaughlin
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31441 Santa Margarita Pkwy, Ste. A-135
Rancho Santa Margarita, CA 92688

Sacramento County District Attorney's
Office
Juvenile Division
Sacramento County District Attorney's
Office - Juvenile Division
9805 Goethe Road
Sacramento, CA 95827

The Honorable Stacy Boulware Eurie
Presiding Judge of the Juvenile Court
Sacramento County Superior Court
9605 Kiefer Boulevard
Department 90
Sacramento, CA 95827-3887

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 26, 2018, at Sacramento, California.

R. DeMello
Declarant


Signature