IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	
Plaintiff and Respondent,	
v.	Case No. S195187
DEMETRIUS LAMONT WILLIAMS,	
Defendant and Appellant	

APPELLANT'S REPLY BRIEF

On Review of an Opinion and Decision of the Court of Appeal,
Second Appellate District, Division Seven, No. B222845
Los Angeles Superior Court, No. MA046168
The Honorable Bernie C. LaForteza, Judge

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PREFACE

In this brief, appellant replies to those arguments in respondent's brief that require an answer in order to present the issue fully to this Court. Appellant may not have expressly replied to all of respondent's assertions or re-asserted each point made in the opening brief. The absence of additional comment on aspects of respondent's brief should not be taken as a concession or forfeiture of any sort. (See *People v. Hill* (1992) 3 Cal.4th 959, 995, fn. 3, overruled on other grounds, *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.) Instead, such absence reflects appellant's view that the issue has been adequately presented.

QUESTION PRESENTED FOR REVIEW

Can a conviction for robbery be based on the use of force in the attempt to escape after committing the crime of theft by false pretenses as opposed to theft by larceny?

INTRODUCTION

This Court has repeatedly stated that robbery requires larceny plus the additional circumstances that the taking be from the person or immediate presence of the victim and that it be accomplished by force or fear. Too, this Court has held that the California robbery statute incorporates the common law of robbery, which requires larceny for a robbery to be committed. In his opening brief, appellant demonstrated that theft by false pretenses does not have a "taking" element that could be ongoing, such that the use of force or fear in the asportation of the property would support a conviction for robbery even if no force were used in the acquisition. Moreover, in theft by false pretenses, the crime is completed when both title and possession of the property pass to the perpetrator, such that the victim's agents may not logically be said to have continuing possession of the property during the asportation phase.

At bottom, respondent dismisses these sound principles of doctrine for the same reason that the Court of Appeal did, namely, that as a matter of public policy, respondent believes that appellant's conduct *should* be treated

as a robbery. To embrace respondent's position, however, it first becomes necessary to abandon this Court's holdings that Penal Code, section 211,[1] incorporates the common law. Second, it becomes necessary to create a new definition of "taking," the boundaries of which cannot reasonably be defined without what amounts to legislation: Would any taking that qualifies as theft by false pretenses qualify? Would the purchase of merchandise with an insufficient-funds check and the obtaining of a prescription drug with a false prescription suffice? Would all forms of fraud that can constitute theft by false pretenses qualify? This conundrum and the one described immediately below illustrate that if, in fact, it would be a good idea to expand the robbery law as respondent urges, such a change should come from the Legislature.

Third, in the context of an *Estes*[2] robbery, the fact of the commission of the underlying theft where it is a larceny is relatively easy for store security personnel to ascertain—either the suspect has the merchant's property that he did not pay for, or he doesn't. It is far less easy to determine if a theft by false pretenses has, in fact occurred. The laws of

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[1] All statutory references are to the California Penal Code unless otherwise stated.

[2] *People v. Estes* (1983) 147 Cal.App.3d 23.

arrest and detention by private store security require that, for an arrest by a private person to be lawful, the crime must, in fact, have been committed. Unlike arrests by peace officers, there is no probable cause "hedge factor" with respect to whether the offense was committed. These statutes (§§ 837, 490.5) as presently written provide suitable tools for security personnel where the underlying theft is larceny; however, due to the complexity in ascertaining whether a theft by false pretenses occurred, those laws are inadequate and will be subject to being abused if routinely employed where false pretenses is suspected.

Next, it is clear that when the crime of false pretenses is committed, the merchant has transferred both title to and possession of the property to the accused, such that it cannot be said that there is any possessory interest in the merchant or its agents if force or fear is later brought into play. Respondent's ingenious suggestion that the security officer's "authority to prevent appellant from getting away with the stolen property" (RB 5) be a substitute for the requisite possessory interest ignores the fact that, as a matter of law, the store has given up title and possession of the property. It is also inconsistent with the limitations on what private security personnel may do under those same laws of arrest and detention.

Too, because the taking element of larceny is an element of the crime, the definition of the offense describes the period within which the

taking is ongoing and when it ends, i.e., by the perpetrator reaching a position of temporary safety. Theft by false pretenses lacks this element, because the offense is finished once title and possession pass. Thus, a new element would have to be added to the statutory definition of false pretenses to make it ongoing while the perpetrator leaves the scene, and the jurors would have to be so instructed.

At bottom, then, respondent's position amounts to urging this Court to abandon legal doctrine and change the law to something that respondent would like it to be. This Court should decline that invitation and preserve the law as it is and has been for decades.

I.

THIS COURT HAS CONSISTENTLY HELD THAT SECTION 211 INCORPORATES THE COMMON LAW OF ROBBERY.

Respondent variously urges that a robbery may be found "without regard to the means by which the defendant originally acquired the property" (RB 6-8); that a number of decisions of this Court state that robbery may be based on "theft" (concluding therefrom that larceny is not required) (RB 11-12); and that "the nature of the initiating theft" is not significant under the *Estes* robbery doctrine (RB 13-15). However, it is without dispute that the common law crime of robbery required larceny. (E.g., 4 Wharton, Criminal Law (15th ed 1996) § 454 ["At common law,

robbery consists of larceny plus two aggravating circumstances"].) Equally true is that theft by false pretenses was unknown to the common law but instead was a creature of statute. (*People v. Ashley* (1954) 42 Cal.2d 246, 259 ["The crime of obtaining property by false pretenses was unknown in the early common law [citation], and our statute, like those of most American states, is directly traceable to 30 Geo. II, chapter 24, section 1"].) To what extent, then, does the result urged by respondent contravene precedent established by this Court?

In *People v. Tufunga* (1999) 21 Cal.4th 935, this Court relied on the fact that, at common law, claim of right negated the "felonious taking" element robbery and reversed the robbery conviction before it: "At common law, claim of right was recognized as a defense to the crime of larceny because it was deemed to negate the *animus furandi*--or felonious intent to steal--of that offense. (See 4 Blackstone [Commentaries], *supra*, at p. 230.) Because robbery was viewed as simply an aggravated form of larceny, it was likewise subject to the same claim-of-right defense. (4 Blackstone, *supra*, at pp. 241-243.)" (*People v Tufunga, supra*, 21 Cal.4th at p. 945.) The Court elaborated:

> [B]y adopting the identical phrase "felonious taking" as used in the common law with regard to both offenses [robbery and larceny], the Legislature in all likelihood intended to incorporate the same meanings attached to those phrases at common law.

(*Id.*, at 938 [emphasis added].)

In 2008 this Court reaffirmed that California law of robbery tracks the common law:

> Section 211, enacted in 1872, incorporates common law robbery requirements. [Citing *People v. Tufunga, supra.*] Under the common law, the crime of robbery consists of larceny plus two aggravating circumstances: (1) the property is taken from the person or presence of another; and (2) the taking is accomplished by the use of force or by putting the victim in fear of injury. (4 Wharton's, Criminal Law (15th ed. 1995) § 454, pp. 2–3 (Wharton); 3 LaFave, Substantive Criminal Law (2d ed. 2003) § 20.3(a), pp. 996–997.)

(*People v. Gomez* (2008) 43 Cal.4th 249, 254, fn. 2.)

It cannot be credibly disputed that heretofore the Court has followed the common law of robbery in deciding questions such as that presented here. That the Court has the power to change that course is not doubted; the Court should decline respondent's invitation to do so, however, and leave any such revisions to the Legislature.

II.

THE CONSOLIDATION OF THE DIFFERENT FORMS OF THEFT INTO ONE STATUTE HAS NO BEARING ON WHETHER ROBBERY MAY BE BASED ON THEFT BY FALSE PRETENSES.

Respondent makes much of the legislative consolidation of larceny, theft by false pretenses, and embezzlement into a single statute defining

"theft" (§§ 490a, 484) and states that the consolidation "supports a finding that a robbery conviction can be premised on theft by false pretenses." (RB 10.) Absent in respondent's discussion, however, is any mention of the fact that decisional law clearly establishes that the "substantive distinctions" between those offenses were not abolished, nor were the requisite elements of each theory changed. (E.g., *People v. Davis* (1998) 19 Cal.4th 301, 304-305, quoted on page 13 of appellant's opening brief.) Thus:

> In other words, the combination of several common law crimes under the statutory umbrella of 'theft' did not eliminate the need to prove the elements of the particular type of theft alleged. [Citation.] Although the offense of theft has been substituted for the offenses of larceny, embezzlement and obtaining money or property by false pretenses, no elements of the former crimes have been changed. The elements of the former offenses of embezzlement and larceny and the distinction between them continue to exist. [Citations.]

(*People v. Nazary* (2010) 191 Cal.App.4th 727, 741 [internal quotation marks omitted].)

Since the substantive distinctions between the forms of theft were not eliminated, the fact of the consolidation has no bearing on the issue before the Court.

III.

THIS COURT'S PASSING REFERENCE TO THEFT BY FALSE PRETENSES IN *PEOPLE V. HILL* IS NOT CONTROLLING.

Respondent writes that "this Court has specifically found that an

Estes robbery can arise from a theft by false pretenses," citing *People v. Hill* (1998) 17 Cal.4th 800, 850. (RB 9.) However, in *Hill* the Court was not addressing either *Estes* or the issue raised in appellant's case, and the passing reference to theft by false pretenses was dictum and not necessary to the decision in the case.

Hill was a death-penalty appeal in which the murder conviction was based on the felony murder theory that the killing occurred in the course of a robbery. (*People v. Hill, supra,* 17 Cal.4th at p. 814.) Respondent is correct that one of the grounds urged for the appeal was that the evidence was consistent with the commission of a theft by false pretenses based on the sale of "bunk," that is, a substance falsely represented to be a controlled substance, and that the victim was killed only after he discovered the scam and attempted to reclaim his money. (*People v. Hill, supra,* 17 Cal.4th at p. 850.) The Court observed, "Although defendant suggests the 'force or fear' element required for robbery would then be lacking, he is mistaken. Even if the perpetrator used peaceful means, such as a pretext, to separate the property from the victim, what would have been mere theft is transformed into robbery if the perpetrator . . . later uses force to retain or escape with the property." (*Ibid.*) (Internal brackets and quotation marks omitted.)

Two lines later, the Court found that, in any event, the evidence was sufficient to constitute what would be a traditional robbery: "[T]he

evidence was that the victim had $ 200, he was holding the money in his hands and counting it out in preparation of a transaction to purchase cocaine, and, 10 seconds later, he had neither money nor cocaine and had been stabbed in the chest. . . . We conclude there was sufficient evidence defendant robbed [the victim]." (*People v. Hill, supra,* 17 Cal.4th at p. 850.)

Because there was sufficient evidence of a traditional robbery, the Court's language addressing the false pretenses argument is not necessary to the decision and thus is dictum. "The holding of a decision is limited by the facts of the case being decided, notwithstanding the use of overly broad language by the court in stating the issue before it or its holding or in its reasoning." (*People v. Jennings* (2010) 50 Cal.4th 616, 684.) Moreover, there is no indication that the Court was addressing the issue that is before it today; indeed, all indications are to the contrary. "The language of an opinion must be construed with reference to the facts presented by the case, and the positive authority of a decision is coextensive only with such facts." (*People v. Superior Court (Moore)* (1996) 50 Cal.App.4th 1202, 1212.)

In part I, *ante,* and in his opening brief, appellant shows the commitment this Court has shown to the principle that section 211 tracks the common law of robbery, which required larceny. The passing reference in *People v. Hill, supra,* should not be taken as altering that commitment. In the words of the Chief Justice in *People v Alford* (2010) 180 Cal.App.4th

1463, 1471, rejecting the notion that such a passing reference would undo firmly established law, "[w]e do not think the California Supreme Court would overturn a rule nearly a half-century old, impliedly, and in a case where the rule was not itself discussed, its application to the case was not important, and there was no trend of decision against it."

IV.

THE STATUTES THAT AUTHORIZE ARRESTS AND DETENTIONS BY STORE SECURITY PERSONNEL ARE NOT SUITED TO THEFTS BY FALSE PRETENSES BECAUSE THE COMPLEXITY OF SUCH OFFENSES MAKES IT DIFFICULT TO DETERMINE IF A CRIME HAS, IN FACT, BEEN COMMITTED.

Respondent states that "[t]he type of theft by which a defendant initially gains possession of the property should not matter in the determination of whether the defendant is guilty of robbery." (RB 4-5.) (Presumably, respondent would also have embezzlement serve as a predicate for robbery.) This assertion, however, is belied by the fact that the laws of arrest that are implicated in *Estes* robberies are not suited to thefts based on false pretenses. Because fraud-based thefts involve subterfuge, it is not as simple a task to ascertain whether a crime has been committed as it is with larceny. This is significant because, in order for an arrest by a store security officer to be lawful, it must be the case that the crime—here theft—was in fact committed. Thus, if it turns out that no theft

actually occurred, the arrest is unlawful even if the security officer had probable cause to believe that a crime had occurred.

The elements of theft by false pretenses are the making of a false representation or pretense, made with the intent to defraud, in reliance on which the owner parts with title to and possession of his property. (*People v. Ashley, supra,* 42 Cal.2d at pp. 258-259; *People v. Wooten* (1996) 44 Cal.App.4th 1831, 1842.) It is safe to say that the only limitation on how this offense may be committed is the imagination of the perpetrators. Some ways are relatively clear-cut; others are not.

The purchase of merchandise with an insufficient-funds check constitutes theft by false pretenses as well as a violation of section 476a, subdivision (a). (*People v. Mason* (1973) 34 Cal.App.3d 281, 284 [theft by false pretenses conviction reversed for failure to instruct on corroboration requirement]; *People v. Martin* (1962) 208 Cal.App.2d 867, 876 [purchase of automobile with insufficient funds check].) The use of an ATM card linked to a closed bank account to purchase groceries at a Safeway store is theft by false pretenses. (*People v. Whight* (1995) 36 Cal.App.4th 1143, 1155-1156.) And, in appellant's case, the jurors were properly instructed that the theory of grand theft was false pretenses.

Other forms of the offense are more esoteric. Fraudulently ordering lumber for a nonexistent project constitutes theft by false pretenses, even

though the victim lumberyard retained a security interest in the lumber. (*People v. Counts* (1995) 31 Cal.App.4th 785, 791.) Theft by false pretenses is similarly established by a false representation that a check would be covered by funds in a non-existent bank account. (*People v. Britz* (1971) 17 Cal.App.3d 743, 757.) A misrepresentation that one has title to real property, made in order to induce another to lend money, constitutes theft by false pretenses. (*People v. Ashley, supra,* 42 Cal.2d at pp. 252-254.) The sale of a stolen car, impliedly representing that it was not stolen, is theft by false pretenses. (*People v. Brady* (1969) 275 Cal.App.2d 984, 996.) Where an accused took money from investors in his roulette gambling "system," promising them a return of 30% per month, and there was never any intention to fulfill that promise, a theft by false pretenses was committed. (*People v. Gilliam* (1956) 141 Cal.App.2d 749, 752-753, 758.)

Larceny, on which robbery is traditionally predicated, requires a "taking and carrying away" of the property of another, accompanied by the intent to deprive. In the context of virtually all *Estes* robberies, it is relatively easy to determine whether a larcenous taking has occurred: Although there exists a myriad of minor variations, in essence most such crimes boil down to a store employee (usually a loss prevention officer) seeing the suspect conceal property on his person and then leaving or preparing to leave without paying for it.

Because theft by false pretenses necessarily involves a fraud, which by its nature involves subterfuge, the commission of the offense is far less obvious and determining that it occurred is far more problematic. Appellant's case is a good example—until it was verified that the credit cards used to purchase the gift cards were fraudulent, all that the store employees knew was that the store had violated its own policy by accepting payment for a gift card with a credit card. (Indeed, as discussed *post,* the laws allowing limited detentions by merchants of suspected shoplifters do not even allow for the kind of search necessary to recover the credit cards appellant used to make the purchase.)

The authority of a security guard to make an arrest is the same authority that governs all so-called "citizens' arrests," namely, section 837. (*People v. Crowder* (1982) 136 Cal.App.3d 841, 844.) Up until force or fear is used, thus elevating the larceny to an *Estes* robbery, shoplifts involving property valued at $950 or less are misdemeanors. (§§ 487, subd.(a), 488.) A private person may arrest for a misdemeanor only when it was in fact "committed or attempted in his presence." (§ 837, subd. (1).) The margin for error or "hedge" that probable cause supplies for peace officers who are making misdemeanor arrests (§ 836, subd. (a)(1)) does not exist for security guards who are attempting to make a misdemeanor arrest:

The authority of a private citizen to make an arrest is more

> limited than that of a peace officer. A peace officer may arrest a person without a warrant whenever he has probable cause to believe that the person has committed a misdemeanor in his presence. (Pen.Code, § 836, subd. 1.) A private citizen, however, may arrest another for a misdemeanor only when the offense *has actually been committed or attempted in his presence*. (Pen.Code, § 837, subd. 1.)

(*Cervantez v. J. C. Penney Co.* (1979) 24 Cal.3d 579, 587, 595 P.2d 975, 979 [emphasis added].)

The *Estes* doctrine involves a shoplift—a classic larceny—followed by the use of force in the attempt to escape with the property, that is, during the asportation of the property. (*Estes, supra,* 147 Cal.App.3d at p. 28.) In virtually every such set of facts, the taking is readily ascertainable and the loss prevention officer may confidently know that the theft was committed for purposes of making an arrest. The opposite is true in a theft by false pretenses, whether it involves facts such as appellant's case, or the use of an insufficient-funds check, or any of the other examples cited above. Normally, the fact of the unlawful acquisition is *not* readily apparent and may even require follow-up investigation to determine whether a crime was committed. Yet where the value of the property is $950 or less, the store security officer or other employee must be correct that the theft occurred and that the arrestee committed it in order for the arrest to be lawful.

Even if the theft involved property worth more than $950, the statute authorizing arrest by a private person also requires that the security guard

be correct regarding the fact of the commission of the offense, though the he may rely on probable cause as to the question whether the arrestee was the person who committed it. (§ 837, subds. (2) & (3).)

Too, the statute that allows merchants and store security personnel as their agents to make detentions and to undertake limited actions to regain property are not tailored to the investigation of such fraud-based crimes. Section 490.5, subdivision (f)(1), allows a merchant to "detain a person for a reasonable time for the purposes of conducting an investigation in a reasonable manner" whether the person is attempting to unlawfully take merchandise. This investigation may include examining suspected stolen property "in plain view . . . for of the purposes of ascertaining ownership thereof." (§ 490.5, subd. (f)(3).) Too, the merchant may request the person detained to "voluntarily surrender" any property believed to belong to the merchant. (§ 490.5, subd. (f)(4).) Thereafter:

> Should the person detained refuse to voluntarily surrender *the . . . item of which there is probable cause to believe has been . . . unlawfully taken* from the premises, or attempted . . . unlawfully taken from the premises, a limited and reasonable search may be conducted by those authorized to make the detention in order *to recover the item*. Only packages, shopping bags, handbags or other property in the immediate possession of the person detained, but not including any clothing worn by the person, may be searched pursuant to this subdivision. Upon surrender or discovery of the item, the person detained may also be requested, but may not be required, to provide adequate proof of his or her identity.

(§ 490.5, subd. (f)(4) [emphases added].)

These statutes—section 837 regarding arrest and 490.5 regarding detentions—are the only legal bases for a merchant or loss prevention officer to act. They are tailored to acts of suspected shoplifting—larceny—because they authorize recovery of specific property believed to have been stolen from the premises. These statutes do not allow for the kind of investigation that is likely to be required to ascertain whether a theft by false pretenses has occurred, and they will likely be abused if routinely employed where false pretenses is suspected.

Respondent makes the ingenious suggestion that the absence of continued constructive possession of the store's property by its employees when the theft is one of false pretenses be cured by finding such possession exists from the loss prevention officers' "authority to prevent appellant from getting away with the stolen property." (RB 5.) Respondent asserts, without citation of authority, that "[a] loss prevention officer's authority or responsibility to protect a store's property does not end at the conclusion of a fraudulent purchase by false pretenses any more than it ends once a thief has acquired store property to means of a larceny." (RB 16.)

The latter assertion is misleading, circular, and ignores the distinction between the two forms of theft. In theft by false pretenses, the victim has yielded up both title to and possession of the property, albeit in

reliance on the perpetrator's fraud. Contrary to respondent's assertion, store security officers do not, in fact, have unbridled rights to prevent escape with the stolen property that would be the functional equivalent of constructive possession. Instead, their authority consists only of that authorized by section 837 and 490.5, to conduct a limited detention for the purpose of carrying out a limited investigation, which may include the recovery of obviously stolen property that is visible but which may not include searching the arrestee's person, and which may include arresting the person if a crime has in fact been committed.

Too, to suggest that simply having the authority and responsibility to prevent thieves from getting away with stolen loot equates to constructive possession of the property would mean that every police officer would be deemed to have such possession. Thus, a thief who struggled with a police officer who is attempting to arrest him for theft would have committed a robbery, a proposition that is obviously untenable. The fact remains that as a matter of substantive criminal law, there is no logical way to find that the store employees are in possession of the property.

V.

BECAUSE THEFT BY FALSE PRETENSES MAY BE COMMITTED IN COUNTLESS WAYS, IT IS NOT POSSIBLE TO DEFINE THE PERIOD OF TIME WITHIN WHICH THE USE OF FORCE OR FEAR WOULD HAVE TO OCCUR IN ORDER FOR THERE TO BE A ROBBERY.

Respondent's assertion that "[t]he type of theft by which a defendant initially gains possession of the property should not matter in the determination of whether the defendant is guilty of robbery" (RB 4-5) fails for another reason as well. It is the ongoing nature of the taking element of larceny—specifically the asportation requirement—that causes a robbery to be committed when force or fear is used after the initial caption. (*People v. Gomez, supra,* 43 Cal.4th at p. 256; *People v. Estes, supra,* 147 Cal.App.3d at p. 28; *People v. Pham* (1993) 15 Cal.App.4th 61, 65.) That element is absent in theft by false pretenses, since the crime is finished once title and possession have passed to the perpetrator. (E.g., *People v. Wooten, supra,* 44 Cal.App.4th at p. 1842.)

In order to make theft by false pretenses serve as the basis of robbery, therefore, it would become necessary to add an element that is comparable to the notion of an ongoing taking. The wide variety of ways in which theft by false pretenses can be committed, however, makes it impossible to create a workable time period within which the use of force or fear would elevate the offense to a robbery.

The examples provided *ante* demonstrate that it is impossible to articulate a workable formula to define the period of time within which the use of force or fear would constitute a robbery. Respondent does not offer a solution, but simply asserts that "regardless of whether asportation is an element of theft by false pretenses, a defendant (like appellant) who commits such a theft and actually asports the stolen property, using force against the victim while doing so, has satisfied all the elements of robbery." (RB 4.)

VI.

IF SOUND PUBLIC POLICY WARRANTS CHANGING THE LAW OF ROBBERY TO INCLUDE FALSE PRETENSES, SUCH A CHANGE SHOULD COME FROM THE LEGISLATURE.

In his opening brief, appellant cited *People v. Nguyen* (2000) 24 Cal.4th 756, as an illustration of the type of change in the law that is better suited to the Legislature than to the judiciary. There, the Court declined to dispense with the requirement that one must have a possessory interest in the property in order to be a victim of a robbery, commending such a change, if warranted, to the Legislature. (*Id.* at p. 764.)

To that example should be added *People v. Tufunga, supra,* 21 Cal.4th 935, 950. There, the Court concluded that section 211 tracked the common law of robbery, and at common law a claim of right could serve as

a defense to robbery by negating the requisite intent. There, as here, the Attorney General argued strongly that public policy would be better served by abandoning the common law rule. This, the Court declined to do:

> [W]e find that the Legislature over 100 years ago codified in the current robbery statute the common law recognition that a claim-of-right defense can negate the *animus furandi* element of robbery where the defendant is seeking to regain specific property in which he in good faith believes he has a bona fide claim of ownership or title. Whatever be our views on the wisdom of the Legislature's chosen delineation of the mental state necessary for robbery, the separation of powers clause (Cal. Const., art. III, § 3) prohibits this court from abolishing the claim-of-right defense altogether on policy grounds, as such would effectively alter a statutorily defined element of that offense by judicial fiat. The Legislature of course remains free to amend section 211 to preclude a claim-of-right defense in robbery prosecutions. The question whether such amendment would better reflect sound public policy is one properly addressed to that body rather than to this court.

(*People v. Tufunga, supra,* 21 Cal.4th at p. 950.)

The changes that respondent asks this Court to make would re-write the law of robbery to expand significantly the breadth and complexity of the statute. If indeed it is true, as respondent asserts, that such a change is desirable, it should nonetheless come from the Legislature.

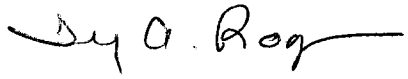
CONCLUSION

Appellant's conduct violated a number of criminal statutes, and he faces a significant term of imprisonment for it. It was not, however,

robbery. To abandon long-standing doctrine and call it robbery simply because in some ways it resembles one and because it is believed it would be a good idea to do so is neither appropriate nor fair. For the reasons stated herein and in appellant's opening brief, his convictions for robbery (counts 1-4) must be reversed.

DATED: February 19, 2012

Respectfully Submitted,



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CERTIFICATION OF WORD COUNT

As required by California Rules of Court, Rule 8.520(c), I certify that this brief contains 5,920 words, as determined by the word processing program used to create it.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed February 19, 2012, in San Diego, California.

Tracy A. Rogers
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DECLARATION OF SERVICE BY MAIL

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Case Number: S195187

I, the undersigned, say: I am over 18 years of age, employed in the County of San Diego, California, and not a party to the subject cause. My business address is 3525 Del Mar Heights Rd. #193, San Diego, California. I served the **Appellant's Reply Brief**, of which a true and correct copy of the document filed in the cause is affixed, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

State of California Attorney General
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Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States mail by me at San Diego, California on February 21, 2012.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 21, 2012, at San Diego, California.

Tracy A. Rogers