In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

EMMANUEL CASTILLOLOPEZ,

Defendant and Appellant.

Case No. S218861

Fourth Appellate District, Division One, Case No. D063394
San Diego County Superior Court, Case No. SCD242311
The Honorable Albert T. Harutunian, III, Judge

OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED

Is possession of a concealed, open pocketknife with the blade in a fully extended position sufficient to sustain a conviction for carrying a concealed dirk or dagger?

INTRODUCTION

During a high-risk vehicle stop, Emmanuel Castillolopez refused to comply with a police officer's repeated commands to stop moving and put his hands in the air. He stared at the officer, who had his gun drawn and pointed at Castillolopez, and reached around under the dashboard area of the car until he surrendered a minute and a half later. Upon arrest, Castillolopez had an open pocketknife with a fully extended two- to three-inch blade hidden in his front jacket pocket. Castillolopez was properly convicted of concealing a dirk or dagger. As the plain language and legislative history of Penal Code section 16470 make clear, a pocketknife can be a dirk or dagger when it is carried as one—that is, with the blade secured in the open position. This interpretation is consistent with the Legislature's intent to protect the public from weapons that can be immediately used as stabbing implements without further manipulation

STATEMENT OF THE CASE AND FACTS

Around 10:00 p.m. on July 29, 2012, Emmanuel Castillolopez was riding in a car in San Diego's City Heights neighborhood. Police Officer Bryce Charpentier attempted a traffic stop on the car but the driver continued driving. When the driver finally stopped, the car was facing bumper-to-bumper with the patrol car.[1] (2 RT 96-98.)

[1] The trial court precluded testimony regarding the circumstances of the pursuit as overly prejudicial to Castillolopez. (1 RT 28-59.)

Under the circumstances, Officer Charpentier conducted a "high-risk vehicle stop." (2 RT 98.) He pointed his gun at the car and commanded the occupants to raise their hands and not make any sudden movements. (2 RT 99-100.) The driver immediately complied. But Castillolopez stared directly at Officer Charpentier and reached around in the vehicle. Despite Officer Charpentier shouting at him "at the top of his lungs" with his gun drawn, Castillolopez maintained eye contact and continued to move his hands around below the dashboard of the vehicle. (2 RT 100-101.) Officer Charpentier "actually believed there was probably going to be a shooting just by [Castillolopez's] furtive movements." (2 RT 101.)

After about one and a half minutes, Castillolopez showed his hands and slowly raised them. (2 RT 101.) Officer Charpentier ordered Castillolopez out of the car and placed him in handcuffs. (2 RT 103-104.) He found a "collapsible knife [with] the blade [] in a locked, open position" in Castillolopez's front jacket pocket. (2 RT 104.) The blade was the only aspect of the knife in the open position and it did not move on its own when it was removed from Castillolopez's jacket pocket. (2 RT 104, 107.) After Officer Charpentier had the situation under control, he closed the knife by using force to fold the blade into the body of the knife. (2 RT 113.)

The San Diego County District Attorney charged Castillolopez with carrying a concealed dirk or dagger, a felony, in violation of Penal Code section 21310.[2] (CT 4-5.)

At trial, the prosecution and defense each called a knife expert to testify about the characteristics of Castillolopez's knife. Cameron Gary, a supervising investigator with the San Diego District Attorney's Office, testified for the People. (2 RT 134.) Investigator Gary had twelve years of experience at the District Attorney's Office, which was preceded by twelve

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[2] All statutory references are to the Penal Code.

years as a deputy sheriff. (2 RT 134.) He has taught Edged Weapons Training to new deputy district attorneys for four years and has testified as a weapons expert approximately a dozen times. (2 RT 136-137.)

Investigator Gary described Castillolopez's knife as a pocketknife[3] or "multi-tool" with a blade that is sharp enough to cut through flesh. (2 RT 137-138.) The open blade is held into place by a friction/spring type of lock. (2 RT 138.) Investigator Gary explained that the spring causes resistance that once "you get past a certain point, the resistance releases, and then it locks into place. [] That's what holds [the blade] in place." (2 RT 138-139; see also 2 RT 147-148.) Once opened, the blade clicks into place in the "exposed and locked position." (2 RT 139.) He opined that every folding knife has some sort of locking mechanism "because, otherwise, the blade wouldn't be able to stay in place." (2 RT 155-157.) Castillolopez's knife is different than what is commonly referred to as a locking blade knife, which requires manipulation of the locking mechanism to close. (2 RT 147-148.) When asked to define the word "lock," Investigator Gary said "[t]o make something impenetrable or immovable." (2 RT 151.)

Investigator Gary acknowledged that a pocketknife may not be a "weapon of choice" as a defensive tactic because it could close if it hit something hard, but that it is nonetheless capable of inflicting great bodily

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[3] Witnesses described Castillolopez's knife by various terms such as collapsible knife (2 RT 104), Swiss Army Knife (2 RT 149, 172), folding knife (2 RT 149, 154, 188), multi-tool (2 RT 140-141, 180), and pocketknife (passim). For consistency, and because the precise type of knife is not generally in dispute, the People will refer to the knife by the common term pocketknife. A copy of a picture of the pocketknife that was introduced as Exhibit 2 (2 RT 105; CT 79) is attached for the court's convenience as Appendix A. The People have asked the Superior Court to transmit the exhibit to this court under California Rules of Court, rule 8.224(a)(1).

injury or death. (2 RT 138.) Castillolopez's knife, which has a two- to three-inch blade (2 RT 138), had "more than enough length to puncture and potentially kill somebody." (2 RT 140.)

The defense called Raymond Flores as their expert. Mr. Flores is a sales manager at Ace Uniforms, a uniform shop that caters to law enforcement and fire personnel, and had never testified as an expert. (2 RT 170.) His training includes 14 years of selling knives and watching knife companies' product demonstrations. (2 RT 170-171.) His store does not sell pocketknives like Castillolopez's, and he had not seen a product demonstration on such knives. But he claimed to be familiar with pocketknives because he has "seen [them] on TV" and received one as an eight-year anniversary gift from his employer. (2 RT 171-173.)

Like Investigator Gary, Mr. Flores distinguished Castillolopez's pocketknife from what is known as a *locking* folding knife, which requires releasing a locking mechanism to close. (2 RT 176-178.) Mr. Flores agreed that the blade of a pocketknife "pops" into place when opened, but opined that this does not constitute a locking mechanism. (2 RT 177.) On the witness stand, Mr. Flores opened Castillolopez's knife and noted that it clicked, which he said is "locking into position, yes, sir, when it opens." (2 RT 185.) He clarified that phrase as meaning in "the final spot of opening" rather than "locked" like a locking knife. (2 RT 186-187.)

Like Investigator Gary, Mr. Flores said that if someone tried to stab Castillolopez's knife into something hard there is a risk that the knife could collapse on the user's fingers. (2 RT 180.) Mr. Flores acknowledged that the pocketknife, in the open position, could be used as a stabbing weapon that could cause death. (2 RT 183-184.) The prosecutor asked Mr. Flores, "So if you were going to stab someone, what position would you put the blade in?" He answered, "Open position." (2 RT 184.)

During deliberations, the jury requested clarification on the definition of dirk or dagger, specifically the phrase "locked into position." (CT 77.) The trial court responded with a written statement: "Whether or not a knife blade is 'locked into position' is a question of fact for the jury to decide, and the court cannot give further guidance on that question." (CT 78.)

The jury found Castillolopez guilty of carrying a concealed dirk or dagger. (4 RT 269; CT 146.) Castillolopez admitted a prior serious felony strike (§§ 667, subds. (b)-(i), 1170.12) and a prison prior (§ 667.5, subd. (b)). The trial court sentenced him to a total term of three years eight months. (CT 147.)

On appeal, Castillolopez first raised a vagueness challenge to Penal Code section 16470. Section 16470 defines a dirk or dagger, in pertinent part, as "a knife or other instrument [] that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by section 21510 [switchblade], or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position."

Castillolopez claimed the statute was unconstitutionally vague because "the notion that a 'nonlocking' knife can be 'locked into position' is inherently contradictory." The Court of Appeal rejected that argument. Relying on dictionary definitions of the verb "lock," the Court of Appeal held that the "the phrase 'locked into position,' when given its plain and commonsense meaning, is sufficiently definite to provide fair notice to people of ordinary intelligence that in order for a concealed folding knife or pocketknife to be a dirk or dagger [], the blade must not only be exposed, but also firmly fixed in place or securely attached so as to be immovable." (Slip opn. at p. 15.) The court further rejected Castillolopez's contention that the term "nonlocking folding knife" was vague. The court held that it

"plainly means a knife with a folding blade that, as designed and manufactured, does not lock into position so as to be firmly fixed and immovable when it is in an open position." (*Id.*, at p. 16.) In the court's view, for a nonlocking knife to be considered a dirk or dagger, it must "be altered in some manner to firmly affix or fasten the blade in the open position and thereby render the blade immovable." (*Ibid.*)

Castillolopez argued in the alternative that there was insufficient evidence to support his conviction because his knife "can never be locked into position." (Slip opn. at p. 21.) The Court of Appeal agreed. Applying its earlier definitions, the court held that it "is beyond dispute that an opened folding-knife blade capable of collapsing upon striking an object is capable of moving, and thus is not immovable." (Slip opn. at p. 24.) The court found unavailing the expert testimony describing the blade as being "locked into position" and capable of inflicting serious injury or death because neither expert considered the blade fixed or immovable. (*Id.*, at pp. 26-27.)

ARGUMENT

I. A POCKETKNIFE IS CAPABLE OF READY USE AS A STABBING WEAPON, AND THUS PUNISHABLE AS A DIRK OR DAGGER, WHEN IT IS CONCEALED WITH THE BLADE SECURED IN THE OPEN POSITION

The present case is precisely the type of dangerous situation the Legislature intended to prevent by defining a dirk or dagger as any instrument capable of ready use as a stabbing weapon that could inflict great bodily injury or death. And, recognizing that a closed pocketknife would not be readily useable as a weapon, the Legislature clarified that folding knives and pocketknives are only capable of ready use if the "blade is exposed and locked into position."

But the Court of Appeal lost sight of the legislative intent when it focused on the word "locked" in isolation without consideration for the scope, purpose, and history of the legislation. In so doing, the Court of Appeal failed to adhere to several well-established canons of statutory construction. First, the broad scope and context of the plain statutory language demonstrates that the Legislature intended to prohibit any instrument that was readily capable of inflicting serious harm. Second, examining the statutory language in context demonstrates that "locked into position" simply means that the pocketknife is secured into a ready-to-stab position. Third, the Court of Appeal's interpretation of the phrase "locked into position" as meaning that the knife must be altered into an immovable position adds an alteration requirement that could have been, but is not, in the statute and results in absurd consequences. Fourth, interpreting the statute as applying to pocketknives that are carried in the open and ready-to-stab position is consistent with the appellate decisions that have interpreted the statutory definition of dirk or dagger.

And, even if the issue cannot be resolved by interpretation of the plain statutory language alone, the legislative history provides a roadmap leading to a conclusion that a pocketknife concealed with the blade secured into the open position is punishable as a dirk or dagger. The history reflects that the Legislature intended to and has significantly expanded the early judicial decisions that expressly excluded pocketknives from the definition of dirk or dagger.

The Legislature did not seek to prohibit only the most efficient stabbing weapons. Instead, in its effort to protect the public from the dangers of concealed stabbing implements, it specifically chose to proscribe otherwise harmless folding and pocket knives when those knives are carried in a manner that allows immediate access for stabbing.

Finally, the Court of Appeal improperly found insufficient evidence to support the jury's finding. Viewing the evidence in the light most favorable to the judgment, and applying a proper interpretation of the statutory language, demonstrates that the Court of Appeal decision should be reversed. Castillolopez's concealment of a pocketknife that was undisputedly readily capable of stabbing Officer Charpentier during a dangerous situation provides sufficient evidence to support the conviction for possession of a concealed dirk or dagger.

A. Applicable Canons of Statutory Construction

The well-established starting point for interpretation of a statute is the language of the statute itself, and its statutory context. (*Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1216 [when interpreting a statute, courts "begin with the language of the statute, affording the words their ordinary and usual meaning and viewing them in their statutory context."].) In interpreting a statute, the court's "fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose." (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) Courts "give the words of a statute their ordinary and usual meaning and construe them in the context of the statute as a whole." (*American Liberty Bail Bonds, Inc. v. Garamendi* (2006) 141 Cal.App.4th 1044, 1052; *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715.) Courts must avoid an interpretation that is contrary to the apparent legislative intent or that would lead to absurd results. (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1131; *People v. Jenkins* (1995) 10 Cal.4th 234, 246.)

"If there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.' [Citation.] 'Where the statute is clear, courts will not "interpret away clear language in favor of an ambiguity that does

not exist." [Citation.]'" (*Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268; *People v. Benson* (1998) 18 Cal.4th 24, 30)

On the other hand, if the statute is ambiguous, courts "'may consider a variety of extrinsic aids, including legislative history, the statute's purpose, and public policy.' [Citation]" (*People v. Mays* (2007) 148 Cal.App.4th 13, 29-30; *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.)

B. The Development of the Dirk or Dagger Statute

In 1917, the Legislature enacted an uncodified statute that prohibited the mere possession of a dirk or dagger. The statute provided, "Every person who possesses any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, metal knuckles, bomb or bombshells, or who carries a dirk or a dagger, is guilty of a misdemeanor . . . ." (Stats. 1917, ch. 145, p. 221, § 2.)

In 1923, the Legislature added to the statute the elements of carrying upon the person and concealment, and made the offense a felony: "[E]very person who . . . carries concealed upon his person any dirk or dagger, shall be guilty of a felony . . . ." (Stats. 1923, ch. 339, p. 696, § 1.)

In 1953, the statute was codified in the Penal Code as section 12020. (Stats. 1953, ch. 36, p. 653, § 12020.) Section 12020 provided, "Any person in this State who . . . carries concealed upon his person any dirk or dagger, is guilty of a felony . . . ."

The statute was amended numerous times between 1953 and 1993, but none of the amendments during this period included a definition of "dirk or dagger."

In 1967, the California Supreme Court adopted the following definition of "dirk or dagger" from *People v. Ruiz* (1928) 88 Cal.App. 502, 504:

> A dagger has been defined as any straight knife to be worn on the person which is capable of inflicting death except what is commonly known as a "pocket knife." Dirk and dagger are used synonymously and consist of any straight stabbing weapon, as a dirk, stiletto, etc. [] They may consist of any weapon fitted primarily for stabbing. The word dagger is a generic term covering the dirk, stiletto, poniard, etc. []

(*People v. Forrest* (1967) 67 Cal.2d 478, 480 (citations omitted); see also *People v. Bain* (1971) 5 Cal.3d 839, 851.)

In 1993, the Legislature first adopted a definition of dirk or dagger. Section 12020, subdivision (c)(24), provided, "As used in this section, a 'dirk' or 'dagger' means a knife or other instrument with or without a handguard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death." (Stats. 1993, ch. 357, § 1.)

In 1995, the Legislature amended the statute to state: "As used in this section, 'dirk' or 'dagger' means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death." (Stats. 1995, ch. 128, § 2.)

In 1997, the Legislature amended the statute to add the following clarification to the 1995 statute: "A nonlocking folding knife, a folding knife that is not prohibited by section 21510 [switchblade], or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position." (Stats. 1997, ch. 158, § 1.)

In 2010, section 12020, subdivision (c)(24), was renumbered as current section 16470 without substantive change as part of a reorganization of parts of the Penal Code. (Stats. 2010, ch. 711, § 6; *Nonsubstantive Reorganization of Deadly Weapon Statutes* (2009) 38 Cal. L. Revision Comm'n Reports 217.)

C. Under the Plain Statutory Language, a Pocketknife Concealed with the Blade Secured in the Open Position is a Dirk or Dagger

Castillolopez's knife, which he concealed in his jacket pocket with a two-to-three-inch blade secured in the fully open and extended position, was undisputedly readily capable of inflicting great bodily injury or death. The plain language of the statute reflects the Legislature's intent to criminalize the carrying of such knives because – in the open position – pocketknives become readily capable of being used as a stabbing weapon. Yet the Court of Appeal defined the plain statutory language so narrowly that only pocketknives with the blade altered into a fixed and immovable position will be punishable as a dirk or dagger even when they are undisputedly capable of ready use as a stabbing weapon. This court should reject the Court of Appeal's interpretation because it is inconsistent with several well-established canons of statutory construction.

1. The broad scope of the statute reflects the Legislature's intent to prohibit instruments concealed in a ready-to-stab position

The Court of Appeal failed to consider the commonsense meaning of the words within the context of the statute as a whole. Courts should consider the entire substance of the statute in context, "'keeping in mind the nature and obvious purpose of the statute . . . .' [Citation.]" (*People v. Mendoza* (2000) 23 Cal.4th 896, 907-908 (*Mendoza*).)

Penal Code sections 21310 and 16470 provide the controlling language at issue in this case. Section 21310 makes it a crime to carry a concealed dirk or dagger. It provides, in pertinent part, "any person in this state who carries *concealed* upon the person any dirk or dagger is punishable by imprisonment in a county jail not exceeding one year or imprisonment . . . ." There is no debate about whether Castillolopez's knife was concealed, so no further analysis of section 21310 is necessary. The

language at issue here is the definition of dirk or dagger, which is set forth in section 16470:

> As used in this part, "dirk" or "dagger" means a knife or other instrument with or without a handguard that is *capable of ready use* as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by section 21510 [switchblade], or a *pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.*

(§ 16470, emphasis added.)

A plain and commonsense reading of the statutory scheme demonstrates that the Legislature intended to prohibit the concealment of all instruments that are readily capable of use as a stabbing weapon. But the Legislature also recognized a distinction between a weapon that is inherently a dirk or dagger, and an instrument that is only a dirk or dagger if it is carried as one. This is evidenced by the differences between the two sentences of the statute.

The first sentence generally applies to all instruments that can be readily used as a stabbing weapon to cause great bodily injury or death. The broad terms "knives or other instruments" reflect the Legislature's intent to not limit the types of instruments that are punishable under the statutory scheme.[4] The second sentence does not limit the type of

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[4] Compare, for example, the detailed and limited definition of a switchblade in section 17235. It provides: "As used in this part, 'switchblade knife' means a knife having the appearance of a pocketknife and includes a spring-blade knife, snap-blade knife, gravity knife, or any other similar type knife, the blade or blades of which are two or more inches in length and which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by the weight of the blade or by any type of mechanism whatsoever. 'Switchblade knife' does not include a knife that opens with one hand utilizing thumb pressure applied solely to the blade of the knife or

(continued...)

instruments punishable as a dirk or dagger, but instead clarifies the position certain instruments must be in to be "capable of ready use" as a stabbing instrument. As this court has long recognized, some instruments may be designed for innocent or harmless purposes but may nonetheless become criminal under certain circumstances. "The Legislature thus decrees as criminal the possession of ordinarily harmless objects when the circumstances of possession demonstrate an immediate atmosphere of danger." (*People v. Grubb* (1965) 63 Cal.2d 614, 621, superseded by statute as stated in *People v. Rubalcava* (2000) 23 Cal.4th 322, 329-330 (*Rubalcava*); see also *People v. Villagren* (1980) 106 Cal.App.3d 720, 726 ["depending on their characteristics and capabilities for stabbing and cutting, some objects present a question of fact for a jury as to whether they are a 'dirk or dagger,' whereas others are considered a 'dirk or dagger' as a matter of law"].) Consistent with this principle, the Legislature recognized that common items such as pocketknives or folding knives are not dangerous unless and until they are concealed in a dangerous manner. As the experts in this case agreed, an open pocketknife is readily capable of inflicting great bodily injury or death. (2 RT 139, 183-184.) Thus, carrying a concealed and open pocketknife should be punishable as a dirk or dagger.

Yet, the Court of Appeal's interpretation of the statute excludes all pocketknives from the definition except those that are altered to make the blade immovable, even if they are concealed in a ready-to-stab position. (Slip opn. at pp. 22-24.) The Court of Appeal lost sight of the forest

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(...continued)
a thumb stud attached to the blade, provided that the knife has a detent or other mechanism that provides resistance that must be overcome in opening the blade, or that biases the blade back toward its closed position." (§ 17235.)

through the trees by focusing on a technical meaning of the word "locked" without consideration of the broad scope of the statute as a whole.

2. The meaning of the phrase "locked into position" must be determined based on the scope of the statute and the practical function of a pocketknife

The Court of Appeal relied on dictionary definitions of the word "locked" to conclude that a nonlocking folding knife, or pocketknife, could only be a dirk or dagger if the blade was altered into a fixed and immovable state. (Slip opn. at p. 15.) As set forth above, this interpretation conflicts with the purpose and context of the statute. It also fails to consider the commonsense meaning of the terms in the context of a pocketknife's practical function. In assessing the language of a statute, courts must give each word a plain and commonsense meaning. (*Mendoza, supra*, 23 Cal.4th at pp. 907-908.)

Folding knives or pocketknives, by their commonly known design, have movable blades that close by folding into the handle and open by extending into a straight position. The phrase "locked into position" must, therefore, be interpreted based on the common function of a folding knife. As the experts testified, a nonlocking folding knife or pocketknife is in the position to stab when the blade is "clicked" into its fully open position. (2 RT 139, 184-185.) In fact, expert testimony established that Castillolopez's open knife was "locked into position" with a friction/tension type of mechanism keeping the blade in place. (2 RT 147-148, 154-155.) The Court of Appeal found this testimony essentially irrelevant because it did not fit the literal definition of the word "locked," which it defined as being fixed or immovable. (Slip opn. at pp. 23-24) But "applying a mechanical, literal, or dictionary interpretation of the term 'lock' may be unwarranted and lead to illogical conclusions" that were unintended by the Legislature. (See *People v. Allen* (2001) 86 Cal.App.4th 909, 915.)

Moreover, the Legislature used the phrase "exposed and locked into position" rather than just the word "locked." Considering the entire phrase "locked into position" rather than isolating the single word "locked" helps clarify the meaning of the statute, particularly when considered within the context of the "ready use" requirement and the function of a pocketknife.

The Court of Appeal relied on dictionaries to define "locked" as fixed, immobile, immovable, incapable of being moved. (Slip opn. at pp. 14-15.) However, the word "locked" must be defined based on the item at issue. A folding knife mechanism is more similar to a joint than a keyed door, for example. Webster's 3d New International Dictionary describes locked in the context of a joint as "held rigidly in the position assumed during complete extension" as in "struck a blow with a [locked] wrist." (Webster's New Internat. Dict. (3d ed. 2002) p. 1328.) Similarly, the Oxford English Dictionary defines lock as "to fasten, make or set fast, fix; [] to fasten or engage (one part of a machine to another); . . . (of a joint) to be rendered rigid." (Oxford English Dict. Online (2014) <http://www.oed.com/view/Entry/109597> (as of October 28, 2014).) Under these definitions, it is reasonable to interpret the Legislature's use of the word "locked" as simply meaning secured in a rigid or fastened location.

Moreover, the Legislature's meaning becomes more clear when considering the word "locked" with the word "position." Position has been defined as "a proper or natural location in relation to other items." (Webster's New Internat. Dict., supra, at p. 1769.) The example given is "put the lever in operating [position]." (*Ibid.*) The Oxford English Dictionary defines position, in pertinent part, as "in (also into) its, his, or her proper, appropriate, or correct place." (Oxford English Dict. Online (2014) <http://www.oed.com/view/Entry/148314> (as of October 28, 2014).) Thus, position can simply be read as the proper place to operate.

Looking at these definitions of the words "locked" and "position" provides support for an interpretation that honors the legislative intent to broadly prohibit any instrument that can be readily used for stabbing. A reasonable interpretation of the phrase "locked into position" is that the blade must be secured in the position that enables it to be used as a stabbing weapon that can inflict great bodily injury or death.

The Court of Appeal justified its interpretation by noting testimony opining that the blade of a folding knife could move either with pressure from the user or if it hit something hard.[5] (Slip opn. at p. 24.) But this is beside the point because a potential risk to the user does not extinguish the undisputed fact that the knife can readily inflict serious injury or death. (2 RT 139, 183-184.) Nowhere in the plain language of the section 16470 does the Legislature suggest that a dirk or dagger must be a risk-free weapon or the best stabbing weapon. Instead, it simply says that a dirk or dagger is any knife that can be readily used as a stabbing weapon to inflict great bodily injury or death. The undisputed testimony and commonsense establish that a pocketknife with a blade secured in the open position is such a knife.

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[5] The Court of Appeal relied heavily on this court's decision in *People v. Forrest*, *supra,* 67 Cal.2d at p. 481 for its conclusion that a pocketknife is not a dirk or dagger because its design would limit the effectiveness of its use as a stabbing instrument. But the court's reliance on *Forrest* is misplaced for two reasons. First, the knife at issue in *Forrest* was a *closed* pocketknife. Second, the Legislature had not yet defined dirk or dagger when *Forrest* was decided and judicial definitions at the time generally excluded pocketknives. (*Ibid.*) As explained further in section D, *infra*, the *Forrest* definition has been superseded by the Legislature's inclusion of pocketknives in the current definition of a dirk or dagger.

3. The Court of Appeal's interpretation transmutes the meaning of the words in the statute

Courts "presume the Legislature intended everything in a statutory scheme, and [] do not read statutes to omit expressed language or to include omitted language" [Citation.]" (*Tyron W. v. Superior Court* (2007) 151 Cal.App.4th 839, 850.) The Court of Appeal failed to adhere to this canon of statutory construction when it added an alteration requirement and rendered the "nonlocking" descriptor superfluous.

The Court of Appeal interpreted the statutory language in the context of Castillolopez's vagueness argument, which was based on the "inherent inconsistences" created by the Legislature's use of the terms "nonlocking folding knife" and "locked into position." (Slip opn. at pp. 16-17.) After defining "locked into position" as "plainly mean[ing] a knife with a folding blade that, as designed and manufactured, does not lock into position so as to be firmly fixed and immovable when it is in an open position," the court applied this definition in the converse to the term "nonlocking folding knife." The court stated that a nonlocking folding knife "plainly means a knife with a folding blade that, as designed and manufactured, does not lock into position so as to be firmly fixed and immovable when it is in an open position." (*Id.*, at p. 16.) This interpretation runs contrary to several accepted cannons of statutory construction.

A court "should give meaning to every word of a statute and should avoid constructions that would render any word or provision surplusage. [Citations.]" (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1038.) Section 16470 specifically contemplates that even a "nonlocking folding knife" can constitute a dirk or dagger. In attempting to give meaning to this term, while at the same time give meaning to the requirement that the knife be "locked into position," the Court of Appeal concluded that the former applied to knives manufactured

without a locking mechanism, whereas the latter applied to after-market modifications that added a locking mechanism. But this is not what the statute says. At no point does section 16470 mention or distinguish between pre- and post-market modifications. If the Legislature had sought to make this distinction, presumably it would have simply and unambiguously stated it.

The Court of Appeal erroneously inserted an alteration requirement where the Legislature did not intend it. The Legislature is not unfamiliar with the word "altered" as it has used it in numerous statutes (see §§ 115.3, 132, 475, 476, 22910, 31620), *including an earlier version of section 16470*. In the 1994 version of the statute, the Legislature defined a dirk or dagger as "a knife . . . primarily designed, constructed, or *altered* to be a stabbing instrument designed to inflict great bodily injury or death." (§ 12020, subd. (c)(24), as enacted by Stats. 1993, ch. 357, § 1, italics added.) The Legislature's removal of the word "altered" in the current statute shows its intent to exclude it as a requirement.

But even aside from the Court of Appeal's addition of requirements not contemplated by the Legislature, its interpretation would result in absurd results. Under the Court of Appeal's interpretation, a "nonlocking folding knife" would satisfy the statute if it had become a locking folding knife. But then it would no longer be a "nonlocking" folding knife. Instead, it would be a locking folding knife. There is no reason to believe the Legislature intended to create such a riddle.

The Court of Appeal failed to interpret the statutory language in a manner that gives meaning to each word within the context of the statutory scheme, thereby changing the scope of the statute.

4. Courts have interpreted the phrase "locked into position" as meaning open

Consistent with the context and practical meaning of the statutory language as set forth above, courts have interpreted the "locked into position" phrase as simply meaning open, or not closed. In other words, a folding knife that is concealed in the open position is a dirk or dagger because it can be immediately used as a stabbing weapon, whereas a folded or closed knife cannot. In *People v. Plumlee* (2008) 166 Cal.App.4th 935, the issue before the court was whether a switchblade with its blade retracted was a dirk or dagger. (*Id.* at p. 939.) In finding that it was, the court noted the language from former section 12020, subdivision (c)(24), which provided that a nonlocking folding knife that is *not* a switchblade, is a dirk or dagger only if it is "exposed and locked into position." The court found this "fairly straightforward" language means that a switchblade is a dirk or dagger regardless of its position but that a folding knife "can be a dirk or dagger only if the knife is *open*." (*Id.*, at p. 940, emphasis added.)

The court in *In re George W.* (1998) 68 Cal.App.4th 1208 considered whether there was evidence the defendant's folding knife was capable of ready use. (*Id.* at pp. 1214-1215.) The court explained that although the knife was capable of locking into position, there was no evidence showing "the blade of the folding knife in appellant's pocket was exposed and locked into position—as opposed to being closed and retracted into its handle." (*Id.* at p. 1215.) The court noted that "closed pocketknives are not 'capable of ready use' without a number of intervening machinations that give the intended victim time to anticipate and/or prevent an attack." (*Id.* at p. 1213.)

The court in *People v. Sisneros* (1997) 57 Cal.App.4th 1454, 1457, held that a device requiring assembly before it can be used is not a dirk or dagger. The device at issue was a cylinder that, when unscrewed, revealed

a blade, which then had to be screwed back into the cylinder. (*Id.* at p. 1455.) The cylinder knife had to be "unscrewed a full five revolutions to expose the blade, then screwed five revolutions to attach the blade to the handle[.]" (*Id.*, at p. 1457.) It was therefore not capable of ready use as a stabbing weapon: "[t]he most deft of individuals will require several seconds to convert the gizmo from a benign cylinder into an instrument of death. [During assembly], the device is useless as a stabbing weapon." (*Id.* at p. 1457.)

The court in *In re Luke W.* (2001) 88 Cal.App.4th 650, 653 (*Luke W.*), considered whether a rectangular-shaped multi-tool instrument that functioned like a Swiss Army Knife was a dirk or dagger when retracted at the time of arrest. The court held that it was not capable of ready use as a stabbing instrument because it required manipulation by both hands to extract the knife. (*Id.* at p. 657.)

By avoiding a technical interpretation of one word of the statute in isolation, the courts have reasonably found that the Legislature did not intend to include instruments that are safely carried in a closed position in the definition of a dirk or dagger. Instead, the Legislature set its sights on public safety and recognized that when those same instruments are carried in an open and ready-to-stab position, the public is at risk and the conduct becomes criminal. This court should therefore reject the Court of Appeal's unreasonably narrow interpretation of the plain statutory language.

D. The Legislative History Provides Further Support that a Pocketknife Concealed with the Blade Secured in the open Position is a Dirk or Dagger

As set forth above, the plain statutory language demonstrates that a pocketknife concealed with the blade secured in the open position is a dirk or dagger. But even if resolution of this issue cannot rest on the words of section 16470 alone, the Court may look to the history and background of

the statute to ascertain legislative intent. (*Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 129, superseded by statute on other grounds as stated in *Arias v. Superior Court* (2009) 46 Cal.4th 969, 977.) Although carrying a dirk or dagger has been a crime in California since 1917, the Legislature did not adopt a definition until 1993. Before this time, courts had interpreted the term dirk or dagger narrowly and presumed it was limited to only those instruments that were designed for stabbing. The Legislature's first definition followed the judicial interpretations. But the Legislature soon realized that its initial definition was too narrow because it allowed criminals to avoid prosecution by fashioning weapons that did not meet the narrow statutory definition. Over the next few years, the Legislature significantly expanded the definition to include all knives and instruments that are carried in a ready-to-stab manner. The evolution of the dirk and dagger definition provides a clear roadmap demonstrating the Legislature's intent to criminalize the carrying of concealed and open pocketknives.

Before the Legislature first provided a definition for dirk or dagger in 1994, the meaning of those terms had "bedeviled courts for decades." (*People v. Sisneros, supra,* 57 Cal.App.4th at p. 1456.) This court attempted to resolve the confusion in *People v. Forrest, supra,* 67 Cal.2d 478. In *Forrest*, this court considered whether a closed pocketknife was a dirk or dagger. (*Forrest*, at pp. 479-480.) The court noted that lower courts had "only applied the section to instruments where the blades and handle are solid, or where the blade locks into place." (*Id.* at p. 480.) The court noted "dirks and daggers were originally used in dueling and required blades locked into place to be effective. They are weapons designed primarily for stabbing." (*Ibid.*) Thus, the court held that a folded pocketknife, as a matter of law, is not a dirk or dagger under the statute at issue. (*Id.* at p. 481.) Importantly, though, this court also explained that the

Legislature could have, but had not, included folding knives within the meaning of dirk or dagger. (*Ibid.*) "No matter how lethal the instrument may be we cannot hold its concealed possession is a crime unless the Legislature has so provided." (*Ibid.*)

In *People v. Bain* (1971) 5 Cal.3d 839 (*Bain*), this court again considered whether a folding knife was a dirk or dagger. The knife in question "opens like a pocketknife and locks in place." (*Bain* at p. 844.) The prosecution contended that the defendant carried the knife open in his pocket, but the defendant claimed the knife was closed. (*Ibid.*) Distinguishing *Forrest*, this court held that "it is a question of fact for the jury to determine whether the instant knife is a 'dirk or dagger.'" (*Id.*, at p. 851.)

The original 1993 definition of dirk or dagger essentially codified the *Forrest* and *Bain* definitions of a dirk or dagger, which focused on the purpose of the instrument. The statute provided that a dirk or dagger was a "knife or other instrument . . . that is *primarily designed, constructed, or altered* to be a stabbing instrument designed to inflict great bodily injury or death." (Stats. 1993, ch. 357, § 1, emphasis added; *George W.*, *supra,* 68 Cal.App.4th at p. 1212.)

But just two years later, the Legislature addressed concerns that criminals were "essentially immune from arrest and prosecution" because they carried knives not primarily designed for stabbing but that could be used in surprise attacks to cause significant injury or death. (See *Rubalcava, supra*, 23 Cal.4th 322 at p. 330, citing Sen. Rules Com., 3d reading analysis of Assem. Bill No. 1222 (1995-1996 Reg. Sess.) as amended May 31, 1995, p. 4; see also Assem. Com. on Public Safety, Analysis of Assem. Bill No. 1222 (1995-1996 Reg. Sess.) as introduced Feb. 23, 1995, p. 2).) Accordingly, the Legislature broadened the definition of dirk or dagger by replacing the phrase, "that is *primarily designed,*

constructed, or altered to be a stabbing instrument," with the phrase, "that is *capable of ready use* as a stabbing weapon." (Compare Stats. 1993, ch. 357, § 1, p. 2155, with Stats. 1995, ch. 128, § 2, italics added; *Rubalcava*, at p. 330.) This was a "much broader and looser definition which included not only inherently dangerous stabbing weapons but also instruments intended for harmless uses but capable of inflicting serious injury or death." (*George W., supra,* 68 Cal.App.4th at p. 1212.)

The 1995 amendment marked a significant expansion of the primary-purpose definition. In *People v. Mowatt* (1997) 56 Cal.App.4th 713 (*Mowatt*), the Court of Appeal examined the applicability of the two versions of the statute to the defendant's possession of a hunting knife. The court noted that the 1993 statute "clearly designates dirks and daggers as 'classic instruments of violence and their homemade equivalents.'" (*Mowatt*, at p. 718.) Under the 1993 statute, which applied to defendant based on the date of his crime, the court held that defendant's hunting knife was not a dirk or dagger because "the statutory definition simply does not include instruments primarily designed for lawful uses but subject to criminal misuse." (*Id.,* at p. 720.) The court noted, however, that the "1995 Legislature reconsidered the 'dirk or dagger' question and substituted a much looser definition, encompassing both inherently dangerous stabbing weapons and instruments intended for harmless uses but also capable of inflicting serious harm." (*Id.*, at p. 719.) The court concluded that the defendant's hunting knife would qualify as a dirk or dagger under the new statutory definition. (*Id.*, at pp. 719-720.) As the court's analysis in *Mowatt* makes clear, the 1995 amendment marked significantly broadened the initial *Forrest*-based definition.

But the broad scope of the 1995 definition raised concerns for hunting knife manufacturers and sportsmen who thought it could criminalize carrying common items like folding knives and pocketknives. (*George W.,*

supra, 68 Cal.App.4th at p. 1213; *Luke W., supra,* 88 Cal.App.4th at p. 653.) In response to this concern, the author of the 1995 legislation, Assembly Member Diane Martinez, published a letter in the Assembly Journal explaining that "'folding knives are not 'dirks or daggers,' unless they are carried in an open and locked position. This is due to the fact that, *when folded,* they are not 'capable of ready use' without a number of intervening machinations that give the intended victim time to anticipate and/or prevent an attack.'" (*George W.*, at p. 1213.)

In 1997, the Legislature again amended the dirk or dagger definition to codify the implied intent of the 1995 amendment. (*George W., supra,* 68 Cal.App.4th at p. 1214.) The 1997 amendment, which is the same as the current definition, added that a "*nonlocking folding knife*, . . . or *pocketknife* is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is *exposed and locked into position.*" (Stats. 1997, ch. 158, § 1, emphasis added.) The purpose of the amendment was to "expressly exclude" folding knives and pocketknives that are "carried in a closed, secure state." (*George W.*, at p. 1213; see also *Luke W., supra,* 88 Cal.App.4th at p. 653.)

Notably, the legislative materials reveal that the 1997 amendment was broader than the knife manufacturers wanted. The Legislature considered a memo on behalf of Buck Knives and the Sports Cutlery Coalition to expressly exclude all folding knives from the definition of a dirk or dagger. (App. Jud. Not., Exh. A at pp. 241-246.[6]) The memo

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[6] Concurrently with the filing of the opening brief on the merits, the People are filing a Request for Judicial Notice of the legislative materials relating to the 1997 amendment of former section 12020. Section 12020, subdivision (c)(24) was repealed and renumbered as section 16470 in 2010 without substantive change. (Stats. 2010, ch. 711, § 6; *Nonsubstantive*

(continued...)

suggested the statute provide: "A non-locking folding knife or pocket knife is not 'capable of ready use' within the meaning of this section. A folding knife with a locking blade is not 'capable of ready use' within the meaning of this section unless it is carried in an open and locked position." (*Id.*, at p. 245.) Notably, the author of the memo reasoned that "[f]olding knives that lock should [] be excluded from the definition as the locking mechanism was designed as a *safety feature and not for stabbing efficiency*. In addition, *locking knives are no more 'capable of ready use' than a non-locking knife.*" (*Id.*, at p. 244.) By including nonlocking and locking folding knives, and pocketknives, in the 1997 definition, the Legislature clearly rejected this proposal and instead found that these knives can be capable of ready use depending upon how they are carried.

The evolution of the statutory definition demonstrates a legislative desire for the definition to be broad enough to include all knives, even nonlocking folding knives and pocketknives, that could be readily used as stabbing instruments to inflict serious injury or death, while also narrow enough to exclude common pocketknives carried in a safe manner. The Court of Appeal's focus on the blade being altered, fixed, and immovable marks a return to the long-abandoned approach of defining dirks and daggers by their physical design, rather than their capacity for ready use. This court should establish that a folding knife or pocketknife that is carried with the blade exposed and secured into a position capable of ready use as a stabbing weapon, provides sufficient evidence to sustain a conviction for carrying a concealed dirk or dagger.

(...continued)
Reorganization of Deadly Weapon Statutes, supra, 38 Cal. L. Revision Comm'n Reports 217.)

E. Sufficient Evidence Supported the Jury's Finding That Castillolopez's Pocketknife Is a Dirk or Dagger

The Court of Appeal found insufficient evidence to support the jury's finding that Castillolopez's pocketknife was a dirk or dagger. In assessing a claim for sufficient evidence, the court must "review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320 [99 S.Ct. 2781, 2792, 61 L.Ed.2d 560].) The court must presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Albillar* (2010) 51 Cal.4th 47, 60.) "If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] .) (*Ibid.*)

The undisputed testimony established that the open pocketknife Officer Charpentier found concealed in Castillolopez's jacket pocket was in a position ready to use as a stabbing weapon that could inflict great bodily injury or death. (2 RT 140 [blade had "more than enough length to puncture and potentially kill somebody"]; 2 RT 183-184 [defense expert agreed that knife could cause death]. The blade was secured in the open position and did not move without applying force to release the spring/friction lock. (2 RT 104, 113, 138.) All Castillolopez had to do was reach in, pull out the knife, and thrust it at Officer Charpentier. Viewing this evidence in the light most favorable to the judgment and applying a definition that honors the legislative intent, the jury had sufficient evidence to convict Castillolopez of carrying a concealed dirk or dagger.

CONCLUSION

For the reasons set forth above, this court should reverse the decision below and hold that a pocketknife concealed with the blade secured in an open position can provide sufficient evidence to support a conviction for possession of a dirk or dagger.

Dated: October 29, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **OPENING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 7,834 words.

Dated: October 29, 2014

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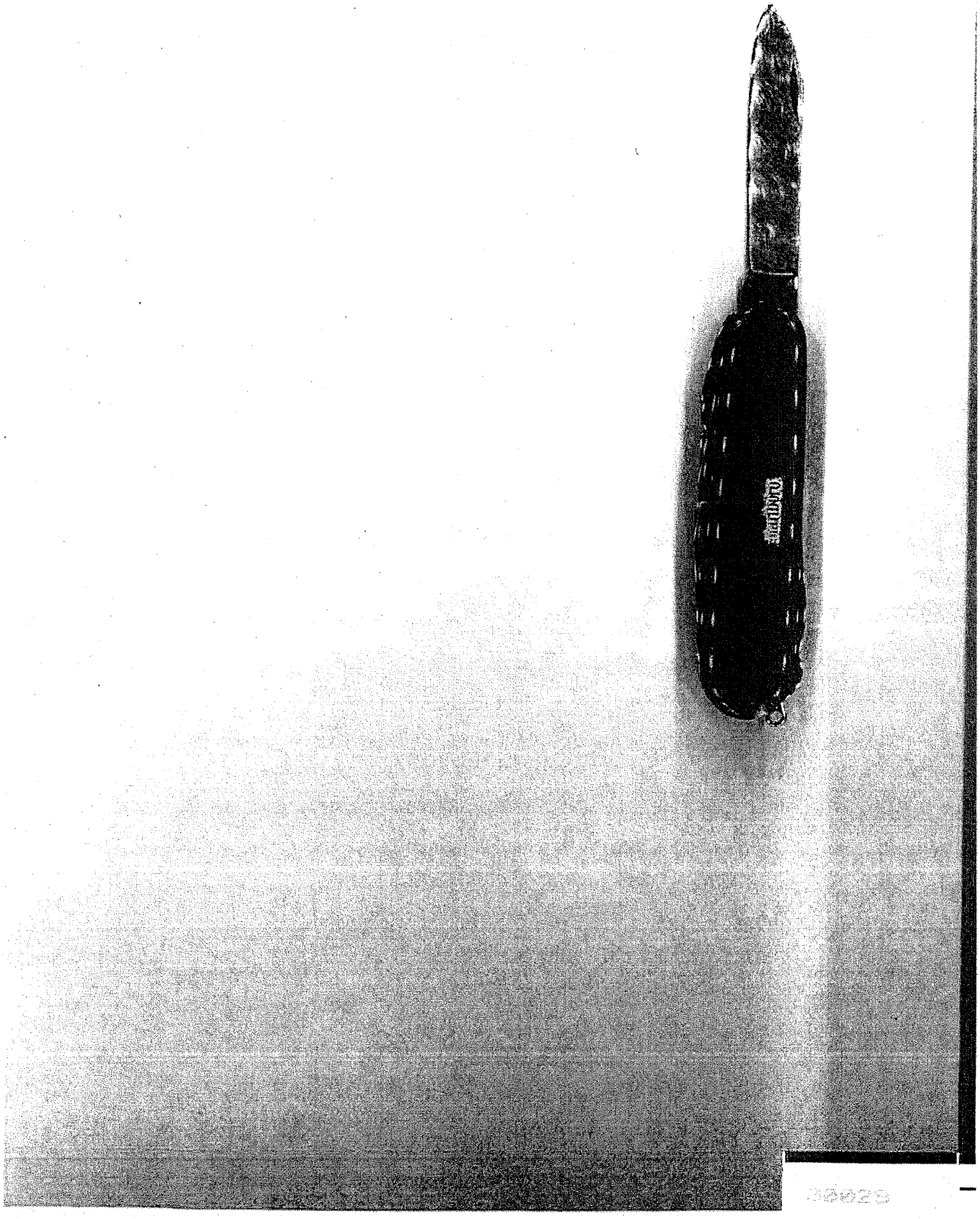
APPENDIX A



DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **People v. Emmanuel Castillolopez**
No.: **S218861**

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 collection and processing of correspondence for mailing with the United States Postal Service. 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 that same day in the ordinary course of business.

On October 29, 2014, I served the attached **OPENING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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Hall of Justice
330 West Broadway, Ste. 1300
San Diego, CA 92101-3826

Clerk of the Court
Central Courthouse
San Diego County Superior Court
220 West Broadway
San Diego, CA 92101-3409

Fourth Appellate District, Division One
Court of Appeal of the State of California
Symphony Towers
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San Diego, CA 92101

and furthermore, I declare in compliance with California Rules of Court, rules 2.251(i)(1) and 8.71(f)(1); I electronically served a copy of the above document on Appellate Defenders, Inc.'s electronic service address eservice-criminal@adi-sandiego.com and on Raymond M. DiGuiseppe, appellant's attorney, via the registered electronic service address diguiseppe228457@gmail.com by 5:00 p.m. on the close of business day. The Office of the Attorney General's electronic service address is ADIEService@doj.ca.gov.

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 October 29, 2014, at San Diego, California.

Tammy Larson
Declarant

Signature

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