SUPREME COURT
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	) Supreme Court) No. S207542
Plaintiff and Respondent,	) Court of Appeal) No. E054154
v.	) Superior Court) No. SWF027980
BEN CHANDLER, JR.,	)
Defendant and Appellant.	)

APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

Honorable Mark Johnson, Judge

APPELLANT'S REPLY BRIEF ON THE MERITS

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By appointment of the California
Supreme Court

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APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

Honorable Mark Johnson, Judge

APPELLANT'S REPLY BRIEF ON THE MERITS

ISSUE PRESENTED.

(California Rules of Court, rule 8.516 (a)(1).

Consistent with First Amendment protections, can appellant be convicted of an attempted criminal threat based only on his subjective intent, regardless of whether the uttered statement is viewed objectively as a threat? If the statement must, at a minimum, be viewed objectively as a threat, does instruction with the general concepts of attempt (CALCRIM No. 460) and the completed criminal threat (CALCRIM No. 1300) convey this required element?

ARGUMENT.

I.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO INSTRUCT THE JURY THAT IT MUST DECIDE ON A CHARGE OF ATTEMPTED CRIMINAL THREATS WHETHER THE INTENDED THREAT REASONABLY COULD HAVE CAUSED SUSTAINED FEAR UNDER THE CIRCUMSTANCES.

A. Summary of Appellant's Argument.

The opinion of the Court of Appeal in the instant case is in direct conflict with the published opinion of the Sixth District Court of Appeal in *People v. Jackson* (2009) 178 Cal.App.4th 590, as well as the opinion of this court in *People v. Lowery* (2011) 52 Cal.4th 419.

Jackson held that, just as a statement must be viewed objectively from the point of view of a reasonable person in determining whether it constitutes a criminal threat, an attempted criminal threat must be viewed from the same perspective in determining whether it constitutes an attempted criminal threat. This is so, the court reasoned, in order to insure that punishment will apply only to speech that clearly falls outside First Amendment protection. (*People v. Jackson, supra,* 178 Cal.App.4th 590, 598.) *Jackson* found that the trial court had committed instructional error because the instructions given for the attempted crime simply referred the jury back to the elements of the substantive completed crime. The problem with that was that the instruction on the substantive completed crime included the reasonableness element only as part of the result of the

completed crime, and did not instruct the jury to consider whether the intended threat reasonably could have caused sustained fear under the circumstances of the attempted crime. (*Id.* at p. 599.)

The Court of Appeal in this case rejected the reasoning of *Jackson*, holding that an attempt to make a criminal threat is a crime regardless of whether it was objectively reasonable, under the circumstances, for the victim to be in fear. (E054154, Slip opinion at p. 18.)

The Court of Appeal's opinion is also in conflict with the opinion of this court in *People v. Lowery, supra,* 52 Cal.4th 419. In *Lowery*, the issue was the constitutionality of Penal Code[1] section 140, subdivision (a), which makes it a crime to threaten to use force or violence on a victim of or a witness to a crime. The defendant argued that the statute was unconstitutional because it did not require the intent to intimidate the victim or witness. This court held that section 140 was constitutional because it "appl[ied] only to those threatening statements that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat . . . ." (*People v. Lowery*, *supra*, 52 Cal.4th at p. 427.) The Court of Appeal's holding in this case is a repudiation of this court's objective standard of a true threat adopted in *Lowery*.

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[1] All further references are to the Penal Code, unless noted.

B. Respondent's Argument.

Respondent obviously disagrees with appellant's analysis, but his argument lacks consistency and the examples used to justify the argument either misconstrue appellant's position or support appellant's position.

The issue in dispute can be generally summarized as follows: An essential component of the completed criminal threat crime is the reasonableness of the fear; it must be reasonable under the circumstances. (*People v. Toledo* (2001) 26 Cal.4th 221, 228.) This element necessarily distinguishes a true threat from hyperbolic speech. Does the crime of attempted criminal threats contain the same reasonableness component? Appellant argues that it must. The Court of Appeal and the Attorney General argue that it does not; that as long as the defendant specifically intended a threat, the objective reasonableness of the threat does not matter. The argument is not persuasive.

Before delving into respondent's argument it might be helpful to remind ourselves how this case came about. As noted by both respondent and the Court of Appeal, "for no apparent reason, defendant Ben Chandler, Jr., walked up to a female neighbor while swinging a golf club from side to side and yelled, "Fuck you, bitch. I'm going to kill you." The next day, likewise for no apparent reason, he walked up to another female neighbor and yelled, "I'm going to kill you[,] bitch." (Respondent's Brief at p. 1; E054154, Slip opinion at pp. 1-2.) As appellant stated in his opening brief

on the merits, "appellant's statements, as testified to by Lopez and Alva, do not make any sense from the perspective of the ordinary reasonable person. They do not seem to be motivated by anything, do not seem to be in response to anything, and, quite frankly, seem to be barely coherent rambling." (AOBM at p. 40.)

The jury's not guilty finding on the charges of criminal threats seem to reflect this, that appellant was ranting and raving. The jury could look at these statements objectively, from the standpoint of a reasonable person, and conclude they were not criminal threats, that no reasonable person would be in fear. The issue, quite simply, is can these statements be punished as an attempted threat; in other words does a statement require that it be objectively viewed as a threat to be punishable as a crime?

Respondent's position seems to waver. He first argues that appellant's position is that "because a completed criminal threat requires a victim to be in actual and reasonable fear, the attempted criminal threat offense must require the same. That is, a person's intent to make a threat engendering fear is not enough – attempted criminal threat also requires a jury to find the victim was objectively and reasonable in fear." (Respondent's Brief at p. 2.) This argument is nonsensical; if the jury found that the threat caused the victim objectively reasonable fear than the person would be guilty of a criminal threat and not an attempt.

Respondent then argues "the attempted criminal threat offense properly proscribes only speech communicated with specific intent a reasonable listener would understand to be a threat." (Respondent's Brief at p. 3.) Isn't that precisely appellant's argument, that a threat must be evaluated from the perspective of a reasonable listener?

Respondent argues that appellant's argument is based on "the premise that because his threat was communicated and received by the victims, the jury had to also find his victims had reasonable fear." (Respondent's Brief at p. 10.) Respondent is mistaken and, again, this argument is nonsensical; if the jury found that the threat caused the victim to have reasonable fear than the person would be guilty of a criminal threat and not an attempt. Appellant's argument is that he can only be guilty of an attempted criminal threat (in this scenario) when his victims were *not* in fear, but a reasonable victim *would* be in fear. This court came to the same conclusion. "[I]f a defendant, again acting with the requisite intent, makes a sufficient threat that is received and understood by the threatened person, but, for whatever reason, the threat does not *actually* cause the threatened person to be in sustained fear for his or her safety even though, under the circumstances, that person reasonably could have been placed in such fear, the defendant properly may be found to have committed the offense of attempted criminal threat." (*People v. Toledo, supra,* 26 Cal.4th 221, 231.)

Respondent next argues that what appellant "is really complaining about is that his jury was not told that because the threat was communicated to and received by the victim, it could consider whether the victim's reasonableness of fear, or lack of fear, impacted how it determined his intent to communicate the threat." (Respondent's Brief at p. 11.) Respondent misconstrues appellant's argument. The reasonableness of the fear is a separate element from the element of intent in the crime of attempted criminal threats. Appellant's argument is that regardless of his subjective intent the threat must still be evaluated from the standpoint of the reasonable listener.

Respondent argues that in *Virginia v. Black* (2003) 538 U.S. 343 [123 S.Ct. 1536, 155 L.Ed.2d 535], the United States Supreme Court "arguably established a baseline for constitutionally proscribed true threat, that is, whether an objective or reasonable person would find the speech communicated to be a serious expression of harm." (Respondent's Brief at p. 19.) So far, so good. But respondent then goes on to argue "that this is not to say that this 'objective listener test' is the exclusive means for punishing speech classified as a true threat. If a threat statute meets this constitutionally objective baseline, a defendant can still violate it when he subjectively intends to communicate a threat of violence or harm against another." (Respondent's Brief at p. 19.)

Isn't this, again, appellant's argument? If a "threat statute meets this constitutionally objective baseline," then the test must be, as noted by respondent, "whether an objective or reasonable person would find the speech communicated to be a serious expression of harm." That *is* the constitutionally objective baseline.

Respondent then cites *U.S. v. Stewart* (9th Cir. 2005) 420 F.3d 1007, a case that acknowledged the precedent for an objective test and did not reach the question in that case, and *U.S. v. Jeffries* (6th Cir. 2012) 692 F.3d 473, a case that only supports appellant's position: "What is excluded from First Amendment protection—threats rooted in their effect on the listener—works well with a test that focuses not on the intent of the speaker but on the effect on a reasonable listener of the speech." (*U.S. v. Jeffries, supra,* 692 F.3d 473, 480.) (Respondent's Brief at p. 21.) Indeed appellant cited 13 cases that have considered the objectively reasonable listener test after the Supreme Court's decision in *Black,* none of which, except for *Jeffries,* were addressed by respondent, and each case cited supported appellant's position.

Respondent discusses this court's decision in Lowery, correctly noting that in *Lowery* this court held that the statute at issue in that case applied "only to those threatening statements that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat…." (*People v. Lowery*, *supra*, 52 Cal.4th at p. 427.)

(Respondent's Brief at pp. 22-26, cite at p. 25.) Respondent then goes on to argue "Chandler tries to expand *Lowery* to contend an objective test is the *exclusive* means to measure whether one can be criminally punished for threats." (Respondent's Brief at p. 26.) Appellant has not expanded *Lowery*; the objective test has been, and remains, a necessary element in the crime of both criminal threats and attempted criminal threats. Respondent cites no authority to the contrary.

Respondent next discusses *Toledo,* again noting "so long as a reasonable listener would understand the statement to be a serious expression of intent to commit an act of unlawful violence, it constitutes a true threat that is not protected speech, and under California law, an attempted criminal threat." (Respondent's Brief at p. 32.) Appellant again agrees with respondent's characterization of the necessity of the reasonable listener test as a necessary element of the crime of attempted criminal threats.

Respondent next addresses a circumstance not addressed by this court in *Toledo*; "when the intended victim is in actual fear, but that fear is considered unreasonable under the circumstances." (Respondent's Brief at pp. 34-35.) Respondent argues that there "was no need to address this in *Toledo.* The effect on and the reasonableness of the intended victim's reaction may be relevant for the completed criminal threat. However, it is simply not an element to be proven for the attempted criminal threat

offense." (Respondent's Brief at p. 35.) Respondent is wrong. This scenario was not addressed in *Toledo* because it isn't a crime. "The jury could have concluded the victims' fear was unreasonable under the circumstances, i.e., the victims were safely inside the house with a telephone to call the police while the defendant sat out front. This scenario is legally insufficient to support an attempted criminal threat conviction." (*People v. Jackson, supra*, 178 Cal.App.4th at p. 600.)

While respondent suggests the *Jackson* court's analysis is "misguided" (Respondent's Brief at p. 34), the reasoning of the *Jackson* court is consistent with the reasoning of every court that has considered the question, save one. In *U.S. v. Bagdasarian* (9th Cir. 2011) 652 F.3d 1113, the court held that a true threat requires the subjective intent to intimidate. (See *People v. Lowery, supra*, 52 Cal.4th at p. 427, fn. 1; see also *id.* at p. 432 [conc. opn. of Baxter, J.].) This court, however, disagreed with *Bagdasarian*; it held that section 140 was constitutional because it "appl[ied] only to those threatening statements that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat . . . ." (*People v. Lowery, supra*, 52 Cal.4th at p. 427.) Justice Baxter's concurring opinion, joined by a majority of the court, stated that it was adopting the "objective standard" of a true threat and rejecting *Bagdasarian*'s "subjective standard." (*People v. Lowery, supra*, 52 Cal.4th at pp. 432-433 [conc. opn. of Baxter, J.].)

Respondent then describes several examples of scenarios where an attempted criminal threat is completed but, under the rationale of *Jackson* requiring an objectively reasonable test, the perpetrator would escape punishment. The first was that of an aggressor that approaches a victim and threatens to beat him up, but the victim is wearing headphones and doesn't hear the threat. Respondent argues that the rationale of *Jackson* would require "a separate finding based on the reaction of the victim, and, the reasonableness of the victim's fear." (Respondent's Brief at p. 37.) Respondent is wrong; this is nothing more than a variation on the first example of an attempted criminal threat cited by *Toledo.* "[I]f a defendant takes all steps necessary to perpetrate the completed crime of criminal threat by means of a written threat, but the crime is not completed only because the written threat is intercepted before delivery to the threatened person, the defendant properly may be found guilty of attempted criminal threat." (*People v. Toledo, supra,* 26 Cal.4th 221, 231.) Here the threat is oral and not written, but the victim doesn't hear the threat. *Jackson* would not require that *this* victim be in reasonable fear, but only that a *reasonable* person would experience fear.

Respondent then slightly changes the scenario to say that even if the victim heard the threat the defendant would be "no less culpable for an attempted criminal threat, merely, when the intended victim was not in fear or for some reason, the fear was found to be unreasonable." (Respondent's

Brief at pp. 37-38.) It is not entirely clear what respondent is arguing here. If the victim heard the threat, was not in fear, but a reasonable listener would be in fear, the defendant would be guilty of an attempted criminal threat. This is the third example cited in *Toledo.* "[I]f a defendant, again acting with the requisite intent, makes a sufficient threat that is received and understood by the threatened person, but, for whatever reason, the threat does not *actually* cause the threatened person to be in sustained fear for his or her safety even though, under the circumstances, that person reasonably could have been placed in such fear, the defendant properly may be found to have committed the offense of attempted criminal threat." (*People v. Toledo, supra,* 26 Cal.4th 221, 231.) If the victim was in fear, but the fear was unreasonable under the circumstances, then no crime has been committed. (*People v. Jackson, supra*, 178 Cal.App.4th at p. 600.)

Respondent then proposes a scenario where an aggressor grabs a feather off the ground, yields it as a knife, and approaches a victim threatening to stab them. "The victim may be in fear of the aggressor, but not in any reasonable fear of being stabbed. Under *Jackson's* logic embraced by Chandler, this would not be an attempted criminal threat because there would be no reasonable fear. But this would lead to absurd results. The speech would not be constitutionally protected simply because the aggressor were mentally compromised and with that same intent believed the feather to be a knife, or, if the aggressor made the threat to beat

up the victim and simply yielded the feather without also communicating a threat." (Respondent's Brief at p. 38.)

With all due respect to respondent the example is absurd. No, a threat to stab someone with a feather would not induce reasonable fear but the aggressor's actions communicating a threat of physical harm may induce reasonable fear. If the aggressor threatened to beat someone up that might lead to reasonable fear, but simply yielding a feather without communicating a threat wouldn't lead to reasonable fear.

Respondent is making the situation more complicated that it is, or than it needs to be. The legal scenario is actually simple; if an aggressor intends to threaten a person and the threat would objectively cause a reasonable person to be in fear, the action is a criminal threat if the victim was actually in fear; it is an attempted criminal threat if the victim wasn't actually in fear but a reasonable person would be in fear.

Respondent cites one more example, "where one defendant would be culpable for an attempted criminal threat when made to a person who understood English, but that same defendant would be absolved of liability if the victim fortuitously did not." (Respondent's Brief at p. 40.) Respondent is again mistaken. As long as the threat would be objectively viewed as a threat by a reasonable person the defendant would be liable under either scenario.

Respondent next cites *U.S. v. Williams* (2008) 553 U.S. 285 [128 S.Ct. 1830, 170 L.Ed.2d 650] as standing for the proposition that the United States Supreme Court has abandoned the objective standard in evaluating protected speech. (Respondent's Brief at pp. 41-45.) This is despite respondent's acknowledgment that ".... the true threat doctrine is not concerned with the same proscribable conduct as child pornography...." (Respondent's Brief at p. 41, fn 10.) *Williams* does not work the sea change in jurisprudence that respondent, and the Court of Appeal, imply.

The statute at issue in *Williams,* generally speaking, prohibits offers to provide and requests to obtain child pornography. The statute does not require the actual existence of child pornography. Rather than targeting the underlying material, this statute bans the collateral speech that introduces such material into the child-pornography distribution network. Thus, an Internet user who solicits child pornography from an undercover agent violates the statute, even if the officer possesses no child pornography. Likewise, a person who advertises virtual child pornography as depicting actual children also falls within the reach of the statute. (*U.S. v. Williams, supra,* 553 U.S. 285, 293.)

Among other issues, the statute in question in *Williams* provided for the possibility of a person being punished for mistakenly distributing virtual child pornography as real child pornography. (*U.S. v. Williams*, *supra,* 553 U.S. 285, 300.) This was not unconstitutional because "Offers to deal in

illegal products or otherwise engage in illegal activity do not acquire First Amendment protection when the offeror is mistaken about the factual predicate of his offer. The pandering and solicitation made unlawful by the Act are sorts of inchoate crimes—acts looking toward the commission of another crime, the delivery of child pornography. As with other inchoate crimes—attempt and conspiracy, for example—impossibility of completing the crime because the facts were not as the defendant believed is not a defense." (*Ibid.*)

As noted in appellant's opening brief on the merits, the holding in *Williams,* consistent with the position advanced in this argument, is that a person can be punished for distributing what he believes to be actual child pornography, that would actually be obscene if his belief is true. This must be contrasted with a scenario where a person subjectively believes that the material is obscene, but the material is not. The *Williams* court (but not the Court of Appeal in this case) addressed this: "the Eleventh Circuit also thought that the statute could apply to someone who subjectively believes that an innocuous picture of a child is 'lascivious.' Clause (v) of the definition of 'sexually explicit conduct' is 'lascivious exhibition of the genitals or pubic area of any person.' [Citation] That is not so. The defendant must believe that the picture contains certain material, and that material in fact (and not merely in his estimation) must meet the statutory definition. Where the material at issue is a harmless picture of a child in a

bathtub and the defendant, knowing that material, erroneously believes that it constitutes a 'lascivious exhibition of the genitals,' the statute has no application." (*U.S. v. Williams, supra,* 553 U.S. 285, 301.)

The two different scenarios illustrated in *Williams* can be applied to the issue in this case. In the first scenario the person delivers what he believes to be a true threat, believes he has delivered the true threat, but the threat is garbled or not understood. It objectively would have been a true threat if understood but it was not. This is the second example envisioned in *Toledo,* that "if a defendant, with the requisite intent, orally makes a sufficient threat directly to the threatened person, but for some reason the threatened person does not understand the threat, an attempted criminal threat also would occur." (*People v. Toledo, supra,* 26 Cal.4th 221, 231.) The person intends to deliver a threat and what he intended to deliver was objectively a threat. The person can be punished for the crime of attempt criminal threats.

The second scenario is one where the person delivers what he believes to be a true threat, but when objectively evaluated from the perspective of the reasonable person, it is not a true threat. In this scenario the person has not committed a crime. His subjective intent is not the determining factor, because his "threat" is not objectively a threat. (*U.S. v. Williams, supra,* 553 U.S. 285, 301. ["The defendant must believe that the picture contains certain material, and that material in fact (and not merely in

his estimation) must meet the statutory definition."].) *Williams* therefore does not support respondent's position. Further, an examination of the cases nationwide that have examined the holding in *Williams* does not reveal a single case that would adopt the position of respondent and the Court of Appeal and *Williams* certainly did not disapprove of that court's holding in *Black.* On the contrary, as noted earlier, appellant cited 13 cases in his opening brief on the merits that have considered the objectively reasonable listener test after the Supreme Court's decision in *Black,* and each case cited supported appellant's position.

Respondent next cites another example, where a person in a bar threatens "to attack another, perhaps even stating he would follow the person outside and beat him up. Unbeknownst to the aggressor, the intended victim is an off-duty police officer and the bar happened to be hosting his retirement party, with the intended victim surrounded by his fellow officers. Under Chandler's logic, even if the aggressor subjectively believed he was making a threat, he engaged in protected speech and did nothing to warrant criminal liability, because the intended victim fortuitously was not in fear." (Respondent's Brief at p. 46.) Respondent has once again missed the point. If the threat would cause a reasonable person to be in fear then the aggressor is criminally liable even if this *particular* person was not in fear. Under respondent's scenario no reasonable

reviewing court would fail to uphold a conviction and appellant would not quibble with the result. That isn't the question facing this court.

Finally respondent argues that any instructional error was harmless "because no reasonable jury would have concluded that Chandler's threats were not the kind to have reasonably caused fear." (Respondent's Brief at p. 48.) Not so. To accept respondent's premise is to conclude that the jury did not carry out its duty, based on the instructions given to it. Two possible scenarios present themselves in this case. The jury may have found that neither Lopez or Alva were in sustained fear for their own safety or for their immediate family's safety. While Lopez stated she was in fear for her safety (1RT pp. 131, 147), Alva stated she was in fear of damage being done to her car (2RT pp. 295-296), until later prompted to say she was in fear of her own safety, although she qualified her fear to state she would have been afraid if appellant came onto her property, which he did not do. (1RT pp. 306, 312, 314.) Thus, the jury could have concluded that the victims did not suffer sustained fear, i.e., the jury might not have believed the victims' testimony that they feared for their lives. This scenario is sufficient to support a conviction of attempted criminal threats only upon a finding that a reasonable person could have suffered fear in those circumstances, something the jury was not asked to decide. (*People v. Jackson, supra,* 178 Cal.App.4th 590, 600.)

While respondent argues that "no reasonable jury would have concluded that Chandler's threats were not the kind to have reasonably caused fear" (Respondent's Brief at p. 48), respondent fails to consider the alternative, and more likely scenario. The jury could have concluded that the victims' fear was unreasonable under the circumstances. While again Lopez stated she was in fear for her safety (1RT pp. 131, 147), the jury may have determined that her fear was not reasonable under the circumstances, that appellant was merely ranting. All parties involved in this case acknowledged that appellant's actions did not make any sense. Alva stated she was in fear of damage being done to her car (2RT pp. 295-296), until later prompted to say she was in fear of her own safety, although she qualified her fear to state she would have been afraid if appellant came onto her property, which he did not do. (1RT pp. 306, 312, 314.) The jury may have also determined that this "fear" was not reasonable under the circumstances, because Alva wasn't really afraid. This scenario is legally insufficient to support an attempted criminal threat conviction. (*People v. Jackson, supra,* 178 Cal.App.4th 590, 600.) Under either scenario the instructions given the jury were erroneous. (*Ibid.*)

The instructional error in this case therefore calls for reversal. The jury could have concluded that the victims did not suffer sustained fear. This scenario is sufficient to support a conviction of attempted criminal threats only upon a finding that a reasonable person could have suffered

fear in those circumstances, something the jury was not asked to decide. On the other hand the jury could have concluded that the victims' fear was unreasonable under the circumstances. This scenario is legally insufficient to support an attempted criminal threat conviction. Since there is nothing in the record upon which to find that the verdict was actually based on a valid ground, appellant's convictions must be reversed. (See *People v. Guiton* (1993) 4 Cal.4th 1116, 1129.)

CONCLUSION

Just as a statement must be viewed objectively from the point of view of a reasonable person in determining whether it constitutes a criminal threat, an attempted criminal threat must be viewed from the same perspective, in order to insure that punishment will apply only to speech that clearly falls outside First Amendment protection. In this case the court committed instructional error because the instructions given simply referred the jury back to the elements of the substantive crime, but the instruction on the substantive crime included the reasonableness element only as part of the result of the completed crime, and did not instruct the jury to consider whether the intended threat reasonably could have caused sustained fear under the circumstances. Appellant's convictions must therefore be reversed due to instructional error.

Dated: August 10, 2013 Respectfully submitted,

____

Stephen M. Hinkle
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

WITH CALIFORNIA RULES OF COURT, RULE 8.360.

Case Name: People v. BEN CHANDLER, JR.,

Supreme Court No. S207542

I, Stephen M. Hinkle, certify under penalty of perjury under the laws of the State of California that the attached APPELLANT'S REPLY BRIEF ON THE MERITS contains 5,191 words as calculated by Microsoft Word 2003.

Dated: August 10, 2013

Stephen Hinkle

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SUPREME COURT CASE NO. S207542
SUPERIOR COURT CASE NO. SWF027980

People v. BEN CHANDLER, JR.,

DECLARATION OF SERVICE

I, the undersigned, say: I am over 18 years of age, employed in the County of Nevada, California, in which county the within-mentioned delivery occurred, and not a party to the subject cause. My business address is 11260 Donner Pass Rd, C-1 #138, Truckee, CA 96161. I served the following document:

APPELLANT'S REPLY BRIEF ON THE MERITS

of which a true copy of the document filed in the cause is affixed, by placing a copy thereof in a separate envelope for each addressee names hereafter, addressed to each addressee respectively as follows:

Attorney General
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And a hard copy at
P.O. Box 85266
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Clerk of the Court
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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 Truckee, California, on August 12, 2013. I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 12, 2013, at Truckee, California.

____
Stephen Hinkle