In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

EMMANUEL CASTILLOLOPEZ,

Defendant and Appellant.

Case No. S218861

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

REPLY BRIEF ON THE MERITS

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INTRODUCTION

Resolution of this case hinges on the meaning of the phrase "locked into position" as used in Penal Code[1] section 16470. Like the Court of Appeal, Castillolopez interprets "locked into position" as referring to the design of a knife, restricted only to a limited category of folding knives designed with a type of locking mechanism that holds the blade in an immovable position when it is fully extended. His reading of the statute exempts folding knives, such as his, designed with locking mechanisms that secure the blade in the open position and release the blade when a certain amount of force is applied against it. Applying his narrow definition, Castillolopez argues his pocketknife was not a dirk or dagger as a matter of law.

The plain language of section 16470 does not support Castillolopez's unreasonably narrow reading of the statute. His proposed interpretation frustrates the apparent purpose of section 16470 to criminalize the concealed carrying of knives or other instruments, even those designed for legal use, that are capable of being used as stabbing implements to inflict serious injury or death. The Legislature has explained that "there is no need to carry such items concealed in public." (*People v. Rubalcava* (2000) 23 Cal.4th 322, 330, citing Sen. Com. on Crim. Procedure, Analysis of Assem. Bill No. 1222 (1995-1996 Reg. Sess.) as amended May 31, 1995, pp. 3, 5-6.) In the context of the statutory language, "locked into position" means the blade of a folding knife is secured in the open position. This interpretation honors the legislative intent. When the evidence is viewed in the light most favorable to the judgment, and the proper definition is

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

applied, the record shows sufficient evidence supported Castillolopez's conviction for carrying a concealed dirk or dagger.

ARGUMENT

I. SECTION 16470 ENCOMPASSES COMMON POCKETKNIVES CARRIED CONCEALED WITH THE BLADE EXPOSED AND SECURED IN THE OPEN POSITION

Castillolopez reads section 16470 as providing a general definition of a dirk or dagger and creating an exemption for common pocketknives and folding knives unless they have certain "characteristics." (AABM 6-10.) He claims the characteristics are: 1) the blade is "exposed," which he defines as in its "fully extended position," and 2) "locked into position," which he defines as a locking mechanism that holds the blade in an immovable position. (AABM 10-17.) He also tries to bolster his argument by representing extrinsic aids and cases as more helpful to his case than they actually are. (AABM 17-26.)

Castillolopez's strained reading of the statute fails to adhere to the well-established cannons of statutory construction, as it reads into the statute words the Legislature did not intend and frustrates the apparent purpose of the statutory scheme. The plain language of section 16470 broadly encompasses any knife or other instrument that is readily capable of being used as stabbing implement to inflict great bodily injury or death, including common pocketknives carried with the blade exposed and secured in the open position. The extrinsic aids Castillolopez relies upon further support respondent's reading of section 16470.

A. The Plain Language of Section 16470 Shows "Locked into Position" Means the Blade of a Folding Knife is Secured in the Open Position

Section 16470 provides:

> As used in this part, "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready

> use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by section 21510 [switchblade], or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

In the Opening Brief on the Merits, respondent maintained that the first sentence of the statute provides a broad definition, encompassing any knife or instrument that is capable of ready use as a stabbing weapon. (ROBM 12.) Castillolopez suggests this language is not as broad as it appears, and he cites to authority interpreting other statutes for support. (AABM 7-9, 29-32.) It is unnecessary to resort to cases interpreting other statutory provisions because the language in the first sentence is unambiguous. (*People v. Jones* (1993) 5 Cal.4th 1142, 1146 [if the statutory language is unambiguous, the reviewing court must apply the statute according to its terms without resort to indicia of the intent of the Legislature].) Indeed, courts interpreting the language in the first sentence have observed that this definition of dirk or dagger is "much broader and looser [than past definitions]" and includes "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.* (1998) 68 Cal.App.4th 1208, 1212; see *People v. Mowatt* (1997) 56 Cal.App.4th 713, 719.) The Legislature recognized that the definition it created "may criminalize the 'innocent' carrying of legal instruments such as steak knives, scissors, and metal knitting needles, but concluded 'there is no need to carry such items concealed in public.' [Citation.]" (*People v. Rubalcava*, *supra*, 23 Cal.4th at p. 330.)

Castillolopez also attempts to limit the application section 16470 by characterizing the second sentence as an exception to the definition provided in the first sentence. (AABM 6.) He focuses on the word "only"

in the second sentence and argues it shows the Legislature carved out an exemption for folding knives and pocketknives except those knives designed with certain "characteristics." (AABM 6-7.) Under his reading of the statute, folding knives designed with a locking mechanism that holds the blade in an immovable position qualify as an exception to the exemption for folding knives. This is a strained reading of the second sentence. The word "only" does not denote an exception or exemption, especially considering how the Legislature used it in the context of section 16470[2]. The second sentence provides "a nonlocking folding knife, a folding knife [that is not a switchblade], or a pocketknife" satisfies the broad definition provided in the first sentence, "only if the blade of the knife is exposed and locked into position." Thus, the second sentence clarifies that folding knives qualify as a dirk or dagger when they are carried with the blade exposed and locked into position. The plain language of section 16470 shows the Legislature intended to include, rather than exclude, folding knives in the definition of dirk or dagger.

Like the Court of Appeal, Castillolopez also relies on dictionary definitions of the word "lock" to support his argument that "locked into position" refers to a mechanical lock that holds the blade in an immovable position. (AABM 11-12.) He states, "As a *noun*, 'lock' is understood to mean '[a]n interlocking or entanglement of elements or parts;' '[a] secure

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[2] Compare, for example, a Florida weapons statute that exempts pocketknives: " 'Weapon' means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon *except a firearm or a common pocketknife*, plastic knife, or blunt-bladed table knife." (Fla. Stat., § 790.001, subd. (13), emphasis added.)

Compare also a Kentucky weapons statute that exempts pocketknives: " 'Deadly weapon' means any of the following . . . (c) *any knife other than an ordinary pocketknife* or hunting knife." (Ky. Pen. Code, § 500.080, subd. (4)(c), emphasis added.)

hold; control' [citation]; or 'a fastening (as for a door) operated by a key or a combination,' 'a locking or fastening together' [citation]." (AABM 12, emphasis added.) His definitions of a tangible lock are inapplicable because section 16470 does not use the noun form of "lock;" it uses the verbal adjective form of "locked" to describe the blade of a folding knife as "locked into position." His definitions of "lock" are also inapplicable because, as stated in the Opening Brief on the Merits, a folding knife functions more like a joint in a limb than a mechanical lock in a keyed door. (ROBM 15.) Webster's Third New International Dictionary describes "locked" in the context of a joint as "held rigidly in the position assumed during complete extension" as in "struck a blow with a [locked] wrist." (Webster's New Internat. Dict. (3d ed. 2002) p. 1328.) That definition is the most appropriate here. Thus, "locked into position," in the context of folding knives, means the blade is secured in the open position.

The testimony of the two knife experts further supports respondent's interpretation of "locked into position." The prosecution's knife expert explained at trial that all folding knives have some type of locking mechanism that holds the blade in place when the blade is fully extended. (2 RT 152-153, 155.) There are different types of locking mechanisms, and they differ in how securely they hold the blade in the open position and how they release the blade. (2 RT 147-148, 157.) A tension or spring lock holds the blade securely enough to pierce skin and vital organs. (See 2 RT 138-139, 183-184.) This type of locking mechanism releases if enough force is applied against the blade to overcome the lock. (2 RT 138-139.) Other locking mechanisms hold the blade more securely and release the blade only when a button on the handle is pressed. (See 2 RT 153, 176, 178-179.) The blade of a folding knife, even one that is classified as a "nonlocking folding knife" is considered in "locked position" or "locked in position" when it is fully extended in the open position. (See 2 RT 139,

187-188.) That is because "locked into position" describes "the final spot of opening" rather than a "locking blade knife." (2 RT 187-188.) Further, a folding knife, with its blade exposed and secured in the open position, is capable of inflicting great bodily injury or death. (2 RT 139, 183-184.)

In light of the design of folding knives and how the phrase "locked into position" is used in the context of folding knives, "locked into position" must mean the blade is secured in the open position. Unlike Castillolopez's definition, which forces into the statutory language an unintended mechanical requirement, respondent's definition honors the legislative intent to broadly prohibit any instrument that can be readily used for stabbing. (*People v. Mendoza* (2000) 23 Cal.4th 896, 907-908 [courts should consider the entire substance of the statute in context, " 'keeping in mind the nature and obvious purpose of the statute . . . .' [Citation.]"].)

Castillolopez also claims that "locked into position" cannot mean secured in the open position because "exposed" means the knife blade is in its "fully extended position," and the conjunctive "and" between "exposed and locked into position" means "an additional thing" is required. (AABM 11-13.) He argues that the "additional thing" must therefore be a locking mechanism that holds the blade in an immovable position. (AABM 12-16.) This interpretation is unreasonable for several reasons.

First, "exposed" does not mean the blade is in its "fully extended position." Castillolopez provides dictionary definitions that describe "expose" as: to " 'make visible,' 'make known,' 'deprive of shelter or protection,' 'lay open to danger or harm,' [citation] [] 'leave (something) without covering or protection,' 'cause to be visible or open to view,' 'exhibit for public veneration' [citation]." (AABM 11.) But the definitions he cites do not show "exposed" is synonymous with "fully extended position." Moreover, in the context of folding knives, a blade can be exposed even if it is not fully extended, e.g., a pocketknife with the blade

open at a 90-degree angle. The blade of a folding knife can also be fully extended but not exposed, e.g., a pocketknife with its blade secured in the open position but inside a sheath. Castillolopez's definition of "exposed" is not only wrong, it renders "into position" immediately following "locked" superfluous. Inserting Castillolopez's definition of "exposed" into the statutory language, section 16470 would read: "only if the blade is in its fully extended position and locked into position." Castillolopez's attempt to characterize "exposed" as "fully extended position," is unavailing. "Exposed," as used in section 16470, simply means the blade is uncovered.

Second, the conjunctive between "exposed and locked into position" does not compel a finding that a certain kind of locking mechanism is required, as Castillolopez claims. (AABM 10-12.) The conjunctive does show the Legislature intended two requirements, and those requirements are: 1) that the blade is exposed, i.e. uncovered, and 2) that the blade is locked into position, i.e. secured in the ready-to-use position. Nothing in the statutory language supports Castillolopez's argument that section 16470 requires a certain kind of locking mechanism, and that pocketknives with friction or spring locks are excluded from the broad purview of the statute.

Third, Castillolopez's interpretation of section 16470 is inconsistent with other words in the statute. Section 16470 provides that a "nonlocking folding knife" qualifies as a dirk or dagger if it is carried with "the blade exposed and locked into position." Castillolopez desperately tries to reconcile his definition with the words "nonlocking folding knife" in section 16470 by claiming the Legislature contemplated a removable alteration. He argues, "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 nonlocked state. And such alterations certainly can be considered without somehow "render[ing] the "nonlocking" descriptor

superfluous.' " (AABM 38, emphasis in original.) Like the Court of Appeal, Castillolopez's interpretation reads into the statute an alteration requirement the Legislature did not intend. (*Tyron W. v. Superior Court* (2007) 151 Cal.App.4th 839, 850 [courts "presume the Legislature intended everything in a statutory scheme, and [] do not read statutes . . . to include omitted language"].)

Castillolopez also cites to other statutes that use the phrase "locks into place" for support, but his reliance on those statutes is misplaced because they show "locks into place," like "locked into position," means secured in the fully extended or open position. (AABM 13-14.) Section 16140[3] defines an air gauge knife, and section 17350[4] defines a writing pen knife. Both prohibit a device "designed to be a stabbing instrument" with a metallic shaft that may be "exposed by mechanical action or gravity which locks into place when extended." Section 626.10[5], subdivision (a)(1),

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[3] Section 16140 defines an "air gauge knife" as "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."

[4] Section 17350 defines a "writing pen knife" as 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.

[5] Section 626.10, subdivision (a)(1) provides:

> (a)(1) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties,

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prohibits the mere possession of certain weapons on school grounds, including a "folding knife with a blade that locks into place." Similar to "locked into position," "locks into place" as used in these statutes means the metallic shaft or knife blade is secured in the fully extended position. Nothing in the language of these statutes supports Castillolopez's claim that "locked into position" means a certain kind of locking mechanism is required. Nor does Castillolopez provide any authority that has interpreted "locked into position" or "locks into place" as requiring a certain kind of locking mechanism.

In *In re T.B.* (2009) 172 Cal.App.4th 125, the Court of Appeal applied section 626.10, subdivision (a), and found that a multi-tool was a "folding knife with a blade that locks into place," without relying on the design of the locking mechanism in the multi-tool. (*In re T.B.*, at p. 130.) Instead, the court based its conclusion on its observation that "the 'multi-tool' at issue includes a blade, which 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

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> who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 2 ½ inches, folding knife with a blade that locks into place, razor with an unguarded blade, taser, or stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO2 pressure, or spring action, or any spot marker gun, upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

deployed." (*In re T.B.*, *supra*, 172 Cal.App.4th at p. 130.) Notably, the court's conclusion that the multi-tool was a "folding knife with a blade that locks into place" did not rest on how secure the locking mechanism held the blade in the open position or how the mechanism released the blade from the open position.[6] This case undermines Castillolopez's argument that "locks into place" implies a certain kind of locking mechanism, and it shows that "locks into place" means the blade is capable of being secured in the open position.

In sum, Castillolopez defends the Court of Appeal's conclusion by interpreting the plain language of section 16470 in a manner that violates well-established cannons of statutory interpretation. Like the Court of Appeal, he inserts a mechanical requirement where the Legislature did not intend it. Not only is his interpretation unreasonable, it frustrates the apparent purpose of the statutory scheme to criminalize the concealed carrying of any instrument that is capable of ready use as a stabbing weapon. Because the language in section 16470 is unambiguous and because Castillolopez's reading of the statute is unreasonable, the rule of lenity does not compel this court to adopt Castillolopez's interpretation of "locked into position." (*People v. Lee* (2003) 31 Cal.4th 613, 627 ["The rule of lenity is inapplicable unless the statute in question is ambiguous, meaning susceptible of two reasonable meanings that " 'stand in relative

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[6] In summarizing the factual background, the Court of Appeal included the juvenile court's observations that "when the blade [on the multi-tool] is open, certainly it is in a locked position, and one cannot move the blade . . . ." (*In re T.B.*, *supra*, 172 Cal.App.4th at p. 128.) The Court of Appeal's mention of this description in its factual summary does not indicate it relied on the type of locking mechanism in the multi-tool to find that it satisfied the statutory definition of a "folding knife with a blade that locks into place."

equipoise . . . .' "].) This court should find that "locked into position" means secured in the open position.

B. The Legislative History and Caselaw Castillolopez Cites Do Not Support His Interpretation of "Locked into Position"

Castillolopez's discussion on how the definition of a dirk or dagger was once narrower, requiring a weapon designed for stabbing (AABM 7-9, 17-19), provides limited guidance, if any, for the interpretation of the current broad definition under section 16470, which omits a design requirement. He briefly acknowledges that in 1995, the Legislature broadened the statutory definition of a dirk or dagger to include "'instruments intended for harmless uses but capable of inflicting serious injury or death.'" (AABM 20.) He implies, however, that the Legislature regretted this broad definition. Relying on Assemblymember Diane Martinez's letter, he claims the Legislature intended to narrow the definition of a dirk or dagger by creating an exemption for folding knives and pocketknives in the 1997 amendment. (AABM 21-22.)

Assemblymember Martinez's letter does not show the Legislature intended to create an exemption for folding knives and pocketknives. She refers to folding knives generally and indicates that they satisfy the statutory definition when "they are carried in an open and locked position." (*George W.*, *supra*, 68 Cal.App.4th at p. 1213 (*George W.*), citing Assem. J., Sept. 1, 1996, p. 9163.) Her letter also suggests the circumstances in which folding knives would not satisfy the statutory definition. She explains: "*when folded*, [folding 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." (*Ibid.*, emphasis added.) Thus, her letter does not support Castillolopez's claim that the Legislature added the 1997 amendment with the intent to narrow the definition it created in

1995. When the Legislature amended the statute in 1997, it kept the broad language from the 1995 amendment and added only the clause that clarified the statute encompasses folding knives carried with the blade exposed and locked into position. (Stats. 1997, ch. 158 § 1.)

Citing to *People v. Mitchell* (2012) 209 Cal.App.4th 1364 (*Mitchell*) and *In re Luke W.* (2001) 88 Cal.App.4th 650 (*Luke W.*), Castillolopez insists: "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 of 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." (AABM 22.) Castillolopez misreads *Mitchell* and *Luke W.* Neither case held that multiple forms of manipulation are required for a folding knife to qualify as a dirk or dagger. The court in *Mitchell* interpreted section 16470 and observed that it "excludes from its coverage an openly-suspended sheathed knife, as well as nonswitchblade folding and pocketknives *kept in a closed or unlocked position.*" (*Mitchell*, *supra,* at p. 1375, italics added.) The court in *Luke W.* similarly found: "The purpose of the [1997] amendment was 'to expressly exclude from the definition of "dirk or dagger" folding knives and pocket knives which are not switchblades, and which are *carried in a closed secured state'*." (*Luke W.*, *supra*, at p. 654, italics added.) These cases further show that the blade of a folding knife is "locked into position" under section 16470 when it is secured in the open position, and not "locked into position" when the blade is closed securely in the handle.

Castillolopez also reaches for support in a footnote this court provided in *People v. Rubalcava*, *supra*, 23 Cal.4th 322. (AABM 23.) In *Rubalcava*, this court examined the language of the 1995 version of section 12020—the former version of section 16470, which did not yet have the

language at issue in this case—to determine if section 12020 made carrying a concealed dirk or dagger a general intent or specific intent crime. (*People v. Rubalcava*, *supra*, 23 Cal.4th at p. 327.) After examining the statutory language and legislative history, this court held that section 12020 was a general intent crime. (*Id.* at pp. 328, 330.) This court explained that "the defendant must knowingly and intentionally carry concealed upon his or her person an instrument 'that is capable of ready use as a stabbing weapon'." (*Id.* at p. 332.) In a footnote, this court provided an illustration of when a defendant would lack the requisite mens rea, stating:

> 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 p. 332, fn. 6) This court's footnote does not support Castillolopez's argument that "locked into position" in the current version of the dirk or dagger statute requires a "locking mechanism rendering it immoveable." (AABM 23.)

Finally, Castillolopez relies on four cases from other states to support his argument. (AABM 25-26.) None of the cases involves statutes that utilize the phrase "locked into position" in the context of folding knives. The four cases apply weapons definitions that are narrower than section 16470.

In the first case, *Ohin v. Commonwealth* (Va. Ct. App. 2005) 622 S.E.2d 784, a Virginia appellate court applied a statute that listed prohibited weapons and included a nonspecific category for "'weapons of like kind.'" (*Id.* at p. 786.) The court observed that "[t]o fit within this category, a knife 'must first be a weapon.'" (*Ibid.*) The court read the statute to exclude "'innocuous household and industrial knives'" such as "a schoolboy's common pocketknife." (*Ibid.*) In concluding that the defendant's knife

was a prohibited weapon under the statute, the court relied on the knife's characteristics that afforded it "'unquestionable utility as a stabbing weapon.' [Citations.]" (*Ohin v. Com., supra,* 662 S.E.2d. at p. 787.) The characteristics included how securely the blade was held in the open and how the blade released. (*Ibid.*) The court described the blade "locks securely when opened, much like a switchblade or a butterfly knife, and can be retracted only when unlocked." (*Ibid.*)

In the second case, *Stout v. Commonwealth* (Ky. Ct. App. 2000) 33 S.W.3d 531, a Kentucky appellate court applied a statute that prohibited "any knife other than an ordinary pocket knife or hunting knife." (*Id.* at p. 533.) Relying on a dictionary definition of the word "knife," the court held "the 'razor knife' or 'utility knife' or whatever term used to describe the instrument, [] was in fact a knife as defined by the statute." (*Id.* at pp. 532-533.)

In the third case, *F.R. v. State* (Fla. Ct.App. 2012) 81 So.3d 572, a Florida appellate court applied a statute that exempted common pocketknives. The court found a juvenile's folding knife did not fall within the statute's common pocketknife exemption because it had a "notched grip, [] locking blade mechanism, and [] hilt guard. . . ." (*Id.* at p. 574.)

In the last case, *Knight v. State* (2000) 116 Nev. 140 [993 P.2d 67], the Supreme Court of Nevada applied a statute that prohibited the concealed carrying of a dirk or dagger, but the statute did not provide a definition of a dirk or dagger. (*Id.* at pp. 71-72.) In deciding whether a steak knife was a dirk or dagger as a matter of law, the court relied on dictionary definitions and a judicially created definition. (*Id.* at p. 72.) Based on the design of the knife, the court concluded it was not a dirk or dagger. (*Ibid.*) The court noted the steak knife was not primarily designed or fitted for use as a weapon and it did not have handguards. (*Ibid.*)

It is unclear how these four cases support Castillolopez's argument that "locked into position," as used in section 16470, means a folding knife must have a locking mechanism that holds the blade in an immovable position. None of these cases defined "locked into position" to mean a folding knife must have a certain kind of locking mechanism. (*People v. Belleci* (1979) 24 Cal.3d 879, 888 ["'cases, of course, are not authority for proposition not there considered'"].) Unlike the definition under section 16470, which omits a design requirement, these cases defined prohibited knives by their design. Thus, the cases Castillolopez cites are distinguishable and provide no guidance here.

Castillolopez claims the cases respondent cited in the Opening Brief on the Merits are inapplicable or distinguishable (AABM 33-35), but the cases respondent relied upon actually involved the statutory language at issue. (ROBM 19-20.) In *People v. Plumlee* (2008) 166 Cal.App.4th 935, the court found the "fairly straightforward" language in the dirk or dagger statute means a switchblade is a dirk or dagger regardless of its position but that a folding knife "can be a dirk or dagger *only if the knife is open.*" (*Id.* at p. 940, emphasis added.) The courts in *George W.*, *supra*, 68 Cal.App.4th 1208, 1213, and *Luke W.*, *supra*, 88 Cal.App.4th 650, 655, observed that folding knives "carried in a closed secured state" would not constitute a dirk or dagger under the statute. The court in *People v. Sisneros* (1997) 57 Cal.App.4th 1454, found that a cylinder knife, which had to be "unscrewed a full five revolutions to expose the blade, then screwed five revolutions to attach the blade to the handle," was not a dirk or dagger when it was carried with the blade retracted inside the cylinder. (*Id.* at pp. 1455-1457.) Consistent with respondent's position, these cases show that while *closed* folding knives do not qualify as a dirk or dagger, *open* folding knives with the blade secured in the fully extended position do qualify because they are readily capable of being used as stabbing weapons.

In conclusion, the plain statutory language of section 16470 and extrinsic aids show "locked into position" means the blade of a folding knife is secured in the open position.

II. CASTILLOLOPEZ'S POCKETKNIFE, CARRIED CONCEALED WITH THE BLADE EXPOSED AND SECURED IN THE OPEN POSITION BY A MECHANISM SIMILAR TO A FRICTION/SPRING LOCK, CONSTITUTED SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S FINDING THAT IT WAS A DIRK OR DAGGER UNDER SECTION 16470

Castillolopez fails to recognize that the evidence, when viewed in the light most favorable to the judgment, constituted sufficient evidence to support his conviction. He tries to portray his pocketknife as a common tool outside the purview of section 16470 by characterizing it as a "nonlocking collapsible blade, which, when extended was suspended open by nothing more than some kind of minimal 'friction' or 'spring' action." (AABM 41.) He omits from his description the words "locking mechanism" and "lock"—words that the prosecution's knife expert used to describe his pocketknife. The knife expert testified that Castillolopez's knife had a "locking mechanism" (2 RT 151) similar to a "friction[/]spring lock" that "locks [the blade] into place." (2 RT 138-139.) Castillolopez also fails to acknowledge that his own knife expert testified that his pocketknife, even though it was classified a "nonlocking folding knife" (2 RT 188), was considered "locked in position" when its blade was fully extended in the open position. (2 RT 186).[7] That is because "locked into

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[7] Castillolopez posits, "*But for* the [Court of Appeal'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." (AABM 39.) There is no vagueness problem because, as the testimony of

(continued...)

position" does not imply a locking blade knife; it describes "the final spot of opening." (See 2 RT 187-188)

Castillolopez also focuses on portions of the experts' testimony that show his knife was not the most efficient weapon for stabbing hard objects. (AABM 41.) However, section 16470 does not prohibit only the most efficient stabbing weapons. It prohibits any instrument capable of ready use as a stabbing weapon that may inflict great bodily injury or death. Section 16470 specifically contemplates instruments without a handguard, and a lack of a handguard would certainly limit the effectiveness of a weapon and risk injury to the person using it. More to the point, both knife experts agreed that Castillolopez's pocketknife, when carried with the blade exposed and locked into position, was capable of stabbing and inflicting great bodily injury or death. (2 RT 138, 140, 184.) The prosecution's knife expert opined that when "it's in a locked open position, it can puncture through a soft type of material" such as "skin," and its two- to three-inch blade had "more than enough length to puncture and potentially kill somebody." (2 RT 138, 140.) The defense's knife expert acknowledged that when the blade was in the open position, it could be used to "stab someone," "hit a vital organ," and "cause death." (2 RT 184.) Given this evidence, and the evidence showing Castillolopez had carried his pocketknife with the blade "in a locked, open position" (2 RT 104), a jury could reasonably conclude that Castillolopez was guilty of carrying a concealed dirk or dagger. Accordingly, this court should reject Castillolopez's argument and find that sufficient evidence supported his conviction for carrying a concealed dirk or dagger.

(...continued)
both experts confirms, the blade of a nonlocking folding knife can lock into position when fully extended.

CONCLUSION

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

Dated: March 11, 2015

Respectfully submitted,

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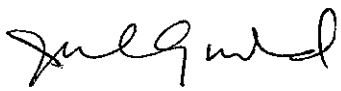
CERTIFICATE OF COMPLIANCE

I certify that the attached **REPLY BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 4,909 words.

Dated: March 11, 2015

KAMALA D. HARRIS
Attorney General of California



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

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

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 11, 2015, I served the attached **REPLY BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

San Diego County District Attorney's Office
Hall of Justice
330 West Broadway, Ste. 1300
San Diego, CA 92101-3826

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

Fourth Appellate District, Division One
Court of Appeal of the State of California
Symphony Towers
750 B Street, Suite 300
San Diego, CA 92101

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 11, 2015, at San Diego, California.

Tammy Larson
Declarant

Signature

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