IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	No. S222227
Plaintiff and Respondent,	)	
v.	)	SUPREME COURT FILED
BRYAN M. PENNINGTON,	)	
Defendant and Appellant.	)	FEB 13 2015

Frank A. McGuire Clerk

Deputy

Second District Court of Appeal, Division Six, Case No. B249482
Santa Barbara County Superior Court No. 1423213
Honorable Brian E. Hill, Presiding Judge

APPELLANT'S OPENING BRIEF ON THE MERITS

MARK R. FEESER
ATTORNEY AT LAW
State Bar No. 252968
3940-7174 Broad Street
San Luis Obispo, CA 93401
805-542-0189
Mark.R.Feeser@gmail.com

Attorney for Defendant and
Appellant Bryan M. Pennington

By Appointment of The
Supreme Court of California

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. BRYAN M. PENNINGTON, Defendant and Appellant.	))))))))))	No. S222227

Second District Court of Appeal, Division Six, Case No. B249482
Santa Barbara County Superior Court No. 1423213
Honorable Brian E. Hill, Presiding Judge

APPELLANT'S OPENING BRIEF ON THE MERITS

MARK R. FEESER
ATTORNEY AT LAW
State Bar No. 252968
3940-7174 Broad Street
San Luis Obispo, CA 93401
805-542-0189
Mark.R.Feeser@gmail.com

Attorney for Defendant and
Appellant Bryan M. Pennington

By Appointment of The
Supreme Court of California

TABLE OF CONTENTS

ISSUES PRESENTED **1**

INTRODUCTION **2**

STATEMENT OF THE CASE **3**

STATEMENT OF FACTS **4**

PROSECUTION CASE 4

DEFENSE CASE 5

ARGUMENT **6**

I. APPELLANT'S CONVICTION FOR VIOLATING PENAL CODE SECTION 243, SUBDIVISION (b) MUST BE REVERSED. 6

A. Relevant Procedural History. 7

B. Relevant Evidence Regarding The Duties Of Santa Barbara Harbor Patrol Officers. 7

C. A Harbor Patrol Officer Is Not A "Peace Officer," Within The Meaning Of Section 243, Subdivision (b), Unless His Or Her "Primary Duty" Is Law Enforcement 9

1. Principles Of Statutory Interpretation 11

2. Pursuant To the Plain Language Of Section 830.33, Subdivision (b), And The Statutory System Conferring "Peace Officer" Status, A Harbor Patrol Officer Is Not A "Peace Officer" Unless His Or Her "Primary Duty" Is Law Enforcement. 12

3. The Interpretation Of Section 830.33, Subdivision (b) Adopted By The Court Of Appeal In This Case Renders Portions Of The Statute Meaningless, And Bestows "Peace Officer" Status Too Broadly. 17

D. There Was Insufficient Evidence That Harbor Patrol Officer Hubbard Was A "Peace Officer." 20

E. The Trial Court Violated Appellant's Federal And State Constitutional Rights To Due Process And A Jury Trial By Excluding Argument And Instructing The Jury That A Harbor Patrol Officer Is A "Peace Officer." 21

CONCLUSION **26**

CERTIFICATE OF LENGTH **27**

TABLE OF AUTHORITIES

California Cases

Baker v. Workers' Comp. Appeals Bd. (2011) 52 Cal.4th 434 12

County of Santa Clara v. Deputy Sheriffs' Assn. (1992) 3 Cal.4th 873 13

Gauthier v. City of Red Bluff (1995) 34 Cal.App.4th 1441 .... passim

Holland v. Assessment Appeals Bd. No. 1 (2014) 58 Cal.4th 482 11

In re M.M. (2012) 54 Cal.4th 530 12

People v. Figueroa (1986) 41 Cal.3d 714 .... 22, 23

People v. Flood (1998) 18 Cal.4th 470 .... 22, 23, 24, 25

People v. Guzman (2005) 35 Cal.4th 577 .... 11, 18

People v. Jones (2001) 25 Cal.4th 98 11

People v. Manibusan (2013) 58 Cal.4th 40 20

People v. Manzo (2012) 53 Cal.4th 880 11

People v. Medina (2007) 41 Cal.4th 685 12

People v. Miller (2008) 164 Cal.App.4th 653 .... passim

People v. Pennington (2014) 229 Cal.App.4th 1376 3

People v. Perez (2005) 35 Cal.4th 1219 22

People v. Sapp (2003) 31 Cal.4th 240 21

People v. Thompson (2000) 79 Cal.App.4th 40 23

People v. Woodhead (1987) 43 Cal.3d 1002 .... 11, 18

Service Employees Internat. Union v. City of Redwood City (1995) 32 Cal.App.4th 53 .... 13, 20

Federal Cases

Faretta v. California (1975) 422 U.S. 806, 95 S.Ct. 2525 7

Jackson v. Virginia (1979) 443 U.S. 307, 99 S.Ct. 2781 21

Sullivan v. Louisiana (1993) 508 U.S. 275, 113 S.Ct. 2078 22

Statutes

Government Code section 3300 15

Penal Code section 243 .... passim

Penal Code section 484 3

Penal Code section 602 3

Penal Code section 664 3

Penal Code section 69 3

Penal Code section 830 .... 10, 13

Penal Code section 830.1 .... 10, 19, 24

Penal Code section 830.33 .... passim

Penal Code section 830.37 .... 15, 16

Vehicle Code section 2800.3 .... 14, 24

Constitutional Provisions

Fifth Amendment to the United States Constitution 22

Fourteenth Amendment to the United States Constitution 21

Sixth Amendment to the United States Constitution 22

Rules of Court

California Rules of Court, rule 8.516 .... 1, 22

California Rules of Court, rule 8.520 .... 1, 22

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. BRYAN M. PENNINGTON, Defendant and Appellant.	No. S222227 2d Crim. No. B249482 (Super. Ct. No. 1423213) (Santa Barbara County)

APPELLANT'S OPENING BRIEF ON THE MERITS

ISSUES PRESENTED

This Court granted review with regard to the following issue: Did the People prove that the named victim, a harbor patrol officer for the City of Santa Barbara Waterfront Department, is a peace officer within the meaning of Penal Code section 243, subdivision (b),[1] supporting defendant's conviction for battery on a peace officer?

Pursuant to California Rules of Court, rules 8.516 and 8.520, subdivision (b)(3), appellant has also briefed the following issue, which appellant believes is "fairly included" within the issue for which this Court granted review:

To the extent that a harbor patrol officer's status as a "peace officer" requires proof that his or her "primary duty" is law enforcement, pursuant to section 830.33, subdivision (b), was appellant prejudiced by the trial court's errors in precluding appellant from arguing that the victim in this case was not a "peace officer," and instructing the jury that a harbor patrol officer is a "peace officer"?

---

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

As discussed, *infra*, this issue is "fairly included" within the issue for which this Court granted review, as both respondent and the Court of Appeal agreed that the trial court erred, and the harmless error analysis turns on the same issue of statutory interpretation for which this Court granted review.

INTRODUCTION

The Legislature has defined a harbor or port police officer as a "peace officer" if "*the primary duty of the peace officer is the enforcement of the law* in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port." (§ 830.33, subd. (b) [Emphasis added.].) The plain language of this statute therefore requires that a harbor patrol officer's "primary duty" must be law enforcement in order to qualify as a "peace officer." Here, the evidence was insufficient to sustain appellant's conviction for battery on a peace officer (§ 243, subd. (b)), because the prosecution failed to establish that law enforcement was the victim's "primary duty."

The Court of Appeal, however, adopting the position asserted by Respondent, held that pursuant to section 830.33, subdivision (b), a harbor patrol officer is a "peace officer" if: 1) his or her primary duty is law enforcement; *or* 2) he or she simply performs necessary duties with regard to the harbor. This interpretation of section 830.33, subdivision (b) should be rejected, as it renders meaningless the "primary duty" requirement, and conflicts with a legislative intent to confer "peace officer" status subject to carefully prescribed limitations and conditions. Moreover, even if the evidence in this case is somehow deemed sufficient to satisfy the "primary duty" requirement, appellant was prejudiced by the trial court's limitation on argument and instruction to the jury that a harbor patrol officer is a

"peace officer." Accordingly, this Court should reverse appellant's conviction for battery on a peace officer.

STATEMENT OF THE CASE

Appellant, Bryan M. Pennington, was convicted by jury of one felony count of violating Penal Code section 69 ("Resisting Executive Officer"), one misdemeanor count of violating section 243, subdivision (b) ("Battery on a Peace Officer"), one misdemeanor count of violating section 602, subdivision (k) ("Trespass With Intent to Interfere"), and one misdemeanor count of violating Penal Code section 664/484, subdivision (a) ("Attempted Petty Theft"). (2CT[2] 324-327, 350-355) At sentencing, the trial court suspended the pronouncement of judgment and released appellant on formal probation for a term of five years. (2CT 351, 352; 3RT[3] 667) The court further ordered appellant to serve 365 days in the Santa Barbara County Jail with regard to the Attempted Petty Theft and Trespass counts. (3RT 667; 2CT 351) Appellant filed a timely Amended Notice of Appeal. (2CT 357)

In a published opinion, filed on September 22, 2014, Division Six of the Second District Court of Appeal affirmed appellant's convictions and sentence. (*People v. Pennington* (2014) 229 Cal.App.4th 1376 *review granted and opinion superseded,* (Cal. 2014) 181 Cal.Rptr.3d 41.) This Court granted appellant's petition for review on December 10, 2014.

---

[2] 2CT refers to volume II of the Clerk's Transcript on Appeal. 1CT will refer to Volume I.
[3] 3RT refers to Volume III of the Reporter's Transcript on Appeal. 1RT will refer to Volume I, and 2RT will refer to Volume II.

STATEMENT OF FACTS

PROSECUTION CASE

On August 29, 2012, the Santa Barbara Harbor Patrol ("Harbor Patrol") was contacted after appellant entered a restricted area of the City of Santa Barbara waterfront (the "Harbor") through an open security gate. (1RT 85-87) Harbor Patrol Officers Ryan Kelly ("Kelly") and Rick Hubbard ("Hubbard") responded. (1RT 126-127, 254-255) Kelly and Hubbard were both in full Harbor Patrol uniform. (1RT 125-126, 139, 265) Kelly and Hubbard located appellant on the one of the slips in the Harbor, with a coiled hose over his shoulder. (1RT 129, 135, 137, 258) Appellant explained that he was retrieving a hose that belonged to his friend Carol, and had permission to do so. (1RT 186, 261) Hubbard instructed appellant to return the hose until they could verify appellant's story. (1RT 261)

Appellant returned the hose, but told Hubbard to call the "real police," and tried to walk away. (1RT 261) Hubbard put his hand out to stop appellant from leaving. (1RT 262) Appellant stepped back, and kicked Hubbard in the right upper thigh or groin area. (1RT 140, 184, 226, 262-263) Appellant continued to resist, and was tasered and then handcuffed. (1RT 143-144, 159-162, 263-266; 2RT 517) A member of the Santa Barbara Police Department was called out to assist, and took appellant into custody. (1RT 152-153; 2RT 517)

Hubbard subsequently determined that the hose belonged to Peter Crane ("Crane"), who owned a houseboat docked in the Harbor. (1RT 192, 194-196) Crane did not give anyone permission to take the hose, and did not know appellant. (1RT 196, 216) However, the dock box where Crane kept the hose belonged to a Carol Holm ("Holm"), and Holm and Crane shared the hose. (1RT 197-207)

The prosecution also presented evidence of two prior incidents to demonstrate appellant's intent, motive, lack of mistake, and common plan. On May 5, 2009, Harbor Patrol Supervisor Stephen McCullough ("McCullough") contacted appellant at the public boat launch. (2RT 432-433) McCullough told appellant that if he did not move his boat or rent a visitor's slip, his boat would be impounded. (2RT 436, 438, 481) Appellant refused to comply and began swearing as another officer prepared appellant's boat to be impounded. (2RT 439-440, 481) Appellant then "charged" at McCullough, throwing himself at McCullough as they both fell into the water. (2RT 441-442, 487-488, 493) A sheriff's deputy responded to assist. (2RT 445)

Additionally, on the morning of July 7, 2012, Hubbard observed appellant's sailboat in the Harbor. (1RT 267) Hubbard told appellant that he would need to move his boat or it would be impounded. (1RT 268-269) At about ten minutes past noon, appellant's boat was still in the Harbor, and Hubbard went to issue a citation. (2RT 285-286) Hubbard also summoned Santa Barbara Police Department Officer Brian Kerr ("Kerr") to "keep the peace." (2RT 402-404) Appellant became confrontational when Hubbard attempted to issue the citation, and threatened to "stab" Hubbard in the neck with a pen. (2RT 286, 291, 407) Kerr moved between appellant and Hubbard, and was able to diffuse the situation. (2RT 407)

DEFENSE CASE

Holm testified on appellant's behalf. (2RT 357-383) Holm had a working/barter relationship with appellant, and appellant was performing work on her boat as repayment for her services. (2RT 358-359, 370) Appellant did not specifically ask for permission to go to her boat or use the hose on August 29, 2012, but appellant had standing permission to do so.

(2RT 359-360, 369-370, 372-374, 383) Holm had previously given appellant permission to use Crane's hose, and even told appellant that it was hers. (2RT 362, 383) Therefore, appellant would have thought the hose belonged to Holm. (2RT 362, 383)

ARGUMENT

I. APPELLANT'S CONVICTION FOR VIOLATING PENAL CODE SECTION 243, SUBDIVISION (b) MUST BE REVERSED.

Appellant challenges his conviction for Battery on a Peace Officer (§ 243, subd. (b)), which requires proof, inter alia, that a battery was committed against certain enumerated "peace officers." In this case, the prosecution alleged that appellant assaulted Hubbard, a member of the Harbor Patrol. Pursuant to section 830.33, subdivision (b), harbor or port police are "peace officers" if "the primary duty of the peace officer is the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port."

As explained below, the plain language of section 830.33, subdivision (b) requires that a harbor patrol officer's "primary duty" must be law enforcement in order to qualify as a "peace officer." In this case, Hubbard failed to testify that law enforcement was his "primary duty," and described numerous duties unrelated to law enforcement. As a result, there was insufficient evidence that Hubbard was a "peace officer." The trial court also prejudicially erred by instructing the jury that Hubbard was a "peace officer" as a matter of law, and precluding any argument to the contrary. Accordingly, this Court should reverse appellant's conviction for Battery on a Peace Officer.

A. Relevant Procedural History.

Appellant was charged, inter alia, with one count of Battery on a Peace Officer (§ 243, subd. (b)). (1CT 131-132) Prior to trial, the prosecution filed a motion in limine, asking the trial court to designate a Harbor Patrol officer as a "peace officer" pursuant to section 830.33, subdivision (b), and to exclude appellant from arguing to the contrary. (1CT 96) The prosecution renewed this request at trial. (1RT 168-171) Over appellant's objection,[4] the trial court granted the prosecution's motion, reasoning that as Harbor Patrol officers, Hubbard and Kelly were "deemed peace officers under the law, so it's just a legal question." (1RT 169-170) The jury instructions with regard to Battery on a Peace Officer similarly indicated that a "sworn member of the Santa Barbara Harbor Patrol officer is a *peace officer*." (1CT 222 [Emphasis in original.].) Several other jury instructions repeated this conclusion. (1CT 218, 219, 243, 258.) The jury found appellant guilty of violating section 243, subdivision (b). (2CT 322, 325)

B. Relevant Evidence Regarding The Duties Of Santa Barbara Harbor Patrol Officers.

Both Hubbard and Kelly testified at trial. Hubbard testified that he was "employed as a Harbor Patrol officer" for the "City of Santa Barbara." (1RT 253) Kelly testified that he was "an officer with the Santa Barbara Harbor Patrol." (1RT 124) According to Hubbard, the Harbor Patrol fell

---

[4] Appellant represented himself at trial, having waived his right to counsel pursuant to *Faretta v. California* (1975) 422 U.S. 806, 95 S.Ct. 2525. (See 1CT 140-144, 147)

under the supervision and authority of the Chief of Police. (1RT 256) Both Hubbard and Kelly carried a sidearm, taser, handcuffs, baton, and pepper spray, and had the power to arrest. (1RT 125-126, 254) They also wore Harbor Patrol uniforms, which included Santa Barbara Harbor Patrol patches and a badge. (1RT 125-126) Hubbard also attended a "peace officer orientation course," which he believed granted him "peace officer" status under section 830.33, subdivision (b). (1RT 254) Kelly similarly testified that he had authority to arrest and detain under section 830.33, subdivision (b). (1RT 125)

Hubbard also described an "average day" for a Harbor Patrol officer.

> We're trained in a number of duties. You know, we're trained as a law enforcement officer, a boating safety officer, emergency medical technician, marine firefighter, and ocean lifeguard, so any one of those things may come into effect at any time. Law enforcement, just usually the things within the marina, the waterfront district. Boating, on an average day we'll tow a bunch of boats broken down, nonemergency, emergency. Marine mammals, we're getting a lot of those lately. Just an average day, that's what we are doing.

(1RT 253-254) Hubbard agreed that "part" of his duties included "enforcing the law in the harbor district." (1RT 254)

Kelly similarly described the duties of the Harbor Patrol officers as including both law enforcement and non-law enforcement activities.

> One of my duties of law enforcement as a peace officer is pursuant to California Penal Code Section 830.33(b). Also, marine -- or, I'm sorry --emergency medical technician -- sorry -- responsible for responding to medical calls in the harbor district. Marine firefighter. We respond to fire service calls in the harbor district. Lifeguard. I'm a rescue boat operator. Search and rescue. I hold a California Department of Boating and Waterways Masters Certificate, as well as a United States Coast Guard Masters license.

(1RT 124.) When asked about the "common issues" he dealt with as a Harbor Patrol officer, Kelly responded:

> You know, it's a little bit of everything I just mentioned. You know, each day is much different. We do patrol the marinas on foot, with vehicles and also on boat. Just patrolling just like PD would patrol the city streets. And then also education, boating education and safety.

(1RT 124) Kelly also agreed that his duties included tasks that were "outside of law enforcement." (1RT 125)

> Again, just rescue calls, you know, protecting the public in the gated areas of the marinas. I mentioned, you know, we're all lifeguards. Search and rescue boat, rescue boat operators. You know, we fight fires. We respond and treat medicals both at sea and on land. And then also we're responsible for the law enforcement aspect both on the water and in the land and in the harbor district.

(1RT 125) Neither Hubbard nor Kelly testified that law enforcement was a "primary duty."

C. A Harbor Patrol Officer Is Not A "Peace Officer," Within The Meaning Of Section 243, Subdivision (b), Unless His Or Her "Primary Duty" Is Law Enforcement.

A harbor patrol officer is not a "peace officer," for purposes of section 243, subdivision (b), unless his or her "primary duty" is law enforcement. Section 243, subdivision (b) provides in relevant part:

> When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties ... and the person committing the offense knows or reasonably should know that the victim is a peace officer ... the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

While section 243, subdivision (b) lists a number of job titles, it does not specifically provide that a battery against a harbor patrol officer constitutes

a violation of the statute. (See § 243, subds. (b), (f)(2)-(14).) Therefore, a battery against a harbor patrol officer would not violate section 243, subdivision (b), unless the officer falls within the broader definition of a "peace officer." In this context, section 243, subdivision (f)(1) defines a "peace officer" by reference to Chapter 4.5 of Title 3 of Part 2 of the Penal Code, commencing with section 830.

Pursuant to section 830, "[a]ny person who comes within the provisions of this chapter and who otherwise meets all standards imposed by law on a peace officer is a peace officer, and notwithstanding any other provision of law, *no person other than those designated in this chapter is a peace officer*." (Emphasis added.) Section 830.1 defines certain law enforcement officials and police officers as "peace officers." This section includes officers of the San Diego Unified Port District Harbor Police and the Harbor Department of the City of Los Angeles, but does not describe any other "harbor patrol" officers. (§ 830.1, subd. (a).) Section 830.33, however, defines a "peace officer" as:

> Harbor or port police regularly employed and paid in that capacity by a county, city, or district other than peace officers authorized under Section 830.1, *if the primary duty of the peace officer is the enforcement of the law* in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.

(§ 830.33, subd. (b) [Emphasis added.].)

Accordingly, a battery against a harbor patrol officer does not violate section 243, subdivision (b), unless the officer falls within the scope of section 830.33, subdivision (b). (See *People v. Miller* (2008) 164 Cal.App.4th 653, 665 [parties agreed that "the only provision in chapter 4.5 which potentially applies" to a harbor patrol officer is section 830.33, subdivision (b).].) *Miller* and the instant case appear to be the only two published cases that have addressed the statutory requirements necessary to

establish that a harbor patrol officer is a "peace officer" under section 830.33, subdivision (b). As discussed, *infra*, these cases divided as to whether the "primary duty" of law enforcement language in section 830.33, subdivision (b) is a necessary or alternative prerequisite to "peace officer" status. This case necessitates that this Court resolve this question of statutory interpretation.

1. Principles Of Statutory Interpretation.

This Court has frequently stated the fundamental principles of statutory interpretation and construction. A reviewing court addresses questions of statutory interpretation under an "independent review standard," in order to "'ascertain the intent of the Legislature so as to effectuate the purpose of the law.'" (*People v. Jones* (2001) 25 Cal.4th 98, 103.) "Statutory construction begins with the plain, commonsense meaning of the words in the statute, ' "because it is generally the most reliable indicator of legislative intent and purpose." '" (*People v. Manzo* (2012) 53 Cal.4th 880, 885.) "'When the language of a statute is clear, we need go no further.'" (*Ibid.*; *Holland v. Assessment Appeals Bd. No. 1* (2014) 58 Cal.4th 482, 490; *People v. Woodhead* (1987) 43 Cal.3d 1002, 1007-1008 ["When the language is clear and unambiguous, there is no need for construction."].) Additionally, "[i]t is a settled axiom of statutory construction that significance should be attributed to every word and phrase of a statute, and a construction making some words surplusage should be avoided." (*People v. Woodhead, supra*, 43 Cal.3d 1002, 1010; *People v. Guzman* (2005) 35 Cal.4th 577, 588.) "'The words of the statute must [also] be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.

[Citations.]'" (*Baker v. Workers' Comp. Appeals Bd.* (2011) 52 Cal.4th 434, 446; *People v. Medina* (2007) 41 Cal.4th 685, 696.)

It is only "where a statute's terms are unclear or ambiguous, [that this Court] may 'look 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.'" (*In re M.M.* (2012) 54 Cal.4th 530, 536.) Further, even if the operative provision of a statute is susceptible to more than one reasonable interpretation, the "'ambiguity in a criminal statute should be resolved in favor of lenity, giving the defendant the benefit of every reasonable doubt on questions of interpretation.'" (*In re M.M., supra*, 54 Cal.4th 530, 545 [rule of lenity applies only if "'two reasonable interpretations of the statute stand in relative equipoise.'"].)

2. Pursuant To the Plain Language Of Section 830.33, Subdivision (b), And The Statutory System Conferring "Peace Officer" Status, A Harbor Patrol Officer Is Not A "Peace Officer" Unless His Or Her "Primary Duty" Is Law Enforcement.

The unambiguous language of section 830.33, subdivision (b), read in context with the statutory system for conferring "peace officer status," requires evidence that a harbor patrol officer's "primary duty" is law enforcement in order to confer "peace officer" status.

At the outset, it is helpful to understand the context and history of the statutory system for conferring "peace officer" status in California.

> Prior to 1968, the designation of peace officers and the description of their powers were dispersed throughout the codes. In April of that year, the Senate declared by resolution that it was essentiɘl the law be clear with respect to "who can act as peace officers, and where, and for what purposes," and it requested a study of "peace officers' powers, including the

> questions of the scope of such powers, the types of officers who should exercise them, and the purposes for which, and the geographical areas in which, they may be exercised ...." (Sen. Res. No. 163 (1967 Reg. Sess.) Thereafter, it enacted chapter 4.5, the purpose of which was to "define peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers and duties ...." (Stats. 1968, ch. 1222, § 79, p. 2331.)

(*County of Santa Clara v. Deputy Sheriffs' Assn.* (1992) 3 Cal.4th 873, 879.) Consistent with this purpose, "chapter 4.5 'specifies dozens of government employees as peace officers, sometimes simply by job title, but more often by reference both to a position and its primary duties.' [Citation.]" (*People v. Miller, supra,* 164 Cal.App.4th 653, 666; *Service Employees Internat. Union v. City of Redwood City* (1995) 32 Cal.App.4th 53, 60.) Section 830 further provides that "notwithstanding any other provision of law, no person other than those designated in this chapter is a peace officer." "The plain import of this statutory system is that the Legislature intended to grant peace officer status, and the powers and authority conferred with that status in particular instances, subject to carefully prescribed limitations and conditions." (*Service Employees Internat. Union v. City of Redwood City, supra,* 32 Cal.App.4th 53, 60; § 830; see *County of Santa Clara v. Deputy Sheriffs' Assn., supra,* 3 Cal.4th 873, 880 [the legislature intended to prohibit local authorities from conferring "peace officer" status on employees not otherwise designated by Chapter 4.5]; *Gauthier v. City of Red Bluff* (1995) 34 Cal.App.4th 1441, 1446 ["If the Legislature had meant that all firefighters were to be peace officers it would have said so."].)

Here, section 830.33, subdivision (b) includes an explicit requirement that the "*primary duty of the peace officer is the enforcement of the law* in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to

patrons, employees, and properties of the harbor or port." (Emphasis added.) This unambiguous language indicates a legislative intent to confer "peace officer" status on harbor or port police only where the officer's "primary duties" are law enforcement. Not surprisingly, lower courts have interpreted the "primary duty" language, and similar language in other provisions of Chapter 4.5, as an essential prerequisite of "peace officer" status. (See e.g., *People v. Miller*, *supra*, 164 Cal.App.4th 653, 665-668; *Gauthier v. City of Red Bluff*, *supra*, 34 Cal.App.4th 1441, 1445-1447.)

In *People v. Miller*, Division 4 of the Second District Court of Appeal analyzed whether there was sufficient evidence to support the defendant's conviction for evading a peace officer causing serious bodily injury (Veh. Code, § 2800.3, subd. (a).) (*People v. Miller*, *supra*, 164 Cal.App.4th 653, 665.) This offense, similarly to Battery on a Peace Officer, requires proof that the defendant evaded a "peace officer." (*Ibid.*) The alleged "peace officer" in *Miller*, Robert Hamilton ("Hamilton"), testified that he was a "harbor patrolman" or "rescue boat operator." (*Id.* at p. 667.) Hamilton also testified that "he had the authority to detain individuals and issue citations, but he 'mostly' drove a rescue or harbor patrol boat," and was never asked to specify his "primary duties." (*Ibid.*)

On appeal, the Attorney General initially conceded that the officer's "status as a peace officer depends on a finding as to his primary duties." (*People v. Miller*, *supra*, 164 Cal.App.4th 653, 667.) The Attorney General argued, instead, that because "Hamilton testified that he operated a 'rescue boat' or 'patrol boat,' the jury could have inferred that he was engaged in 'policing functions.'" (*Ibid.*) At oral argument, the Attorney General also argued that the officer qualified as a "peace officer" based on the final clause of section 830.33, subdivision (b), irrespective of whether law enforcement was a primary duty. (*Id.* at p. 667, fn. 9.) The Attorney General asserted, as in this case, that "employees of the harbor or port

police should be considered peace officers as long as they are … 'performing necessary duties with respect to patrons, employees, and properties of the harbor or port.'" (*Id.* at p. 667, fn. 9.)

Relying on the plain language of section 830.33, subdivision (b), however, the court held that:

> Penal Code section 830.33, subdivision (b) does not confer peace officer status on harbor or port police who engage in any "policing functions" or who perform any duty that might also be performed by a peace officer. Rather, it confers peace officer status on those whose "primary duty" is "the enforcement of the law."

(*People v. Miller, supra,* 164 Cal.App.4th 653, 667.) The court also rejected the Attorney General's reliance on the final clause of the statute:

> Under this interpretation, the final clause of Penal Code section 830.33, subdivision (b) would operate to create a wholly separate category of harbor and port police employees who may be deemed peace officers without regard to whether their primary duty is enforcement of the law. This definition would bestow peace officer status on a broad category of employees who perform no law enforcement functions, and cannot be reconciled with prior decisions' strict interpretation of the provisions of Chapter 4.5.

(*Id.* at p. 667, fn. 9.) Accordingly, because the prosecution failed to establish that the officer's "primary duty" was law enforcement, the court reversed the conviction. (*Id.* at pp. 667-668, 670.)

The Third District Court of Appeal reached a similar conclusion with regard to the "primary duty" requirement included in section 830.37, subdivision (b). (*Gauthier v. City of Red Bluff, supra,* 34 Cal.App.4th 1441.) In *Gauthier*, a fire chief asserted that he was a "peace officer" within the meaning of the Public Safety Officers Bill of Rights Act ("PSOBRA") (Gov. Code, § 3300, et. seq.). (*Id.* at p. 1443.) The PSOBRA similarly defined a "peace officer" by reference to various sections of the Penal Code, including section 830.37. (*Id.* at pp. 1443-1444.) Like section

830.33, subdivision (b), section 830.37, subdivision (b) includes a requirement with regard to the officer's "primary duty." Specifically, that members of a fire department or fire protection agency are peace officers "if the *primary duty* of these peace officers, when acting in that capacity, is the enforcement of laws relating to fire prevention or fire suppression." (§ 830.37, subd. (b) [Emphasis added.].) Concluding that this language did not confer "peace officer" status unless the fire chief's "primary duty" was law enforcement, the court observed:

> Only Penal Code section 830.37, subdivision (b) is at issue here, but by considering that subdivision in conjunction with the entire section, and the section in conjunction with the chapter, it is clear that only very specific persons are deemed to be "peace officers." Moreover, many statutes defining "peace officers" provide limited powers or provide that a person is a peace officer in limited circumstances. [Citation.] In this case, the statute's introductory paragraph states "The following persons are peace officers whose authority extends to any place in the state *for the purpose of performing their primary duty or when making an arrest,*" and the rest of the statute must be considered in that light.

(*Id.* at p. 1445 [Emphasis in Original.].) The court conceded that the statute had "many problems," including, inter alia, that "the various clauses can be construed to relate to different antecedents." (*Ibid.*) Nevertheless:

> [O]ne limitation clearly emerges: members are covered by the statute (and, hence, are peace officers) if and only if "the primary duty of these peace officers, ...is the enforcement of laws relating to fire prevention or fire suppression." Although poorly worded, the statute covers those firefighters who act as *peace officers* by enforcing fire laws as their primary duty. This interpretation gives effect to each part of the statute.

(*Ibid.*) The court also rejected the argument that the statute should be interpreted "to mean it covers firefighters 'when the "primary duty of these peace officers, *when acting in that capacity,* is enforcement of laws relating

to fire prevention or fire suppression." '" (*Id.* at pp. 1445-1446 [Emphasis in Original.].)

> This interpretation is circular and disregards much of the language of the statute. Under this view every firefighter would be a peace officer because every firefighter at one time or another performs some duty relating to fire suppression or prevention laws. If the Legislature had meant that all firefighters were to be peace officers it would have said so.

(*Id.* at p. 1446.) Therefore, although the fire chief at times enforced fire prevention laws, there was no evidence that this was his "primary duty," and he was not a "peace officer." (*Id.* at pp. 1446-1447.)

Accordingly, by its plain meaning, and in the context of the statutory system for conferring "peace officer" status, section 830.33, subdivision (b) requires proof that a harbor patrol officer's primary duty is law enforcement in order to qualify as a "peace officer."

3. The Interpretation Of Section 830.33, Subdivision (b) Adopted By The Court Of Appeal In This Case Renders Portions Of The Statute Meaningless, And Bestows "Peace Officer" Status Too Broadly.

In contrast to the cases discussed above, the Court of Appeal in this case adopted an alternative interpretation of section 830.33, subdivision (b), which bestows "peace officer" status even if the officer's "primary duty" is not law enforcement. Specifically, the court, like the Attorney General in *Miller*, took the position that section 830.33, subdivision (b) establishes two alternative bases to qualify for "peace officer" status, based on the first and second clauses of the statute. (Slip Op. pp. 6-7.) The court thus held that a harbor patrol officer qualifies as a "peace officer" if: 1) their primary duties are law enforcement in or about the harbor or port ("First Clause"); *or* 2) when the officer is "performing necessary duties with respect to patrons, employees, and properties of the employing agency" ("Second Clause").

This interpretation must be rejected, as it renders a portion of the statute meaningless, and would bestow "peace officer" status on a broad category of employees with little or no law enforcement functions.

First, the interpretation adopted by the Court of Appeal violates a fundamental principle of statutory interpretation, by rendering the "primary duty" clause unnecessary and superfluous. (See *People v. Guzman, supra*, 35 Cal.4th 577, 588 [the courts must "'if possible, ... give effect and significance to every word and phrase of a statute.' [Citation.]"]; *People v. Woodhead, supra*, 43 Cal.3d 1002, 1010.) There is no purpose to requiring some harbor police to have "primary duties" of law enforcement, because every harbor patrol employee at one time or another performs necessary duties related to the harbor. The "primary duty" language becomes superfluous, and the statute would "bestow peace officer status on a broad category of employees who perform no law enforcement functions." (*People v. Miller, supra*, 164 Cal.App.4th 653, 667, fn. 9.)

Respondent will likely contend that appellant, and the court in *Miller*, overstate the concern about granting "peace officer" status too broadly. This is because, as the Court of Appeal in this case reasoned, the Second Clause applies only to "'[h]arbor or port *police* regularly employed and paid in that capacity,' i.e., their official capacity as police officers." (Slip. Op. at p. 7 [Emphasis in Original.].) This interpretation, however, places too much faith on the word "police," while still failing to give any meaning to the "primary duty" requirement.

First, as a factual matter, Hubbard and Kelly testified that they were "Harbor Patrol officer[s]," not "Harbor or port police," as used in the statute. (1RT 124, 253) While Hubbard testified that the Harbor Patrol fell under the "umbrella" of the police department, neither he nor Kelly purported to be a member of a "police" department. (See 1RT 124, 253) Kelly and Hubbard demonstrated this distinction when they summoned the

Santa Barbara Police to take appellant into custody following the incident in this case. (See 1RT 151-153, 158-159; 2RT 517) As discussed, *supra*, both officers also testified that they had numerous non-law enforcement duties. Therefore, it is questionable that the jury could have found that Hubbard was a "police" officer, even the word "police" served as a substitute for the "primary duty" requirement.

More importantly, the Court of Appeal's reliance on the word "police" highlights a critical question with regard to the legislature's intent. Why would the legislature include a "primary duty" requirement, if the word "police" served a similar but apparently less demanding function? If the legislature intended all harbor patrol officers to be "peace officers," it could have easily done so by omitting *any* requirement with regard to the officer's "primary duties." (See *Gauthier v. City of Red Bluff, supra*, 34 Cal.App.4th 1441, 1446 ["If the Legislature had meant that all firefighters were to be peace officers it would have said so."].) Moreover, section 830.33, subdivision (b) specifically excludes traditional "police officers" from its definition, as they are bestowed "peace officer" status under section 830.1. This further demonstrates that the legislature intended to grant "peace officer" status to Harbor or Port police under more specific and limited circumstances.

In contrast, requiring proof that a harbor patrol officer's "primary duty" is law enforcement gives meaning to both the First and Second Clauses of section 830.33, subdivision (b). Without the Second Clause, section 830.33, subdivision (b) bestows "peace officer" status "if the primary duty of the peace officer is the enforcement of the law *in or about* the properties owned, operated, or administered by the harbor or port." (Emphasis added.) A harbor patrol officer would not be a "peace officer" if they performed their primary duties of law enforcement *outside* the harbor. The Second Clause clarifies that a harbor patrol officer, whose "primary

duty" is "the enforcement of the law," is a "peace officer": 1) if those duties are performed "in or about" the harbor; or 2) "when performing necessary duties *with respect to* patrons, employees, and property of the harbor." (See § 830.33, subd. (b) [Emphasis added.].) This interpretation is reinforced by the introductory paragraph to section 830.33, which states: "[t]he following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty..."

As discussed, *supra*, the "Legislature intended to grant peace officer status, and the powers and authority conferred with that status in particular instances, subject to carefully prescribed limitations and conditions." (*Service Employees Internat. Union v. City of Redwood City*, *supra*, 32 Cal.App.4th 53, 60.) Interpreting section 830.33, subdivision (b) to negate any requirement with regard to a harbor patrol officer's "primary duty" cannot be reconciled with the legislature's intent. Accordingly, giving meaning to every phrase in section 830.33, subdivision (b), a harbor patrol officer is not a "peace officer" unless his or her "primary duty" is law enforcement.

D. There Was Insufficient Evidence That Harbor Patrol Officer Hubbard Was A "Peace Officer."

Where a defendant challenges the sufficiency of evidence to support a conviction, this Court reviews "'the whole record to determine whether any rational trier of fact could have found the essential elements of the crime ... beyond a reasonable doubt.' [Citation.]" (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.) A conviction must be reversed unless the record, viewed in the light most favorable to the judgment, "discloses substantial evidence – that is, evidence which is reasonable, credible, and of solid value – such that a reasonable trier of fact could find the defendant guilty

beyond a reasonable doubt." (*People v. Sapp* (2003) 31 Cal.4th 240, 282.) The Due Process Clause of the Fourteenth Amendment also protects a defendant in a criminal case against conviction "except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." (*Jackson v. Virginia* (1979) 443 U.S. 307, 316, 99 S.Ct. 2781.)

There was insufficient evidence in this case that Hubbard's "primary duty" was law enforcement. As discussed, *supra*, a necessary element of this offense is that the victim is a "peace officer." Pursuant to section 830.33, subdivision (b), a harbor patrol officer is not a "peace officer" unless his or her "primary duty" is law enforcement. Here, the prosecutor never asked Hubbard or Kelly to specify whether their "primary duty" was law enforcement. To the contrary, Hubbard and Kelly described numerous duties in addition to law enforcement, and conceded that law enforcement was only part of their job. It is true, as the Court of Appeal observed, "Hubbard was in full uniform carrying peace officer accoutrement including a firearm, taser, and baton. He was investigating a suspected trespass and theft." (Slip Op. p. 7.) While this may have established that *some* of Hubbard's duties involved law enforcement, it fails to establish that law enforcement was his "*primary duty*." Accordingly, this Court should reverse appellant's conviction for Battery on a Peace Officer.

E. The Trial Court Violated Appellant's Federal And State Constitutional Rights To Due Process And A Jury Trial By Excluding Argument And Instructing The Jury That A Harbor Patrol Officer Is A "Peace Officer."

As described, *supra*, there was insufficient evidence to establish that appellant violated section 243, subdivision (b). Assuming, arguendo, however, that the evidence was sufficient to establish that Hubbard's

"primary duty" was law enforcement, appellant's conviction must still be reversed. Reversal is required because the trial court erred by instructing the jury that a Harbor Patrol officer is a "peace officer," and precluding appellant from arguing to the contrary. Appellant was prejudiced by these errors, and his conviction should be reversed.[5]

"Under established law, instructional error relieving the prosecution of the burden of proving beyond a reasonable doubt each element of the charged offense violates the defendant's rights under both the United States and California Constitutions." (*People v. Flood* (1998) 18 Cal.4th 470, 479-480; *Sullivan v. Louisiana* (1993) 508 U.S. 275, 277–278, 113 S.Ct. 2078 [Fifth Amendment to the United States Constitution].) "Such erroneous instructions also implicate Sixth Amendment principles preserving the exclusive domain of the trier of fact." (*People v. Flood, supra,* 18 Cal.4th 470, 491.) "'[A] jury's verdict cannot stand if the instructions provided the jury do not require it to find each element of the crime under the proper standard of proof...'" (*People v. Figueroa* (1986) 41 Cal.3d 714, 726.)

---

[5] As noted in appellant's Petition for Review in this case, the Court of Appeal held that the trial court's rulings with regard to the scope of argument and jury instructions were error. (Petition for Review at p. 8, fn. 2.) The court found the error to be harmless, however, in light of its interpretation of section 830.33, subdivision (b). As the harmless error analysis turned on the court's interpretation of section 830.33, subdivision (b), appellant did not separately raise any issues with regard to instructional error and limitation on argument in his Petition. Appellant respectfully asserts these errors now, pursuant to California Rules of Court, rules 8.516 and 8.520(b)(3), which limit the issues presented in a brief on the merits to those specifically identified in the order granting review, and "any issues fairly included in them." (See *People v. Perez* (2005) 35 Cal.4th 1219, 1228 [issue of statutory interpretation not specifically raised in petition for review was "fairly embraced in the petition" where it was necessary to determination whether instructional error was harmless.].)

> A mandatory presumption, in effect, removes an element from the jury's consideration and thereby lessens the prosecution's burden to prove beyond a reasonable doubt every element of the charged offense. Instructions that relieve the state's burden violate state and federal constitutional guarantees of due process and the rights to a jury trial and proof beyond a reasonable doubt.

(*People v. Thompson* (2000) 79 Cal.App.4th 40, 59-60.)

> "Thus, although a judge may direct a verdict for the defendant if the evidence is legally insufficient to establish guilt, he [or she] may not direct a verdict for the State, no matter how overwhelming the evidence. [Citations.]" [Citations.] The prohibition against directed verdicts for the prosecution extends to instructions that effectively prevent the jury from finding that the prosecution failed to prove a particular element of the crime beyond a reasonable doubt.

(*People v. Flood, supra*, 18 Cal.4th 470, 491.) "If a judge were permitted to instruct the jury on the basis of assertedly 'undisputed' evidence that a particular element had been established as a matter of law, the right to a jury trial would become a hollow guarantee." (*People v. Figueroa, supra*, 41 Cal.3d 714, 730.) "'Put simply, the right to be tried by a jury of one's peers finally exacted from the king would be meaningless if the king's judges could call the turn.' [Citation.]" (*Id.* at p. 741.)

> [A]n instructional error that improperly describes or omits an element of an offense, or that raises an improper presumption or directs a finding or a partial verdict upon a particular element, ... like the vast majority of other constitutional errors, falls within the broad category of trial error subject to *Chapman* review.

(*People v. Flood, supra*, 18 Cal.4th 470, 502-503.) Under this standard, reversal is required unless "it appears beyond a reasonable doubt that the error did not contribute to this jury's verdict." (*Id.* at p. 504.)

In the instant case, Respondent conceded, and the Court of Appeal found, that the trial court erred by instructing the jury that Hubbard was a "peace officer," and precluding appellant from arguing to the contrary.

(Slip Op. pp. 7-8.) Nevertheless, the court found both errors to be harmless, based on its interpretation of section 830.33, subdivision (b), which the court held did not require proof that law enforcement was a "primary duty." (*Ibid.*) As discussed, *supra*, the court's interpretation of section 830.33, subdivision (b) must be rejected. Once section 830.33, subdivision (b) is correctly interpreted, there is little question that appellant was prejudiced by the instructional error and limitation on argument.

This Court's opinion in *People v. Flood* is illustrative of the prejudice analysis in this context. In *Flood*, this Court found that the trial court violated a defendant's due process rights by instructing the jury that two police officers were "peace officers." (*People v. Flood*, *supra*, 18 Cal.4th 470, 482-483, 492-493 [the defendant was charged with evading a peace officer (Veh. Code, § 2800.3).].) The trial court ruled that the two police officers were "peace officers" pursuant to section 830.1, subdivision (a), and instructed the jury accordingly. (*Id.* at p. 482.) Section 830.1, subdivision (b) provides in relevant part, that "Any ... police officer, employed in that capacity and appointed by the chief of police ... of a city ... is a peace officer." Section 830.1, subdivision (a) does not include any requirement with regard to a police officer's primary duties.

Turning to prejudice, this Court observed, "[o]ne situation in which instructional error removing an element of the crime from the jury's consideration has been deemed harmless is where the defendant concedes or admits that element." (*People v. Flood*, *supra*, 18 Cal.4th 470, 504.) Error may also be found harmless where "the parties recognized the omitted element was at issue, presented all evidence at their command on that issue, and the record not only establishes the element as a matter of law but shows the contrary evidence not worthy of consideration." (*Id.* at p. 506.) In *Flood*, "several circumstances" indicated that the defendant "effectively conceded th[e] issue." (*Id.* at p. 504.) The defendant presented no evidence

regarding the "peace officer" element, did not object to the instruction, and did not argue that the prosecution failed to prove the element beyond a reasonable doubt. (*Id.* at pp. 504-505.) Moreover, "*all* of the evidence at trial ... indicated that [the officers] were peace officers, and thus there is no rational basis upon which the instructional error could have affected the jury's verdict." (*Id.* at p. 505 [Emphasis in original.].) Accordingly, the instructional error was harmless. (*Id.* at p. 507.)

In contrast to *Flood*, the instructional error in this case was not harmless. Unlike the *police* officers in *Flood*, a *harbor patrol* officer is not a "peace officer" simply by virtue of his job title and appointment. Instead, the prosecution's theory was that Hubbard was a "peace officer" pursuant to section 830.33, subdivision (b). (1CT 96) As discussed *supra*, for a harbor patrol officer to be a "peace officer" under that section, his or her "primary duties" must be law enforcement. The evidence in this case demonstrated that Hubbard and Kelly had numerous duties beyond law enforcement, and neither testified that law enforcement was a "primary duty." (1RT 124-125, 253-254.) Moreover, unlike the defendant in *Flood*, appellant in no way conceded this issue. To the contrary, this was an important issue to appellant, which the trial court erroneously barred appellant from arguing to the jury. (1RT 168-171) As a result, the prosecutor was able to argue that it was "clear" that Hubbard was a "peace officer." (3RT 574) Had the jury been properly instructed and appellant been permitted to argue the issue at trial, it is unlikely that the jury would have concluded Hubbard was a "peace officer."

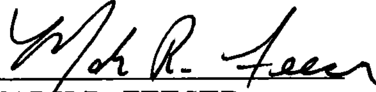
Accordingly, the instructional error and limitation on argument with regard to Hubbard's "peace officer" status was not harmless beyond a reasonable doubt, and appellant's conviction should be reversed.

CONCLUSION

For the foregoing reasons, appellant respectfully requests that this Court reverse his conviction for Battery on a Peace Officer (Count 2).

DATED: February 11, 2015

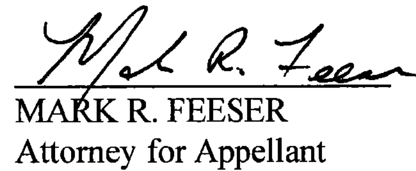
Respectfully submitted,



MARK R. FEESER
Attorney for Appellant

CERTIFICATE OF LENGTH

I, Mark R. Feeser, counsel for Bryan M. Pennington, certify pursuant to the California Rules of Court, rule 8.520(c), that the word count for this document is 7,612 words. This document was prepared in Microsoft Word, and this is the word count generated by the program for this document. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed, at San Luis Obispo, California, on February 11, 2015.



MARK R. FEESER
Attorney for Appellant

PROOF OF SERVICE

I am a citizen of the United States, over the age of 18 years, employed in the County of San Luis Obispo, and not a party to the within action; my business address is 3940-7174 Broad Street, San Luis Obispo, CA 93401.

On February 11, 2015, I served the within

APPELLANT'S OPENING BRIEF ON THE MERITS

in said action, by placing a true copy thereof enclosed in a sealed envelope and placing the envelope for collection and mailing following my ordinary business practices. I am readily familiar with this businesses practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Kamala D. Harris, Attorney General Attn: Theresa A. Paterson, DAG 300 South Spring Street, Suite 1702 Los Angeles, CA 90013	Clerk of the Court of Appeal Second Appellate District Division Six 200 East Santa Clara Street Ventura, CA 93001
Joyce E. Dudley, District Attorney 1105 Santa Barbara Street Santa Barbara, CA 93101	Bryan M. Pennington, Appellant c/o Mark R. Feeser, Attorney at Law 3940-7174 Broad Street San Luis Obispo, CA 93401
Clerk of the Court for Santa Barbara County, delivery to: Honorable Brian E. Hill 1100 Anacapa Street PO Box 21107 Santa Barbara, CA 93121-1107	California Appellate Project 520 S. Grand Avenue, 4th Floor Los Angeles, CA 90071

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 11, 2015 at San Luis Obispo, California.

MARK R. FEESER