IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent **v.** **EMMANUEL CASTILLOLOPEZ,** Defendant and Appellant.	**Case No. S218861** Court of Appeal Case No. D063394 San Diego County Superior Court Case No. SCD242311

ON REVIEW FROM
THE FOURTH APPELLATE DISTRICT, DIVISION ONE
AND THE SAN DIEGO COUNTY SUPERIOR COURT
THE HONORABLE ALBERT T. HARUTUNIAN, III, JUDGE

APPELLANT'S ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED

Was Castillolopez's possession of a concealed and opened pocketknife with the blade in its fully extended position sufficient to sustain his conviction for carrying a concealed dirk or dagger in violation of Penal Code section 21310?[1]

INTRODUCTION

The answer to this Court's question is no, as a matter of law – that law being section 16470, which carves out an express *exception* to the "dirk or dagger" prohibition under section 21310, intended to *exclude* folding knives and pocketknives from the general prohibition *unless* the knife is concealed with the blade *both* "exposed *and* locked into position." The plain meaning of the statute's express terms, the centuries-old commonsense understanding of what constitutes a "stabbing weapon," and the historical development of the law intended to control such weapons all compel the conclusion that a concealed folding knife or pocketknife falls within this narrow prohibition *only* when the blade is locked into the open position so as to be *immovable or immobile*. That is the crucial qualifying characteristic for this class of knives because, *by the very definition of the class* under section 16470, such a knife is otherwise *not* "capable of ready use as a stabbing weapon that may inflict great bodily injury or death" within the meaning of section 21310's general prohibition. The undisputed evidence in this case establishes that the blade of the "Swiss Army knife" Castillolopez had concealed on his person lacked any sort of locking mechanism that could have rendered the blade immovable or immobile. Thus, the Court of Appeal correctly held the evidence legally insufficient to support Castillolopez's conviction and its judgment should be affirmed.

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[1] Statutory citations are to the Penal Code unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

A San Diego County jury convicted Castillolopez of carrying a concealed dirk or dagger (§ 21310), and he admitted having previously suffered a prison prior offense (§§ 667.5, subd. (b), 668) as well as a prior "strike" conviction (§§ 667, subds. (b)-(i), 1170.12, 668). (CT 145.) The trial court sentenced Castillolopez to three years and eight months in state prison. (CT 147.) On appeal, among other claims, he challenged his conviction on the basis that section 16470 (which defines "dirk or dagger" for purposes of section 21310's general prohibition against concealed dirks and daggers) is unconstitutionally vague, as well as on the basis that the supporting evidence is insufficient as a matter of law because the "Swiss Army" pocketknife (a "multi-tool" device) found in his pocket could not satisfy the statutory definition. The Court of Appeal upheld the constitutionality of section 16470 but found the supporting evidence is indeed insufficient as a matter of law because, although the device at issue was found with the knife blade fully extended into the open position, it was not locked into place so as to be immovable or immobile, which is expressly required to bring such a knife within the ambit of the prohibition. (Opn. 15, 27.) This Court granted respondent's petition for review.

The charge against Castillolopez arose from an incident in which he was riding as a passenger in a car that became the subject of a police traffic stop in the City Heights area of San Diego. (2RT 95-98.) Once stopped, Castillolopez began moving around and reaching below the dashboard area, initially ignoring commands that he and the driver show their hands and not make any sudden movements. (2RT 99-102.) Eventually, he raised his hands and complied with commands to get out of the car and submit to an arrest. (2RT 103-104.) Inside a pocket of Castillolopez's jacket was what the arresting officer described as a "Swiss Army" knife, the "collapsible" blade of which was "in a locked, open position." (2RT 104, 112-113, 148.)

At trial, two knife experts testified: Cameron Gary (an investigator with the District Attorney's Office) for the prosecution, and Raymond Flores (a knife retailer) for the defense. (2RT 137-138, 169-171.) Both experts examined Castillolopez's device on the stand and compared it to other knife-like objects. According to Gary, the device was commonly known as a "Swiss Army" knife or "pocketknife," which contained other "tools," like scissors and a screwdriver. (2RT 149, 154.) The knife blade was two to three inches long. (2RT 138.) When extracted, the blade was suspended in the open position by "friction" or "spring" tension, which Gary described as a "friction, slash, spring lock." (2RT 138-139, 148.) All folding blade knives "lock" into position in the sense that some degree of friction or tension keeps the blade in the open position when it is extended, because "[o]therwise, you couldn't use them." (2RT 155, 157.) The blade of Castillolopez's device could inflict great bodily injury or death when fully extended, insofar as it could puncture the skin and strike a vital organ, though it would generally be of limited effectiveness as a stabbing weapon because the blade could collapse if one attempted to puncture anything hard with it. (2RT 139-140, 149-150, 154, 157-158.) Gary testified that any hard, "point[ed] or "edged" object, including a pen, toothbrush, or "sharpened" hair comb, could be used to puncture the skin and cause grave bodily injury. (2RT 141, 144-145, 147.) Gary would not classify Castillolopez's device as a "stabbing weapon," "fighting knife," or a "defensive weapon," but as primarily "a tool." (2RT 140-141, 150-151.)

The law under which Castillolopez was being prosecuted required that the knife blade be "locked" into position, which Gary defined as meaning "[t]o make something impenetrable or immovable." (2RT 151-152.) There are folding blade knives, classified as "locking blade" knives, which include an actual locking mechanism that renders the blade effectively "immobile" until the user physically disengages the blade

through a separate action to release it; one would "have to almost break the blade" to close it without releasing the locking mechanism. (2RT 148, 153.) Castillolopez's knife was "absolutely not like those" knives (2RT 151), because it could be closed solely by applying pressure against the back side of the blade without the need to disengage or release any sort of locking mechanism that fixed the blade into the open position (2RT 151-152).

Flores agreed that the device at issue was a "standard Swiss Army knife" or "multi-tool" that, unlike a "locking blade knife," did not have a mechanism rendering the blade immobile when fully extended. (2RT 176.) While the knife blade "may pop into place" when extended, it could only be said to "lock into position" in the limited sense that the blade would remain open in the fully extended position (i.e., "the final state of where it's supposed to be at") until collapsed back into its folder. (2RT 185, 187-188.) But Flores would never describe the blade as capable of actually locking into place (and he knew of no one else in the industry who would), because the blade remained "mobile" while it was extended, and "nothing at all" had to be manipulated to close the blade; instead, it could "very easily" be closed with mere pressure against the blade. (2RT 177, 185-188.) Flores also agreed that, like other pointed objects, such as pens, a knife blade of this sort could puncture the skin and thus possibly cause significant injury or death, but there was a risk the knife would collapse if one tried to use it as a stabbing weapon, which is the reason the "locking blade" knife was developed. (2RT 180, 183-184.) Flores contrasted these types of knives with photographs depicting common locking blade knives and the physical features on those knives that effectively immobilize the blade when extended into the open position. (2RT 174-175, 177-179; Appendix A.)[2]

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[2] These photographs were introduced into evidence as Defense Exhibit A. (CT 79, 142.) Castillolopez has requested their transmission to

ARGUMENT

I

THE UNDISPUTED EVIDENCE ESTABLISHES THAT THE "SWISS ARMY KNIFE" LACKED THE CRUCIAL QUALIFYING CHARACTERISTIC FOR THE CLASS OF SUCH KNIVES THAT THE LEGISLATURE HAS NARROWLY DEFINED SO AS TO GENERALLY EXCLUDE FOLDING KNIVES AND POCKETKNIVES FROM THE "DIRK OR DAGGER" PROHIBITION, AND THUS THE COURT OF APPEAL CORRECTLY REVERSED THE CONVICTION

The Fourteenth Amendment guarantees no person shall suffer a criminal conviction except upon proof sufficient to show guilt beyond a reasonable doubt of the charged offense. (*Jackson v. Virginia* (1979) 443 U.S. 307, 316, 318-319; *In re Winship* (1970) 397 U.S. 358, 362; *People v. Johnson* (1980) 26 Cal.3d 557, 576-578.) The appellate court views the record, and draws all reasonable inferences, in the light most favorable to a conviction. (*Johnson*, at p. 576.) However, the evidence must be of a "substantial" nature – that is, "sufficiently reasonable, credible, and of such solid value that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt" of the charged offense. (*People v. Chatman* (2006) 38 Cal.4th 344, 389.) It is the Legislature's definition of the crime, as expressed through the specific statutory elements, that the evidence must satisfy to this degree of certitude; for it is solely the province of the Legislature to define a crime. (*In re Brown* (1973) 9 Cal.3d 612, 624.)

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the Court pursuant to California Rules of Court, rule 8.224(a)(1), and has attached a copy of the exhibit as Appendix A for ease of reference.

A. Section 16470 Creates an *Exception* to the "Dirk or Dagger" Prohibition that *Excludes* from the Purview of Section 21310 *All* Folding Knives and Pocketknives *Unless* They Possess the Specific Characteristics Statutorily Defined by the Legislature

Here is the law of the case as it applied to Castillolopez in 2012 and as it still stands today: "[A]ny 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 pursuant to subdivision (h) of Section 1170." (§ 21310; added by Stats. 2010, c. 711 (S.B. 1080), §6, operative Jan. 1, 2012.) "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 [regulating switchblade knives], 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; added by Stats. 2010, c. 711 (S.B. 1080), §6, operative Jan. 1, 2012.)

Right away, two basic precepts stand out from the plain unambiguous meaning of these statutory provisions (*People v. Albillar* (2010) 51 Cal.4th 47, 54 ["we first examine the words of the statute, viewing them in their statutory context and giving them their ordinary and usual meaning" and when "the language of statute is unambiguous, the plain meaning controls"]): First, there is a *general* definition of "dirk or dagger" for purposes of establishing a *general* prohibition against the concealed carrying of "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." (§ 16470.) Second, folding knives ("nonlocking" and otherwise) and other pocketknives (except switchblades) are carved out from the general class of what constitutes a "dirk or dagger"

as a subset of specified objects to which the general prohibition applies "*only* if the blade of the knife is exposed and locked into position" (§ 16470, italics added) – i.e., so as to create an *exception* to the general rule because, without the blade "exposed and locked into position," they are deemed *not* "capable of ready use as a stabbing weapon that may inflict great bodily injury or death" within the meaning of the prohibition (*ibid.*).

A narrow rule of inclusion within section 21310's basic prohibition – or, perhaps better stated, a general rule of *exclusion* – for common pocketknives and other ubiquitous objects containing a folding knife blade, such that the prohibition applies *only* when these objects are carried with the blade "exposed and locked into position," is entirely consistent with the statutory scheme of which the prohibition is part: the "Control of Deadly Weapons Act" (originally enacted as the "Dangerous Weapons' Control Law" under former section 12000 et. seq.).[3] (*People v. Jenkins* (1995) 10 Cal.4th 234, 236 ["We consider the statute as a whole, harmonizing the various elements by considering each clause and section in the context of the overall statutory framework."].) Unlike common pocketknives and the various objects containing a knife blade among a group of other implements generally used for purely utilitarian purposes, the knife-like objects historically subject to prohibition could typically serve no purpose other than a surreptitious means for a deadly attack upon an unsuspecting victim; namely: "air gauge knives" (§ 16140); "ballistic knives" (§ 16220); "belt buckle knives" (§ 16260); "cane swords" (§ 16340); shurikens (§

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[3] The "Deadly Weapons Recodification Act of 2010" reorganized the existing statutes that regulate deadly weapons, while continuing the existing law essentially without substantive change. (See §§ 16005, 16010.)

17200); "lipstick case knives" (§ 16830); "undetectable knives" (§ 17290); "writing pen knives" (§ 17350); and switchblades (§ 17235).[4]

The same is true of the other objects prohibited under this scheme, like: "nunchakus" (§ 16940); "wallet guns" (§ 17330); "cane guns" (§ 16330); flechette darts (§ 16570); "metal knuckles" (§ 16920); "leaded canes" (§ 16760); rifles (§ 17090); shotguns (§ 17190); and "undetectable firearms" (§ 17290). As with the knife-like objects enumerated above, the concealed possession of these types of objects can generally serve no purpose other than to provide a means for inflicting great bodily injury or death by surprise. On the other hand, as in the case of the exception for folding knives and pocketknives carried *without* the blade "exposed and locked into position," the statutory scheme has built-in exceptions to the general prohibition for other objects commonly carried for legitimate or lawful purposes. So, for example, the prohibition against concealed carrying of a "camouflaging firearm container" does not include such a container used in connection with lawful hunting (§ 16320) and the prohibition against such carrying of "zip guns" does not apply if the device was not imported or designed to be a firearm (§ 17360). There is also such an exception for a "ballistic knife" in that the prohibition does not include "any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun." (§ 16620.)

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[4] For example, an "air gauge knife" is "a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended" (§ 16140), and a "writing pen knife" is "a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device" (§ 17350).

The overall design of this statutory scheme is reflective of its long-understood, self-evident purpose: "to condemn weapons common to the criminal's arsenal" (*People v. Mayberry* (2008) 160 Cal.App.4th 165, 169) – those "unusual, sophisticated weapons, some with mysterious and evil-sounding names" (*People v. King* (2006) 38 Cal.4th 617, 621), which are '"ordinarily used for criminal and unlawful purposes'" (*Mayberry*, at p. 169, quoting *People v. Grubb* (1965) 63 Cal.2d 614, 620) or "ordinarily harmless objects when the circumstances of possession demonstrate an immediate atmosphere of danger" (*People v. Barrios* (1992) 7 Cal.App.4th 501, 504, quoting *Grubb* at p. 621). Consistent with their function "to interpret laws, not to write them" (*People v. Haykel* (2002) 96 Cal.App.4th 146, 150-151) and the "usual practice in interpreting criminal statutes," courts have "literally applied and 'strictly construed'" the prohibitions in this scheme (*In re George W.* (1998) 68 Cal.App.4th 1208, 1214, quoting *People v. Bain* (1971) 5 Cal.3d 839, 850; *In re Luke W.* (2001) 88 Cal.App.4th 650, 656). A court may not "enlarge" their scope or "include items within the statutory policy but without the statutory language . . ." (*Mayberry*, at p.171; *People v. Pellecer* (2013) 215 Cal.App.4th 508, 517 ["Penal statutes may not be made to reach beyond their plain intent, covering only crimes coming within the statutory language."].)

Thus, just as the concealed possession of a proscribed object is not enough without the requisite criminal state of mind (*People v. Rubalcava* (2000) 23 Cal.4th 322, 331-332 [the defendant must *knowingly* possess the proscribed object]), mere possession of an object for unlawful purposes is not a crime if the object does not contain all the characteristics necessary to render it statutorily proscribed (*People v. Mayberry*, *supra*, 160 Cal.App.4th at p. 172, fn. 11 ["the circumstances in which an object is carried or the intent of the carrier cannot alter the descriptive characteristics of the object. It can only annul the criminal character in the circumstances

of its possession."]). The statutorily prohibited character of the object, based on its "descriptive characteristics," is indeed primary to a conviction. (*People v. King*, *supra*, 38 Cal.4th at p. 627, italics added ["*First*, the prosecution must prove that the item had the necessary characteristic to fall within the statutory description. It must *also* prove that the defendant knew of the characteristic."].) Returning to the prohibition against concealed carrying of folding knives and pocketknives as a subset of the prohibited "dirks" and "daggers," the plain meaning interpretation dictates that the only such knives "coming within the statutory language" (*People v. Pellecer*, *supra*, 215 Cal.App.4th at p. 517) are those concealed with the blade "exposed and locked into position" (§ 16470) – i.e., this is the "necessary characteristic" that must exist for the prohibition to have any application (*King*, at p. 627). It is part and parcel of the plain intent to carve out a general exception for common folding knives and pocketknives, leaving only a narrow class that could properly be deemed "capable of ready use as a stabbing weapon" within the meaning of the prohibition.

B. The Distinct, Statutorily Defined Characteristic of "Locked Into Position" Means Just What It Sounds Like: the Blade Must Be Locked Into Position So as to Be Immovable or Immobile

The "ordinary and usual meaning" of the language creating this narrow class of prohibited folding knives and pocketknives also plainly reveals just what is required to meet the essential qualifying characteristic of concealment with the blade "exposed and locked into position." It is axiomatic that "[s]ignificance must be attributed to every word and phrase of a statute, and a construction making some words surplusage should be avoided." (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1131; accord *White v. County of Sacramento* (1982) 31 Cal.3d 676, 681.) To this end, courts employ the ordinary meaning of the word "and" – which is "a conjunctive,

meaning 'an additional thing,' 'also' or 'plus.'" (*In re C.H.* (2011) 53 Cal.4th 94, 101.) Here these principles compel the conclusion that the characteristic necessary to bring a "nonlocking folding knife," a "folding knife," or other "pocketknife" (except a switchblade) within the prohibition is that the blade must be "exposed" *and* "locked into position." (§ 16470.)

The statute does not endeavor to define the ordinary words "exposed," "locked," or "position," nor the phrase "locked into position." "When attempting to ascertain the ordinary, usual meaning of a word, courts appropriately refer to the dictionary definition of that word." (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121-1122; accord *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1146.) "Expose" means to: "make visible," "make known," "deprive of shelter or protection," "lay open to danger or harm" (American Heritage Dict. (4th ed. 2000) p. 626, col. 2), or "leave (something) without covering or protection," "cause to be visible or open to view," "exhibit for public veneration" (Merriam Webster Online Dictionary [http://www.merriam-webster.com/dictionary/expose]). The basic feature distinguishing folding knives and pocketknives from standard knives with straight blades affixed to a handle is obviously that the knife blade folds or collapses into the body of the object containing the blade. Thus, consistent with both the obvious functional purpose of unfolding or opening a collapsible knife blade and the ordinary connotation of this term – something "open to view," "known," "visible," *without* covering or protection" (*ibid.*, italics added) – "exposed" must mean that the knife blade is unfolded or extracted from its closed or collapsed position into its fully open or fully extended position.

As for "lock," in its verb form, the word generally means to: "fix in place so that movement or escape is impossible; hold fast;" "engage and interlock securely so as to be immobile;" "become rigid or immobile" (American Heritage Dict., *supra*, at p. 1027, col. 1); or "fasten (something)

with a lock," "make fast, motionless, or inflexible especially by the interlacing or interlocking of parts" (Merriam Webster Online Dict. http://www.merriam-webster.com/dictionary/lock). As a noun, "lock" is understood to mean: "[a]n interlocking or entanglement of elements or parts;" "[a] secure hold; control" (American Heritage Dict., at p. 1027, col. 1); or "a fastening (as for a door) operated by a key or a combination," "a locking or fastening together" (Merriam Webster Online Dict., *supra*). The ordinary meaning of "position" is simply: "[a] place or location;" "[t]he right or appropriate place;" "[t]he way in which something is placed;" or "[t]o put in place or position." (American Heritage Dict., at p. 1369, col. 2.)

Again, given the *conjunctive* form of the phrase "exposed *and* locked into position," "locked into position" must mean something *more* than just an "exposed" knife blade – i.e., it must mean "'an *additional* thing,' 'also' or 'plus.'" (*In re C.H.*, *supra*, 53 Cal.4th at p. 101, italics added.) It cannot be enough that the blade is extracted to its state of full extension. Indeed, the most reasonable (and really the only reasonable) construction of the "exposed" requirement in this context *already* requires that the blade be in its fully extended state; so, if that were sufficient to constitute being "exposed *and* locked into position," the latter requirement – though clearly worded as a separate, *additional* requirement of the necessary prohibited characteristic – would be rendered meaningless.

The logical corollary of the presumption that "every word, phrase and provision employed in a statute is intended to have meaning and to perform a useful function . . ." (*White v. County of Sacramento*, *supra*, 31 Cal.3d at p. 681) is the axiom that courts "'do not presume that the Legislature performs idle acts, nor do we construe statutory provisions so as to render them superfluous'" (*People v. Minor* (2002) 96 Cal.App.4th 29, 42, quoting *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 17; see also *Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 850 ["We presume the

Legislature intended everything in a statutory scheme, and we do not read statutes to omit expressed language or to include omitted language."].)

The phrase "locked into place" – which means substantially the same thing as "locked into *position*," since "place" and "position" are essentially synonyms (American Heritage Dict., *supra*, at p. 1369, col. 2) – appears in multiple other statutory provisions dealing with similar subjects. As noted, for purposes of the prohibition against the concealed carrying of "air gauge" and "writing pen" knives, both types of objects are defined with specific reference to the characteristic of a metallic shaft that "*locks into place* when extended." (§§ 16140, 17350, italics added.) Additionally, from the time it was enacted in 1974, section 626.10's prohibition against the carrying of certain weapons onto school grounds (kindergarten through the twelfth grade) has defined the prohibition against "folding knives" as "[a]ny folding knife with a blade *that locks into place*." (§ 626.10, subd. (a)(1), italics added; added by Stats. 1974, c. 103, p. 218, § 1.) For purposes of promulgating the prohibition against "dirks" or "daggers," section 626.10 incorporates the same general definition used in section 16470 to define "dirk or dagger." (§ 626.10, subd. (h).) However, similar to the distinct treatment that section 16470 accords folding knives and pocketknives, section 626.10 distinguishes a "folding knife that locks into place" from the general class of "dirks" and daggers" by separately enumerating the prohibitions against these objects. (§ 626.10, subd. (a)(1).)[5]

Surely, we neither can nor should presume that the phrase "locks into place" or "locks into position" lacks any independent significance in each of these statutory provisions where it has been used for decades to effectuate the same essential purpose of controlling deadly weapons. "To understand the intended meaning of a statutory phrase, we may consider

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[5] The statute has retained this classification and definition of the prohibited knives since its inception. (See Stats. 1974, c. 103, p. 218, § 1.)

use of the same or similar language in other statutes, because similar words or phrases in statutes in pari materia [that is, dealing with the same subject matter] ordinarily will be given the same interpretation." (*Bonner v. Cnty. of San Diego* (2006) 139 Cal.App.4th 1336, 1351.) Conversely, "when the Legislature uses a particular word or phrase in one statute, the omission of that word or phrase in another statute dealing with the same general subject matter shows a different legislative intent." (*California Med. Ass'n v. Brown* (2011) 193 Cal.App.4th 1449, 1462.) The plainly intentional inclusion of this phrase in these similar statutory provisions demonstrates its independent significance in the Legislature's crafting of prohibitions against knife-like objects. Thus, the existence of a "metallic shaft" embedded within a concealed device that appears to be an air gauge does not bring the device within the statute's prohibition *unless* that shaft actually *locks into place* when extended. Similarly, the possession of a "folding knife" on school grounds does not violate section 626.10 *unless* it has a blade that *locks into place*. On the other hand, a "writing pen knife" falls within the prohibition if its metallic shaft is *either* "*exposed* by mechanical action or gravity *which locks into place* when extended" *or* simply "*exposed* by the removal of the cap or cover on the device." (§ 17350, italics added.) The Legislature's crafting of this prohibition to apply when the shaft is exposed *and* locked into place *or* merely exposed shows it understands the obvious difference in meaning between "exposed" and "exposed and locked into position" (or "place") and uses this difference to describe the specific definitional characteristics of a prohibited weapon.

So it must be with the definitional characteristics of the prohibition against folding knives and pocketknives under section 16470: the Legislature intended the phrase "locked into position" to have independent significance within the definition of the proscribed class of knives; and according the phrase that significance requires construing it as a distinct

from, and additional to, the mere status of the blade as "exposed." The "locked into position" requirement must be read, consistent with the "ordinary and usual" understanding of those terms, to mean that the blade of the object is "fix[ed] in place" so as to be rendered essentially "immobile," "motionless," or "inflexible." (American Hert. Dict., *supra*, at p. 1027, col. 1 & p. 1369, col. 2; Merriam Webster Online Dict. http://www.merriam-webster.com/dictionary/lock). This is indeed precisely how the knife experts in this case defined the phrase in distinguishing between "locking" and "nonlocking" blades. (2RT 151-152, 178-179.)

And this is precisely the analytical framework the Court of Appeal applied in rendering its interpretation of the statutory scheme concerning Castillolopez's conviction. The court rejected the prosecution's claim that the blade need merely be "*fully open*" or "*fully extended into the open position*" to fall within the statutory prohibition. (Opn. at 11, italics original.) Based on the axiomatic principles of statutory interpretation, the Court of Appeal rightly concluded first that section 16470 carves out an *exception* to the general prohibition under section 21310 for such objects, thereby specifically *limiting* the prohibition to folding knives and pocket knives that are concealed with the blade exposed *and* locked into position:

> Looking first at the plain and commonsense meaning of the foregoing statutory language [citation], we first determine that, under section 16470, any one of the three types of knives specified therein – a 'nonlocking folding knife,' a 'folding knife' that is not a switchblade prohibited by section 21510, or a 'pocketknife' – is *not* 'capable of ready use as a stabbing weapon that may inflict great bodily injury or death' – and, therefore, is *not* a 'dirk or dagger' within the meaning of section 16470 – unless 'the blade of the knife is exposed *and locked into position.*'

(Opn. 13-14, italics original in opinion.)

Next, the court properly considered the meaning of the phrase "locked into position" based on its "plain and commonsense meaning" as illustrated through the ordinary understanding of the term "lock" – that is, a mechanism that renders something "motionless or inflexible," "firmly fixed in place," "immovable," "not easily moved," "securely attached," "incapable of being moved," and similar connotations. (Opn. at 15-16.) Consistent with the plain meaning interpretation compelled by the statutory terms, the court correctly concluded that the phrase "locked into position" in section 16470 "plainly means 'firmly fixed in place or securely attached so as to be immovable'" and thus "in order for a concealed folding knife or pocketknife to be a dirk or dagger within the meaning of sections 16470 and 21310, the blade must be not only exposed, but also firmly fixed in place or securely attached so as to be immovable." (Opn. at 15.) Accordingly, the court was compelled as a matter of logic, commonsense, and the most basic principles of statutory construction to reject the notion that the mere status of the blade as "open," so as to be "fully exposed," was sufficient to bring the object within the ambit of the prohibition:

> We reject the Attorney General's contention that, '[b]ased on the plain language' of section 16470, the phrase 'locked into position' means 'fully open' and, thus, section 16470 'reasonably defines [a dirk or dagger] as any folding knife, other than a switchblade, [that is] fully fixed into an open position,' whether or not the blade 'mechanically lock[s] into place.' By claiming the phrase 'locked into position' should be construed to mean 'fully open,' the Attorney General is necessarily suggesting that the phrase 'exposed and locked into position' in section 16470 can be replaced by the phrase 'exposed and fully open' without altering the meaning of the statute. Such an interpretation, however, would essentially rewrite section 16470 and render plain express language adopted by the Legislature – the phrase 'locked into position' – meaningless.

(Opn. at 18.)

The Court of Appeal's interpretation of this statutory scheme should be affirmed because the plain meaning of the operative language dictates that section 16470 indeed carves out an exception for folding knives and pocketknives such that the general prohibition of section 21310 does not apply *unless* the blade is *both* "exposed" so as to be fully extended *and* "locked into position" so as to be rendered immovable or immobile.

C. The Extrinsic Aids Can Only Bolster This Interpretation

While the plain meaning of the operative statutory language is clear enough to compel this construction of sections 16470 and 21310, to the extent there may be room for legitimate debate about the meaning and effect of the "locked into position" requirement, the historical statutory development, policy considerations, and other extrinsic aids simply further compel the same conclusion. (*People v. Rubalcava*, *supra*, 23 Cal.4th at p. 328, internal quotations omitted ["If the language permits more than one reasonable interpretation, then the court looks to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part."].)

Historically, "dirks," "daggers," and the like have always been associated with stabbing instruments the integral part of which is a straight or fixed blade, or other inflexible implement that is sharp and pointed, either affixed to a handle or integrated into a device that provides leverage for using the blade or pointed implement as an effective stabbing weapon. "In pure usage the dagger, always a weapon, should have a symmetrical tapering blade with two, three, or even four edges and a sharp point. It is primarily designed for thrusting or stabbing." (*People v. Mowatt* (1997) 56 Cal.App.4th 713, 719.) '"The dirk is a variant of the knife. In its original

form it was a weapon with an evenly tapered blade sharpened on one edge. In the late 18th and early 19th centuries, however, the name was applied to all the short side arms carried by naval officers. Thus, it included true daggers and sharply curved knives almost of cutlass length.'" (*Ibid.*, quoting Peterson, American Knives: The First History and Collectors' Guide (1958) p. 2.) "When these historical archetypes, as well as the dictionary definitions, are examined, several attributes repeatedly appear including a fixed or locking blade, with sharpened edges, shorter than a sword and longer than an ordinary pocketknife, ranging between 4 and 25 inches, hilt, and designed with the intent to be used primarily for stabbing during combat." (*State v. Payne* (2008) 250 S.W.3d 815, 820 (Mo. Ct. App.).) Dirks or daggers were originally used in dueling and required blades locked into place to be effective. (*People v. Forrest* (1967) 67 Cal.2d 478, 480-481, citing *inter* alia American Knives, at p. 2.) '"[F]ailure [of the knife blade] to lock severely limits its effectiveness as a stabbing weapon because if the blade should hit a hard substance as a bone there is grave danger that the blade would close on the hand of the wielder.'" (*Payne*, at p. 820, quoting *People v. Bain*, *supra*, 5 Cal.3d at p. 851.)

Thus, before there was a statutory definition for "dirk or dagger" in California, "courts only applied the [prohibition under former section 12020] to instruments where the blades and handle are solid, or where the blade locks into place." (*People v. Forrest*, *supra*, 67 Cal.2d at 480; see e.g., *People v. Shah* (1949) 91 Cal.App.2d 716, 718 [a collapsible-blade knife was a "dirk or dagger" because the blade "fixed" into place and could not be collapsed without disabling a "set lock"]; *People v. Bain*, *supra*, 5 Cal.3d at pp. 851-852 [knife could be prohibited because its blade "lock[ed] in place" upon release].) Courts recognized the need to "strictly construe" this category of weapons. (*People v. La Grande* (1979) 98 Cal.App.3d 871, 873 ["[F]ormer [s]ection 12020 simply does not encompass every sharp-

pointed tool which can stab within the definition of dirk or dagger."]; *People v. Barrios*, *supra*, 7 Cal.App.4th 501, 503 ["it was clear the Legislature did not intend 'dirk or dagger' to include all knives" under former section 12020].) However, the lack a uniform definition for "dirk or dagger" led to inconsistent, often overly broad applications. (*People v. Gerardo* (1984) 174 Cal.App.3d.Supp. 1, 8, quoting *People v. Ferguson* (1970) 7 Cal.App.3d 13, 19-20 [courts and juries were often "turning knives into 'dirks or daggers' in order to protect citizens from those who carry death-dealing weapons," resulting '"in a whole line of cases wherein the courts were compelled to call ordinary kitchen knives and carving knives and other knife-like weapons capable of inflicting mortal wounds, 'dirks and daggers'"]; *People v. Wharton* (1992) 5 Cal.App.4th 72, 77 ["much confusion has been engendered by the Legislature's failure to define [these] terms"]; *In re George W.*, *supra*, 68 Cal.App.4th at p. 1212 ["This often resulted in inconsistent results on similar facts."].)

The Legislature eventually did enact a definition of "dirk or dagger" in 1993, which defined this to mean "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." (Former § 12020, subd. (c)(24); Stats. 1993, ch. 357, § 1.) "It is immediately apparent that the 1993 Legislature chose a *considerably more restrictive* definition than the courts did," so as to define the class of objects narrowly and exclude knives normally used for legitimate purposes. (*People v. Mowatt*, *supra*, 56 Cal.App.4th at pp. 717-718, italics added [comparing this definition to the one in *People v. Ruiz* (1928) 88 Cal.App. 502, 504, which was stated as "any straight knife . . . capable of inflicting death" that "*may* consist of any weapon fitted primarily for stabbing"].) "[T]he Legislature's formulation tracked the technical definition of dirks and daggers as stabbing weapons *distinct from knives*, which are cutting

tools that may also be used as weapons." (*Mowatt*, at pp. 718-719.) Thus, "[t]his definition was held to *exclude* the types of hunting and folding knives designed primarily for use in various outdoor recreational activities." (*In re George W.*, *supra*, 68 Cal.App.4th at 1212, italics added.)

But this definition '"ultimately proved too narrow and too difficult of proof."' (*People v. Rubalcava*, *supra*, 23 Cal.4th at p. 337 (conc. opn. of Werdegar, J.), quoting Sen. Rules Com., 3d reading analysis of Assem. Bill No. 1222 (1995-1996 Reg. Sess.) as amended May 31, 1995, p. 4.) "Prosecutors complained that 'since we can never show that the primary purpose of a butcher knife, hunting knife, survival knife, ice pick, etc., is to cause death or great bodily injury by stabbing, we cannot obtain convictions under the statute,' even when the person was carrying the concealed instrument for potential use as a weapon." (*Ibid.*) As a result, even gang members and other people who carried '"lethal knives hidden in their clothing [were] essentially immune from arrest and prosecution."' (*Ibid.*) To avoid these unintended results, the Legislature changed the general definition of "dirk or dagger" in 1995, replacing the "primarily designed" definition with one that provided "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" was a "dirk or dagger." (Former § 12020, subd. (c)(24), as amended by Stats.1995, ch. 128, § 2.) This resulted in "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." (*In re George W.*, *supra*, 68 Cal.App.4th at p. 1212.)

However, the Legislature's effort to prevent an unintended overly narrow application of the general prohibition with the 1995 amendment resulted in an unintended overly *broad* application of the prohibition – specifically with respect to common folding knives and pocketknives. The

very next year, Assemblyperson Diane Martinez, the author of the 1995 legislation, published a letter "expressing concern that the broad definition of dirk or dagger in the 1995 statute had *the unanticipated result of including folding knives and pocketknives*." (*In re Luke W.*, *supra*, 88 Cal.App.4th at p. 653, italics added.) Martinez explained that, according the district attorney's office which had drafted this definition, "folding knives are not 'dirk 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." (*In re George W.*, *supra*, 68 Cal.App.4th at p. 1213, italics added, quoting Martinez's letter; see RMJN at 252[6] [Martinez's letter in the 1996 Assembly Journal concerning Assem. Bill No. 1222].) Martinez concluded by saying: '"Thus, the definition of 'dirk or dagger' amended by my [Assembly Bill No.] 1222 last year was *not* intended to prohibit folding knives. I believe this is consistent with the intent of the Legislature."' (*Ibid.*, italics added.)

Martinez's letter expresses a clear legislative intent to *exclude* from the general "dirk or dagger" prohibition all folding knives and pocketknives *except* those concealed with the blade "*exposed and locked into position*," because without those "intervening machinations" (i.e., the maneuvers of opening the blade and locking it into position), they are not "capable of ready use as a stabbing weapon that may inflict great bodily injury or death." And that intent was born out in the amendment prompted by these concerns. It changed the definition into its current form (Stats. 1997, ch. 158, § 1), which "*expressly exclude[s]* from the definition of 'dirk or dagger' folding knives and pocket knives, which are not switchblades,"

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[6] "RMJN" refers to respondent's motion for judicial notice filed in this Court, and the page citations refer to the bate-stamped legislative history materials that respondent has attached as Exhibit A to that motion.

such that "folding and pocket knives could *only* fit the definition of 'dirk or dagger,' that is, of 'being capable of ready use as a stabbing weapon that may inflict great bodily injury or death,' if 'the blade of the knife is *exposed and locked into position.*'" (*In re George W., supra*, 68 Cal.App.4th at p. 1213, italics added.) The Legislature's express purpose to *exclude* and create an *exemption* for all folding knives and pocketknives except those that fit within this narrowly defined class is apparent throughout the legislative history. (RMJN at 252, 351, 444, 445, 461.)

Courts have readily recognized this modern formulation of the law for what it is: a narrowly circumscribed class of inclusion for folding knives and pocketknives intended to prevent improper or unfair application of the "dirk or dagger" prohibition to the many such knives commonly carried for utilitarian purposes. (See *In re Luke W., supra*, 88 Cal.App.4th at p. 656, italics added ["the statute *exempts* from the 'dirk or dagger' proscription both folding knives generally (unless they qualify as switchblades) and pocketknives"]; *People v. Mitchell* (2012) 209 Cal.App.4th 1364, 1371, italics added ["Thus, the statute [section 21310] generally proscribes the concealed carrying of a knife, but provides *exceptions* for (1) a knife placed in a sheath and visibly suspended from the waist, and (2) *a nonswitchblade folding or pocketknife if the blade is not exposed and locked.*"].) In keeping with the expressly *dual* nature of the crucial qualifying characteristic (i.e., the blade must be "exposed *and* locked into position"), it is clear courts have also recognized that merely opening or extending the blade is not enough to bring the knife within the prohibition because *more than one* form manipulation is necessary to transform a common folding knife or pocketknife into something "capable of ready use as a stabbing weapon" within the meaning of the prohibition. (*Luke W.* at 656, italics added ["small knives obviously designed to be carried in a pocket in a closed state, and which cannot be used until there have been *several* intervening

manipulations, comport with the implied legislative intent that such knives do not fall within the definition of proscribed dirks or daggers but are a type of pocketknife *excepted* from the statutory proscription"]; *Mitchell* at 1372, italics added ["the folding or pocketknife *exception* is consistent with the statute's objective because folded knives 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'"].) This *additional* form of manipulation necessarily must involve what the statute's definitional characteristics expressly require *in addition to* an "exposed" blade: that the blade must be *locked into position* so as to be *capable* of such "ready use."

In fact, *even before* this express exception was created for folding knives and pocketknives (when the "much broader and looser" version of the *general* prohibition stood alone in 1995), courts recognized that the salient feature of concern is a blade fixed into position by a locking mechanism rendering it immovable. In *People v. Rubalcava*, *supra*, 23 Cal.4th 322, which applied the 1995 version (*id.* at pp. 327-328), this Court provided an illustration of when a defendant would lack the requisite mens rea for a violation of the statute, explaining: "For example, a person could slip a knife into a defendant's pocket without his knowledge or give a defendant a *fixed-blade* knife wrapped in a paper towel, but tell the defendant the knife has a folding blade *that cannot lock.* In these cases, the defendant would lack the necessary mens rea" (*id.* at pp. 331-332, fn. 6, italics added; see also *People v. Mitchell*, *supra*, 209 Cal.App.4th at p. 1380 [quoting *Rubalcava* on this point]). In other words, in such a situation, the defendant would lack the requisite knowledge that he or she was in possession of an object "capable of ready use as a stabbing weapon that may inflict great bodily injury or death" *specifically because* the defendant believed it did not have a *fixed* or *locked* blade. So this was considered the

crucial qualifying characteristic of a folding knife even at a time when the statute did not *expressly require* that the blade be "locked into position."

And ever since the enactment of the modern formulation in 1997, courts have not only accorded independent significance to the "*locked* into position" requirement based on the statute's express terms, but they have continued to rely upon the centuries-old commonsense understanding that it is a mechanism fixing the blade into an immobile state which renders the object the sort of "stabbing weapon" properly proscribed. Consider again section 626.10, regulating weapons on the grounds of schools for children and teenagers. This is a much broader prohibition, as it applies to any dirk, dagger, straight blade knife with a blade 2 1/2 inches or longer, "folding knife that locks into place," or razor with an unguarded blade, among other weapons, regardless of whether they are concealed; possession alone is enough. (§ 626.10, subd. (a)(1); *In re T.B.* (2009) 172 Cal.App.4th 125, 129.) With respect to the folding knife prohibition, the knife blade need not be open (i.e., unfolded or extended from its folder) nor even be capable of actually inflicting "great bodily injury or death;" mere possession of such an instrument on school grounds, even with the blade collapsed, is enough for a violation. (§ 626.10, subd. (a); *In re T.B.*, at p. 131.) Given its wide, highly protective breadth, if ever there were a context in which the plain meaning of "locked" *might* properly be abandoned in favor of an unnaturally broad construction so as to simply mean the blade is open to its fullest point of extension regardless of whether it truly locks into an immobile position, one would think it would have to be this context. Yet, as the *T.B.* case shows, even in this context, "locked" still means *locked.*

In that case, the minor was found at school with a "multi-tool" containing a one-inch "sharpened blade" that, "[w]hen extended, locked into place." (*In re T.B.*, *supra*, 172 Cal.App.4th at p. 127.) The point crucial to the court's holding that possession of the object violated section 626.10

was that the blade was capable of, and actually did, lock into place so as to be immovable. The court quoted the juvenile court's reasoning in sustaining the charge: '"[O]n this device, when the blade is open, *certainly it is in a locked position*, and *one cannot move the blade*.... [¶] In looking at [the 'multi-tool'], it struck the court as somewhat de minimus in nature in that it is such a small item.... [¶] But in looking at this instrument, it would seem to me that [it] would still be a folding knife *if it was opened up properly* and if it was used for that purpose." (*In re T.B.*, at 128, italics added.) In affirming, the *T.B.* court similarly reasoned "a 'multi-tool' is a 'folding knife with a blade that locks into place' if (simply enough) it has a blade that folds out *and* locks into place" in this manner. (*Id.* at 131, italics added.) From a "[f]unctional[] standpoint, "the 'multi-tool' is a 'folding knife with a blade that locks into place" because the blade "can be deployed by pulling it out of the interior of the tool and *locking it into place*. The blade can then be 'folded' back into the tool *once the locking mechanism is released*. The remainder of the 'multi-tool' serves as the handle for the knife when the blade is deployed." (*Id.* at p. 130, italics added.)

While different states use different terms and definitions in crafting prohibitions against dirks, daggers, and the like, their modern case law further reflects the reality that locked means *locked* in this context.[7] (See e.g., *Ohin v. Com.* (2005) 47 Va.App. 194, 197, 200-201 [622 S.E.2d 784] (Va. Ct. App.), italics added [finding possession of a pocketknife in violation of the state's weapons statute because "[t]he blade *locks securely*

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[7] Out-of-state authorities are, of course, not binding, but they are another persuasive factor in the analysis. (See *In re Episcopal Church Cases* (2009) 45 Cal. 4th 467, 490 ["These out-of-state decisions are not binding on this court, but we find them persuasive, especially in the aggregate."]; *Allgoewer v. City of Tracy* (2012) 207 Cal.App.4th 755, 762 [relying upon out-of-state opinions as persuasive authority]; *Bowen v. Ziasun Technologies, Inc.* (2004) 116 Cal.App.4th 777, 788 [same].)

in place when extended," "*can be retracted only when manually unlocked*," which rendered it a "fixed blade, sharp point, and single-sharpened edge" and "afford[ed] it unquestionable utility as a stabbing weapon"]; *Stout v. Com.* (2000) 33 S.W.3d 531, 532 (Ky. Ct. App.), italics added ["the Court having examined the instrument, and having heard the evidence presented, finds that it could be used to slit someone's throat, or to inflict physical injury on somebody, *especially since the blade locks*, somewhat akin to a switchblade" and thus "it was not a pocket knife or hunting knife" (which are exempt from the state's weapon statutes)]; *F.R. v. State* (2012) 81 So.3d 752, 754 (Fla. Dist. Ct. App.), italics added ["a blade *that can be locked in an open position* would not be a characteristic of a common pocketknife" so as to fall within an exception for pocketknives]; *Knight v. State* (2000) 116 Nev. 140, 146 [993 P.2d 67], italics added ["Relevant factors to consider when determining whether a knife is a dirk or dagger include whether the knife has handguards and a blade *that locks in place*."].)

Ultimately then, any resort to extrinsic aids in determining the proper construction of the express qualifying characteristic under 16470 simply further bolsters what a plain, commonsense interpretation compels: for folding knives and pocketknives, section 21310's prohibition does not apply unless the blade is exposed, insofar as being fully extended, *and* locked into position in the sense of being immovable or immobile. So again, the Court of Appeal was quite right in rejecting the prosecution's attempt to rely upon the legislative history to support its position that "locked into position" means nothing more than the blade is "fully open," because all such extrinsic aids show exactly the opposite. (Opn. 19-21.)

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D. Respondent's Rationale Must Be Rejected as Completely at Odds with the Express Language and Purpose of the Law

Despite the clarity with which the foregoing shows that the phrase "*locked* into position" means precisely what the Court of Appeal construed it to mean, respondent still contends that "locked" does not really mean *locked.* Respondent claims it means something less than "locked" in the true sense – although just what respondent claims it means is rather unclear. Respondent appears to struggle with how to construct the less-than-truly-locked formulation it seeks to have supplanted for the plain, commonsense, legislatively intended meaning of the express definitional language in section 16470. Initially positing the issue for review, respondent proposed formulations under which liability would attach so long as a pocketknife "is concealed on the person *with the blade fully open and extended*" (Pet. for Rev. 4, italics added) or "concealed on the person *with the blade open and extended into a position capable of ready use as a stabbing weapon*" (*id.* at 4, 10, italics added). Respondent now posits that "a pocketknife can be a dirk or dagger *when it is carried as one – that is, with the blade secured in the open position*" (ROBM 1, italics added) or when the knife is "*concealed with the blade secured in the open positon*" (RBOM 20, italics added).

Perhaps respondent believes the connotation of "secured" sounds *more like* "locked" in the true sense than merely "fully open and extended." Whatever new meaning respondent hopes to covey here, at the end of the day, its ultimate position is that section 21310's prohibition should apply to the device at issue *despite* the undisputed evidence (discussed further below) that it does *not* have a locking mechanism that renders the blade immovable or immobile in the true sense of "locked." Respondent is only able to reach this conclusion by specifically advocating that the blade need only be extracted from its folder so as to be in the "open" position. (See e.g., RBOM 19, italics added ["locked" "simply mean[s] *open, not closed*"

– i.e., the blade need only be "*in the open position*"].) Similar to "exposed" (the word that *the Legislature* uses to establish the first definitional characteristic of prohibited folding knives and pocketknives), "open" connotes a state of being completely "undisguised," "unconcealed," "displayed," or "spread out" in "full view," like "an open book." (American Heritage Dict., *supra*, at p. 1231, col. 2 – p. 1232, col. 1.) Thus, "open" in this context also means nothing more than that the blade is extracted to the point of its fully extended position, so it can be utilized. As the prosecution's expert explained, "[o]therwise, you couldn't use [the knife]." (2RT 155.) Indeed, what good to the reader is a *partially* "open" book?

So however respondent may shift the phraseology, the thesis remains the same: the blade need only be "*fully open and extended*" to satisfy the statute's express requirement that it be "exposed *and locked* into position." For all the reasons already discussed, such a construction is untenable. "Locked into position" means something *more* than merely "open," "fully open," "fully extended," or "secured into the *open* position." The blade must be *locked into that position* so as to be immovable or immobile. And a look at the specific arguments that respondent puts forth in support of its thesis only further demonstrates why the Court of Appeal rightly rejected it.

1. Respondent's Rationale Would Eliminate the Crucial Locking Requirement and Ultimately Completely Nullify the Legislature's Carefully Crafted Exception for Folding and Pocketknives Under this Statutory Scheme

Respondent's primary argument in support of its thesis is that folding knives and pocketknives carried with the blade in the open, fully extended position (whether or not the blade is truly "locked") are "capable of ready use as a stabbing weapon" within the meaning of section 21310 because the blade could be used to inflict great bodily injury or death.

(RBOM 7, 11, 15, 24-25.) More specifically, respondent argues that section 16470 "simply says that a dirk or dagger is any knife that can be readily used as a stabbing weapon to inflict great bodily or death" (ROBM 16), meaning *any and all* such instruments readily capable of use as a stabbing weapon to inflict such harm fall within this prohibition (RBOM 7, 11, 15), and thus an "open" folding knife or pocketknife is "punishable as a dirk and dagger" just the same since it possesses this potential (RBOM 13).

Respondent's rationale not only completely eliminates the locking requirement for the narrow class of knives included within the prohibition, but it also completely eliminates any meaningful distinction between those knives and the *general* class of "dirks" and "daggers" subject to the *general* rule. Section 21310 establishes a *general* prohibition against concealed dirks or daggers and section 16470 establishes a *general* definition for what constitutes a dirk or dagger. But the very next sentence of section 16470 carves out an express *exception* to this general rule of prohibition, which is specifically designed to *narrow* and *restrict* any application of this prohibition to folding knives or pocketknives such that *only* those folding knives and pocketknives carried with the blade *exposed and locked into position* fall within the ambit of section 21310's general prohibition. Section 16470 specifically achieves its purpose of carving out this exception by tying the crucial qualifying characteristic – a blade "*exposed and locked into position*" – directly to the knife's capability "for ready use as a stabbing weapon." Again, as the Court of Appeal explained, any knife of the specified type "is *not* '*capable of ready use as a stabbing weapon that may inflict great bodily injury or death*' – and, therefore, is *not* a 'dirk or dagger" within the meaning of section 16470 – *unless* 'the blade of the knife is exposed and locked into position.'" (Opn. 14-15, italics added.)

In other words, under the express terms of the statute, *by definition*, a folding knife or pocketknife is *not* capable of such ready use and therefore

is *not* a prohibited "dirk or dagger" under section 21310 *unless* the blade *is* in fact "exposed and locked into position." Accordingly, if the blade of such a knife is *not* "exposed and locked into position," it is *not* subject to the general prohibition *even if* it *could be* used to inflict great bodily harm or death. Otherwise, the general rule would swallow the express exception so carefully crafted to exclude all but this narrow class of such knives.

The Legislature's express, unambiguous declaration that, for purposes of section 21310, folding knives and pocketknives are *not* capable of such ready use when the blade is *not* "exposed and locked into position" establishes the statutorily qualifying characteristic that must be used as the test for determining whether a knife of this sort falls within the prohibition. (*In re Brown*, *supra*, 9 Cal.3d at p. 624 ["'"Only the Legislature and not the courts may make conduct criminal."'"].) So in the absence of the statutorily defined "necessary characteristic," there can be no crime. (*People v. King*, *supra*, 38 Cal.4th at p. 627.) This is why the conviction in *Mayberry* could not stand: even though the sand-weighted boxing glove *could have* and *indeed did* cause the victim "serious injuries," it did not satisfy the "descriptive characteristics" established *by the Legislature* for defining the class of similar weapons that are actually prohibited under the statutory scheme. (*People v. Mayberry*, *supra*, 160 Cal.App.4th at pp. 167-168.)

Countless objects could be used as or transformed into things "capable of ready use as a stabbing weapon that may inflict great bodily injury or death." A ballpoint pen, a sharpened pencil, a straightened wire shirt hanger, a straightened metal paper clip, a nail, a screw, a nail file, a letter opener, or a fallen tree branch with angular point at one end all *could* obviously be used to puncture skin or to stab through an eye socket, damaging vital organs and leading to serious bodily injury or even death. Lest we risk potentially subjecting people to absurdly broad regulations concerning what they may carry about in their pockets, the test is not

merely whether an object *could* cause such injury. (See *State v. Nelson* (2014) 263 Or. App. 482, 489 [330 P.3d 644] (Or. Ct. App.) ["If a knife was a 'similar instrument' to an enumerated object merely because it had 'similar' characteristics and was capable of producing a 'similar' injury to a dirk, dagger, or ice pick – a stab wound – nearly every knife in existence would fall under [the statute]."]; *Knight v. State*, *supra*, 116 Nev. at p. 146 ["we doubt that the legislature sought to bar the concealment of common household items when it enacted the statutory provisions prohibiting concealment of a dirk or dagger"]; *Ohin v. Comm.*, *supra*, 47 Va. App. at p. 199 ["This focus on a knife's weapon-like properties excludes from concealed weapons statutes innocuous household and industrial knives which may be carried for legitimate purposes. [Citation.] Thus, a schoolboy's common pocketknife would necessarily fall outside the reach of the statute."]; *Nelson* at p. 490 ["The problem with the [state's] argument is that virtually anything with a point could be used for stabbing."].) Rather, the test is whether it has the particular characteristics of an object that *the Legislature has determined* properly subject it to specific regulation as a deadly or dangerous weapon. (*People v. King*, *supra*, 38 Cal.4th at p. 627.)

We see the Legislature making such distinctions throughout the Penal Code. Surely, a straight knife with a fixed blade *less than* 2 1/2 inches long *could be* used to cause great bodily injury or death, but the Legislature has decided to prohibit only such knives "having a blade *longer than 2 1/2 inches*" on school grounds. (§626.10, subd. (a)(1), italics added.) Similarly, under the Control of Deadly Weapons Act, "a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity" could theoretically be used to inflict such harm even if the shaft did *not* "lock into place." (§ 16140.) But the Legislature has specifically defined an "air gauge knife" as possessing the

characteristic of a metallic shaft "*which locks into place when extended*" (§ 16140, italics added); as such, only *those* type of devices can properly be classified and prohibited as unlawful deadly weapons under the statute.

So the concern driving respondent to advocate for a rationale that would essentially have the general rule against "dirks and daggers" swallow the express exception for folding knives and pocketknives does not drive the analysis of what constitutes a prohibited object under the statute; it is the statutory definition of what constitutes a prohibited folding knife or pocketknife under section 16470 that controls. *Perhaps* under a sweepingly broad interpretation, pens, pencils, sticks, and the like could be characterized as falling within the language of section 21310's *general* prohibition in some cases.[8] But whatever the case may be for the array other items one could possibly use as a "stabbing weapon," the Legislature has crafted a specific *exception* to the general prohibition for folding knives and pocketknives. And under that exception, such a knife is not a prohibited "dirk or dagger" unless the blade is "exposed and locked into position," regardless of whether it *could* otherwise cause great bodily injury or death.

Despite respondent's attempt to find support in case law for the notion that "locked into position" "simply mean[s] open, or not closed" for purposes of section 16470's requirements (RBOM 19), it remains clear that the blade must be locked so as to be immovable or immobile. Respondent's cited cases only further prove this point – particularly the *George W.* and *Luke W.* cases. As noted, the courts in those cases specifically explained that pocketknives carried in their normal closed state cannot be transformed into objects "capable of ready use" so as to fall within the ambit of the

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[8] The breadth of the language establishing the general prohibition is the reason for the *mens rea* requirement, because it could potentially "criminalize seemingly innocent conduct" and "invite arbitrary and discriminatory enforcement . . . due to the wide range of otherwise innocent conduct it proscribes." (*People v. Rubalcava*, *supra*, 23 Cal.4th at p. 333.)

narrow prohibition for such knives without *multiple* intervening manipulations. (*In re Luke W.*, *supra*, 88 Cal.App.4th at p. 656, italics added ["*several* intervening manipulations" are required to so transform a pocketknife]; *In re George W.*, *supra*, 68 Cal.App.4th at p. 1213, italics added ["*a number* of intervening machinations" are required].) The "opening" or "exposure" of the blade, which is required for *any* use, is just the *first* step in a process clearly understood to involve *multiple* steps necessary to ultimately render the knife the sort of object properly subject to prohibition. These additional forms of manipulation obviously must include *locking* the blade into position, as the statute expressly so states.

In the *Plumlee* case that respondent cites, the court was considering the different, much broader prohibition against concealed *switchblade* knives, which applies regardless of whether the blade is "exposed" or "open" (§ 17235), and thus it had no occasion to consider the question here concerning folding knives and pocketknives (*People v. Plumlee* (2008) 166 Cal.App.4th 935, 939-940). So, of course, the usual axiom precludes a meaningful analogy. (*People v. Belleci* (1979) 24 Cal.3d 879, 888 ["cases, of course, are not authority for propositions not there considered"].) In any event, the only comparison the court made was that, unlike a switchblade knife, the blade of a folding knife necessarily must be "open" before it can be included among the prohibited class; again, this is invariably just the *first* of *multiple* manipulations required. Moreover, by their very design, the blades of switchblade knives necessarily *lock* into place – in the *true* sense of the word. (See RMJN at p. 424 [knife dealer James K. Mattis defined a "switchblade knife" as follows in letter to the State Assembly: "a pocket knife whose blade is held closed, against spring tension, by a positive catch of some sort. Releasing that catch allows the blade to spring open and normally to lock in the open position."]; *Ohin v. Comm.*, *supra*, 47 Va.App. at p. 198 ["While technically a folding 'pocketknife,' [citation], a

switchblade is also prohibited as it locks into a fixed position for fighting purposes."]; *Ohin* at p. 200 ["Ohin's knife blade also locks securely when opened, much like a switchblade or a butterfly knife, and can be retracted only when unlocked."].) Thus, the *Plumlee* court's comparison of switchblade knives with the sort of "open" folding knives subject to prohibition under former section 12020 (those "*exposed and locked into position*") implies that it meant "open" in a manner similar to an open blade of a switchblade knife – i.e., essentially "locked into position." So any purported analogy to this case provides no support for respondent's thesis.

It is not entirely clear what respondent seeks to gain in citing the *Sisneros* case (see RBOM 19-20), but the citation simply translates into another purported analogy heading in the wrong direction. The item at issue there had a blade that, when fastened to the handle, functioned like a "*fixed* blade knife" and could only "realistically be used" as a stabbing weapon when "*attached* to the handle" through multiple manipulations. (*People v. Sisneros* (1997) 57 Cal.App.4th 1454, 1457, italics added.) Thus, it was not "capable of ready use as a stabbing weapon" within the meaning of the general "dirk or dagger" prohibition. (*Ibid.*) Again, the same is true under the exception to the prohibition for folding knives and pocketknives; such knives are not "capable for ready use" without *multiple* manipulations necessary to render them effective stabbing weapons, including the locking of the blade into an immobile position in the manner of a fixed blade knife.

Ultimately, respondent's arguments fail to even generate a legitimate debate about the meaning of section 16470's express exception for folding knives and pocketknives, because the plain meaning, commonsense, and the extrinsic aids all point to a single, reasonable interpretation. But to the degree one may entertain the notion of an "ambiguity," any such doubt must resolved in favor of the interpretation Castillolopez has advanced. '"When language which is reasonably susceptible of two constructions is

used in a penal law ordinarily that construction which is more favorable to the offender will be adopted.'" (*In re Christian S.* (1994) 7 Cal.4th 768, 780, quoting *People v. Stuart* (1956) 47 Cal.2d 167, 175; *People v. Arias* (2008) 45 Cal.4th 169, 177 ["If a statute defining a crime or punishment is susceptible of two reasonable interpretations, we ordinarily adopt the interpretation that is more favorable to the defendant."]; accord *People v. Pellecer*, *supra*, 215 Cal.App.4th at pp. 512-513; *In re T.B.*, *supra*, 172 Cal.App.4th at p. 129 ["[A]ny doubts as to the correct interpretation of the statutory prohibition must be resolved in [defendant's] favor."].)

The continuing need to "strictly construe" such ambiguities in favor of the defendant (see *In re George W.*, *supra*, 68 Cal.App.4th at p. 1214) is evident given the potentially significant penal consequences flowing from a determination that an object constitutes a prohibited "dirk or dagger." The Control of Deadly Weapons Act creates a separate criminal offense for the possession of each item enumerated as prohibited. (§ 17800.) A concealed "dirk or dagger" is classified as a "generally prohibited weapon" (§16590, subd. (i)), and such a weapon is also considered a "deadly weapon" (see § 16430; *In re Conrad V.* (1986) 176 Cal.App.3d 775, 777 [dirks and daggers "are undoubtedly also included with the general description of dangerous or deadly weapons in some of the use prohibition statutes"]). So defendants are not only subject to criminal sanction for the concealed carrying of each object deemed a "dirk" or "dagger," but they are also subject to increased penalties when they happen to employ such an object during the commission of a felony crime. (See § 12022, subd. (b)(1) [generally imposing a one year enhancement for the use of a "deadly or dangerous weapon" in connection with a felony]; § 667.61, subd. (e)(3) [imposing a life term for the use of such a weapon in specified felonies].) Honoring the plainly narrow interpretation the Legislature obviously intended in crafting

the exception for folding knives and pocketknives would ensure against the arbitrary prosecutions and unfair sentences that could otherwise follow.

2. Respondent's Attempt to Undermine the Court of Appeal's Analysis Simply Further Reveals the Untenable Nature of the Rationale Respondent Pursues

What remains of respondent's position consists of unfounded criticisms of the Court of Appeal's reasoning in support of the ultimate conclusion that Castillolopez's conviction under section 16470 cannot stand. The gist here is the notion that the Court of Appeal engineered an "unreasonably narrow interpretation" of section 16470 through which it "erroneously inserted" an "alteration requirement" for the entire category of folding knives and pocketknives so as to "exclude[] *all* pocketknives from the definition except those *that are altered* to make the blade immovable . . ." (RBOM 11, 13, 17-18, italics added.) Respondent claims the Court of Appeal's analysis "marks a return to the long-abandoned approach of defining dirks and daggers by their physical design, rather than their capacity for ready use" under the *Forrest* rubric. (ROBM 16, fn. 5, 25.)

First of all, it is inaccurate to portray the *Forrest* opinion as having been completely eclipsed by the intervening changes to the statutory definition of dirk or dagger. The teachings of *Forrest* that the Court of Appeal cited remain true today. There really can be no dispute that the lack of a locking mechanism fixing the blade into an immovable or immobile position "severely limits its effectiveness as a stabbing weapon, because if the blade should hit a hard substance such as a bone, there is grave danger that the blade would close upon the hand of the wielder," distinguishing such a knife from a traditional "dirk or dagger." (Opn. 15-16, quoting *People v. Forrest*, *supra*, 67 Cal.2d at p. 481.) The current definition of "dirk or dagger" carries forward this very distinction, by carving out an

exception for folding knives and pocketknives so as to exclude those knives that do *not* have blades *locked* into position in the manner of the typically *effective* stabbing weapon. Not surprisingly then, there is no dispute on this point here either, as both experts acknowledged the reality that folding knives lacking this capability pose the risk history has always foretold – a collapse of the blade when it is used for stabbing. (2RT 140, 150, 180.)[9]

This irrefutable, centuries-old understanding about the basic functionality of knife-like objects as effective stabbing weapons now expressly embodied in the current definition of "dirk or dagger" is what drove the analysis of the Court of Appeal that respondent attacks. As the evidence here showcases, there are two distinct categories of folding knives and pocketknives: "locking" (those with a mechanism that locks the blade into an immovable state) and "nonlocking" (those without such a mechanism). The general difference is obvious from a comparison between the "multi-tool" at issue (see Resp. Appendix A), which everyone agreed is "nonlocking" in this sense (2RT 151, 176-177), and the knives that the defense presented as exemplars of actual "locking" knives (Appendix A). The former represents the ubiquitous "Swiss Army" device commonly known and used for its utilitarian purposes, whereas the latter obviously represents something wholly different – an object that realistically could serve little purpose other than to be used as a means to inflict serious harm.

Nevertheless, as the Court of Appeal recognized, a normally nonlocking folding knife certainly *could be* altered in some way to effectively immobilize the blade so as to render it *locked into position* when extended. (Opn. 16-17.) It is obvious that this point applies only to those

---

[9] *Forrest* also recognized "'the fact that the weapon can be used as a stabbing weapon and is capable of inflicting death is not determinative'" (*Bills v. Superior Court* (1978) 86 Cal.App.3d 855, 860, quoting *People v. Forrest*, *supra*, 67 Cal.2d at p. 481) – which remains just as true today.

folding knives or pocketknives that are normally *non*locking and would have no application to any such knives that are of the *locking* type. That is, the Court of Appeal did not erroneously engraft an "alteration requirement" into the statute so as to exclude *all* folding knives and pocketknives *unless* altered in some "after-market" fashion, as respondent says. (RBOM 17-18.) All the court did was recognize what the express statutory language requires: for *all* categories of the specified knives ("nonlocking folding" knives, "folding" knives, and "pocketknives"), the blade must *lock into position* when extended in order to fall within the narrow class of such knives subject to prohibition. Because a *non*locking folding knife normally lacks such capability, it necessarily must somehow be modified or altered to possess such capability before it could properly be deemed "capable of ready use as a stabbing weapon" within the meaning of section 16470.

The court's analysis does not create some kind of "riddle" because a nonlocking folding knife modified to possess a locking capability would necessarily no longer be a "nonlocking" knife. (RBOM 18.) Respondent's train of thought assumes that the only way to effect such an alteration is to *permanently* affix the blade into an immobile state in the manner of a fixed blade knife so as to essentially reclassify it as a "locking" knife. Obviously, such a knife could be fitted with a *removable* device or contraption that could be employed to fasten the blade into a locked state while extended but then disengaged so as to return the blade to its normal *non*locked state. And such alterations certainly can be considered without somehow "render[ing] the 'nonlocking' descriptor superfluous." (RBOM 17.) Alterations are of course relevant to determining whether the knife falls within the ambit of the statute – just as the standard instruction on the elements of a violation of section 16470 specifically states. (CALCRIM

No. 2501.)[10] Ultimately, what matters for purposes of section 16470 is that the blade be effectively locked into position so as to be immobile when it is extended. If the knife meets this test, its concealment is prohibited – whether it was originally designed with such blade-locking capability or somehow altered to possess this capability; if not, it is not prohibited.

In the end, respondent's criticism of the Court of Appeal's analysis is entirely misguided. *But for* the court's reading of the statute, the entire category of "nonlocking folding" knives would be in jeopardy of being carved out *completely* from the dirk or dagger prohibition on the basis that the category is unconstitutionally vague insofar as one might interpret that term as inherently irreconcilable with the requirement that the blade of such a knife *lock into position* when it is extended.[11] The Court of Appeal was required to avoid a construction of the statute that would unnecessarily or improperly nullify any of its express terms – much less an entire category of proscribed items. (*People v. Rodriguez*, *supra*, 55 Cal.4th at p. 1125; *People v. Jenkins*, *supra*, 10 Cal.4th at p. 246.) Ironically then, the court's interpretation of the statute that respondent challenges as "unreasonably narrow" is necessary to *avoid* potentially narrowing its terms to such a degree that the specific prohibition against "nonlocking" folding knives – one of the three categories of "folding" knives that the Legislature intended to include within the prohibition, and the very type of knife that served as

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[10] CALCRIM 2501 provides: "When deciding whether the defendant knew the object could be used as a stabbing weapon, consider all the surrounding circumstances, including the time and place of possession. Consider also the destination of the defendant, *the alteration of the object from standard form*, and other facts, if any." (3RT 225-226, italics added.) The prosecutor even made an "alteration" argument to the jury, saying that, by having opened the knife blade, Castillolopez had "altered" his knife in this sense, from "normal closed state where it could be used as a tool" into form in which it could be used as "a stabbing weapon." (3RT 247.)

[11] Castillolopez challenged the statute on this basis below. (AOB 9-21.)

the basis for the conviction in this case – would be entirely eliminated. It is this interpretation of the statute that makes it possible to properly bring "nonlocking folding" knives within the ambit of the prohibition at all.

E. The Undisputed Evidence Demonstrates that the Multi-Tool Falls Squarely Outside the Ambit of the Prohibition

And so we come full circle, returning to the law of the case as it specifically applies here. The prosecution's basic theory of the case at trial was that any collapsible knife blade extracted from its folder (or any other similar "edged" or "point[ed]" object) which is suspended in its fully extended position by any degree of "friction" or "spring tension" would fall within the ambit of the statute because it would have the capability of inflicting great bodily injury or death. (2RT 138-141, 144-145, 147.) As we have seen, such a construction of the statute is far broader than the Legislature could have ever intended and would essentially eliminate the express distinction between folding knives and pocketknives under section 16470 by applying the terms of the general prohibition under section 21310 without regard to the specific qualifying criteria under section 16470. Significantly, while the prosecution's knife expert (Cameron Gary) testified that all folding knives necessarily have some sort of "locking" mechanism so the blade can be suspended in the open position (2RT 155), when asked pointedly what the "locked blade" requirement meant under "the law regarding dirks and daggers," Gary said it meant "locked" so as "[t]o make something impenetrable or immovable." (2RT 151-152.) Thus, the prosecution's own expert effectively (and correctly) conceded the crucial point that the law requires the blade not merely be "open," "fully open," or "fully extended," and not merely that it be held open by *some* degree of "friction" no matter how minimal or ineffective for stabbing purposes, but that the blade must be fixed into place so as to be "*immovable*."

It is undisputed that there was no mechanism on Castillolopez's "Swiss Army knife" that fixed the blade into place so as to be immovable or immobile. (2RT 112-113, 151-152, 176-177, 186.) It was a nonlocking collapsible blade which, when extended, was suspended open by nothing more than some kind of minimal "friction" or "spring" action (2RT 112-113, 138-139, 148, 151, 155, 185-187) and which could "very easily" be closed with a push on the back of blade (2RT 185-186). The blade was necessarily limited in its effectiveness as a stabbing device given its propensity to collapse if one tried to puncture something hard. (2RT 140, 149-150, 154. 157-158, 180-183.) The "knife" was, instead, a "multi-tool" device that contained other "tools," like a screwdriver and scissors, which Flores knew to be commonly carried by children and Boy Scouts. (2RT 140-141, 180, 182, 188.) The multi-tool was quite unlike a "locking blade" knife, the blade of which is fixed into place by a locking mechanism rendering it "immobile." (2RT 148, 153; Def. Exh. A.) The knives depicted in Defense Exhibit A were emblematic of this kind of knife, and included the "Spyderco" locking blade knife. (2RT 174-175, 177-179.) Notably, the Spyderco locking blade knife was cited in the legislative history as a "*perfect example of what the statute is intended to cover*" (RMJN at 243, italics added [the March 17, 1997 Memorandum from Chris Micheli on behalf of Buck Knives, quoting a statement of the Crescenta Valley Police Department concerning the intent of Assembly Bill No. 1222].)

If it were as respondent contends and a blade kept in place merely by some form of easily overcome friction or spring action was enough to bring the multi-tool within the ambit of the prohibition, what would prevent applying the prohibition to each of the other sharp, pointed implements commonly contained in such devices – like a screwdriver, cork screw, or nail file? Just like the knife blade, these implements also must be "fully extended" and suspended in that position by the same sort of "friction"

mechanism to be of any utility to the user. And, of course, one could imagine their being capable of use to inflict great bodily injury or even death if that was the user's purpose. The obvious potential for sweepingly broad, arbitrary applications of the "dirk or dagger" prohibition under respondent's proposed rationale highlights its untenable nature. But again, even if the prohibition could be stretched far enough to reach the untold number of other generally innocuous items that respondent's rationale would allow, the Legislature has spoken specifically on the subject of folding knives and pocketknives. It has crafted an express exception – in effect, a general rule of exclusion from section 21310's "dirk or dagger" prohibition – for all such knives lacking the crucial qualifying characteristic of a blade "locked into position" so as to render it immovable or immobile.

Because the undisputed evidence establishes that Castillolopez's multi-tool did not "lock into position" so as to be immovable or immobile, the evidence is insufficient to support the conviction as a matter of law. The Court of Appeal's reversal of that conviction should be affirmed. (*People v. Eroshevich* (2014) 60 Cal.4th 583, 591, citing *Burks v. United States* (1978) 437 U.S. 1, 16 [when the evidence is insufficient as a matter of law, the conviction must be reversed and retrial is barred under double jeopardy principles]; accord *In re Miguel L.* (1982) 32 Cal.3d 100, 110-111.)

CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Dated: February 17, 2015

Respectfully submitted,

Raymond Mark DiGuiseppe,
Attorney for Defendant and Appellant

CERTIFICATE OF COMPLIANCE

I certify that the attached Appellant's Answer Brief on the Merits is prepared with 13 point Times New Roman font and contains 13,722 words.

Dated: February 17, 2015

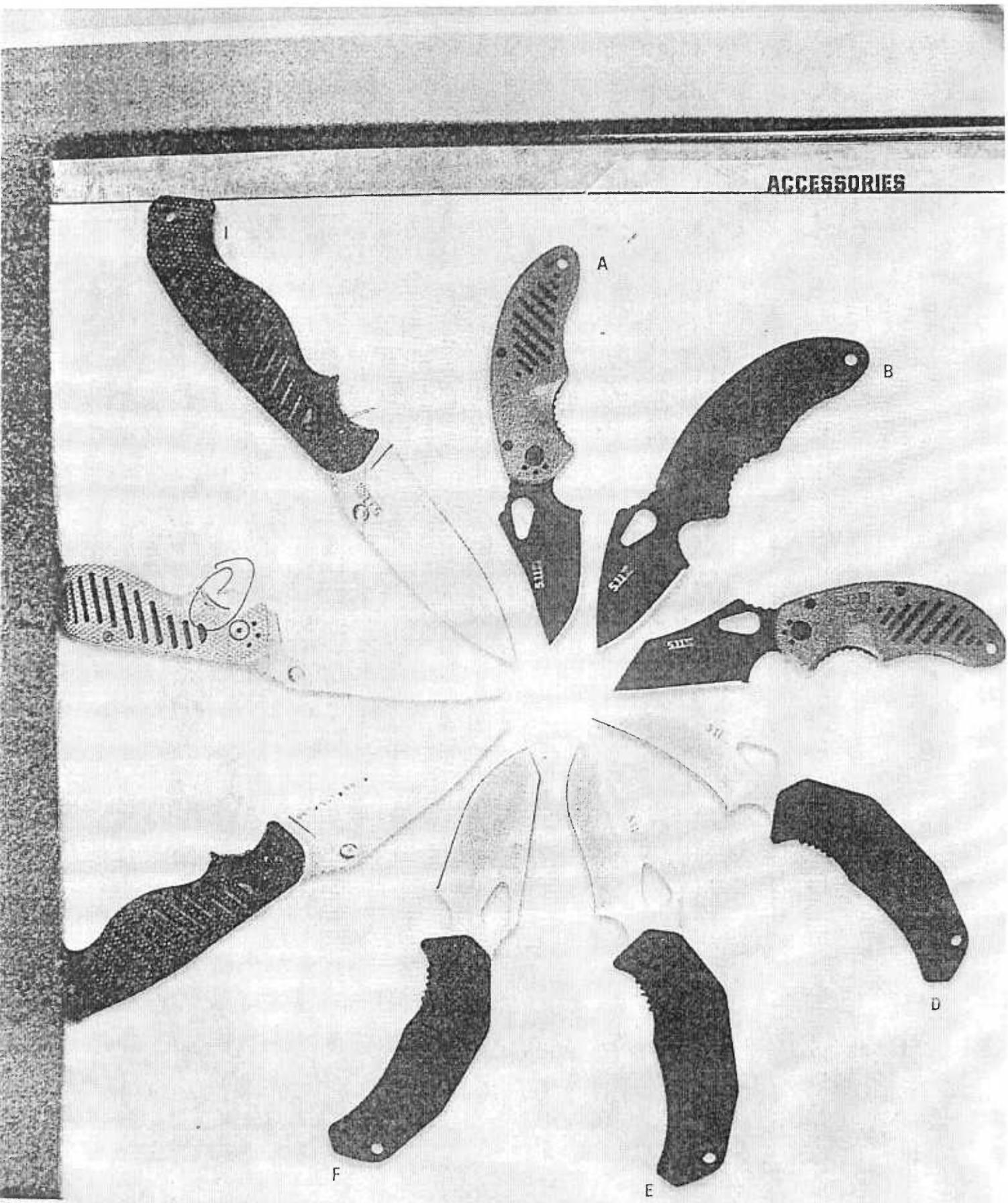
Respectfully submitted,

Raymond Mark DiGuiseppe

APPENDIX A

Defft. Ex. 4
Case # SCD 24231
Rec'd 11-7-12
Dept. CR Clk

... cerca de su domicilio.


I
A
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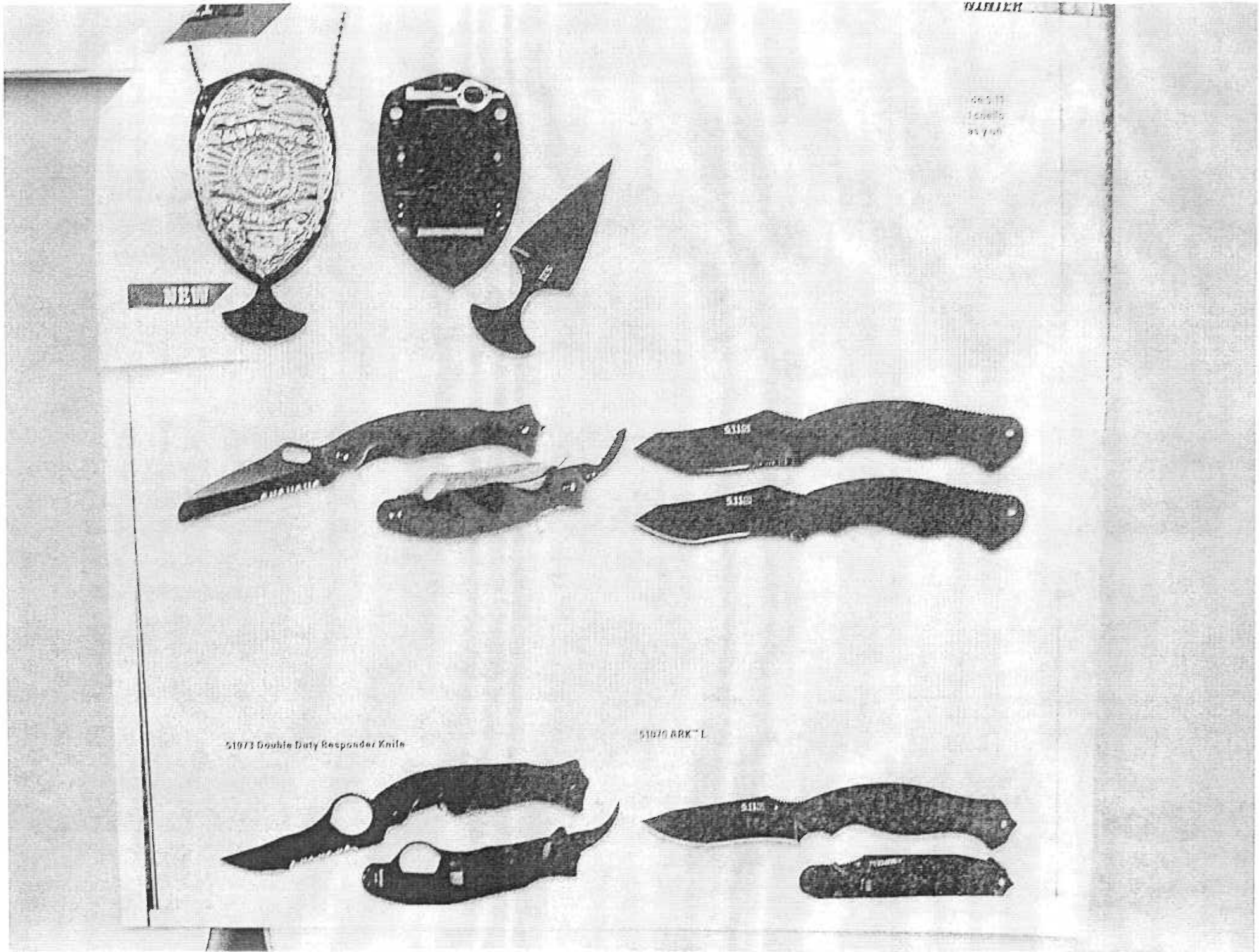
5.11
S30V
Includes IWB sheath and
breakaway neck chain
5.11
S30V
TARANI


NEW
51973 Double Duty Responder Knife
51970 ARK™ L

DECLARATION OF SERVICE

Re: ***People v. Emmanuel Castillolopez*** **(S218861/D063394)**

I, Raymond Mark DiGuiseppe, declare that I am over the age of 18 and not a party to this case. My business address is: P.O. Box 10790, Southport, NC 28461.

Service By Mail

On February 17, 2015, I served the foregoing **Appellant's Answer Brief on the Merits** on each of the parties listed below, by placing a true copy of it in a sealed addressed envelope with postage fully paid and depositing it with the United States Postal Service in Southport, North Carolina, to be delivered in the ordinary course of business:

Emmanuel Castillolopez
CDCR # AN2020
California State Prison (Centinela)
P.O. Box 731
Imperial, California 92251-0731

Clerk of Court
Court of Appeal
Fourth District, Division One
750 B Street, Suite 300
San Diego, California 92101

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

District Attorney's Office
330 West Broadway, Suite 1300
San Diego, California 92101

Electronic Service

I further declare that at or before the close of business at 5:00 p.m. on the same date, I served **the same document** electronically from my electronic service address of diguiseppe228457@gmail.com to the following entities:

Appellate Defenders, Inc.: eservice-criminal@adi-sandiego.com

Attorney General's Office: ADIEService@doj.ca.gov

Maureen Bodo (Court of Appeal Appellate Counsel): mbodo@earthlink.net

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and was executed on February 17, 2015.

Raymond Mark DiGuiseppe
Declarant

Signature

DECLARATION OF SERVICE

Re: ***People v. Emmanuel Castillolopez*** **(S218861/D063394)**

I, Raymond Mark DiGuiseppe, declare that I am over the age of 18 and not a party to this case. My business address is: P.O. Box 10790, Southport, NC 28461.

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and was executed on February 17, 2015.

Raymond Mark DiGuiseppe
Declarant

Signature