IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	No. S206084
Plaintiff/Respondent,	)	
	)	Court of Appeal
vs.	)	No. G046177
	)	
DANIEL INFANTE,	)	(Superior Court
	)	Case No. 10NF1137)
Defendant/Appellant.	)	
	)	

ANSWER BRIEF ON THE MERITS

FOLLOWING THE APPEAL FROM THE
SUPERIOR COURT OF ORANGE COUNTY
THE HONORABLE RICHARD W. STANFORD, JUDGE PRESIDING

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INTRODUCTION

Defendant committed felonious criminal conduct when he violated Penal Code section 12021.[1] His felonious criminal conduct satisfies section 186.22, subdivision (a)'s third element – promoting, furthering or assisting in any felonious criminal conduct by members of the gang. Yet, defendant argues his felonious criminal conduct cannot satisfy section 186.22, subdivision (a)'s third element when included within section 12031, subdivision (a)(2)(C) or section 12025, subdivision (b)(3).

Defendant's position makes no sense. If his felonious criminal conduct under section 12021 satisfies section 186.22, subdivision (a)'s third element when charged as a substantive count, it should also satisfy section 186.22,

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

subdivision (a)'s third element when included within sections 12031 and 12025.

RELEVANT FACTS

On April 1, 2010, defendant was driving a car stopped by La Habra Police Officer Michael Costanzo. (C.T. pp. 9-12.) Officer Costanzo searched the car and found two loaded firearms in a hidden compartment behind the stereo system. (C.T. pp. 20-21.) Defendant was a convicted felon. (C.T. pp. 152-153.) He was also an active participant in the Headhunters criminal street gang. (C.T. pp. 61-65.)

PROCEDURAL HISTORY

The People filed a felony complaint against defendant alleging the following felonies: Count 1 – Penal Code section 12025, subdivision (a)(1) & (b)(3); Count 2 – Penal Code section 12031, subdivision (a)(1) & (a)(2)(C); Count 3 – Penal Code section 12021, subdivision (a)(1); Count 4 – Penal Code section 186.22, subdivision (a). (C.T. pp.1-3, 236.) The People also alleged an enhancement pursuant to section 186.22, subdivision (b)(1) with respect to Counts 1, 2, and 3. (C.T. pp. 2, 236.)

Following a preliminary hearing, defendant was held to answer on Counts 1, 2, 3, and 4. (C.T. p. 171.) He was not held to answer on the section 186.22, subdivision (b)(1) enhancement. (C.T. p. 171.)

The People filed an information alleging the same charges as Counts 1, 2, 3, and 4 that were alleged in the complaint. (C.T. pp. 173-176.) The People did not allege the section 186.22, subdivision (b)(1) enhancement. (C.T. pp. 173-176.)

Defendant filed a section 995 motion seeking dismissal of Counts 1, 2, and 4. (C.T. pp. 219-226.) The superior court granted defendant's motion on Counts 1 and 2 and denied defendant's motion on Count 4. (C.T. pp. 253-254.)

The People appealed. The Court of Appeal reversed the superior court's order granting defendant's motion to dismiss Counts 1 and 2.

ARGUMENT

A. A VIOLATION OF SECTION 12021 IS INDEPENDENT FELONIOUS CRIMINAL CONDUCT AND PROPERLY ELEVATES SECTIONS 12031 AND 12025 TO FELONIES

In pertinent part, both section 12031, subdivision (a)(1) and section 12025, subdivision (a)(1) prohibit the carrying of firearms. (Pen. Code, §§ 12031, subd. (a)(1), 12025, subd. (a)(1).)[2] Section 12031 prohibits carrying a loaded firearm in a vehicle. (Pen. Code, § 12031, subd. (a)(1).) Section 12025 prohibits carrying a concealed firearm within a vehicle. (Pen. Code, § 12025, subd. (a)(1).) Without more, a violation of either statute is a misdemeanor. (Pen. Code, §§ 12031, subd. (a)(2)(G), 12025, subd. (b)(7).)

These offenses are elevated to felonies where the person is an "active participant in a criminal street gang, as defined in [section 186.22(a)]." (Pen. Code, §§ 12031, subd. (a)(2)(C), 12025, subd. (b)(3).) This requires proof of

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[2] After the instant case was filed, sections 12021, 12031, and 12025 were renumbered without substantive changes as section 29800, 25850, and 25400, respectively. (Pen. Code, §§ 29800, 25850, 25400.) For purposes of this appeal, the People continue to refer to sections 12021, 12031, and 12025.

all the elements of section 186.22, subdivision (a), including proof the person "willfully promote[d], further[ed], or assist[ed] in any felonious criminal conduct by members of [the] gang, ..." (Pen. Code, § 186.22, subd. (a); *People v. Robles* (2000) 23 Cal.4th 1106, 1115 [interpreting section 12031, subd. (a)(2)(C)]; *People v. Lamas* (2007) 42 Cal.4th 516, 524-525 [applying *Robles* to section 12031, subd. (a)(2)(C).)

A defendant who possesses two loaded and concealed firearms in a car violates section 12021, subdivision (a)(1) – felon in possession of a firearm. (Pen. Code, § 12021, subd. (a)(1).) This violation constitutes "felonious criminal conduct." (*People v. Green* (1991) 227 Cal.App.3d 692, 704, abrogated on another point in *People v. Castenada* (1991) 23 Cal.4th 743, 752, ["felonious criminal conduct" means conduct amounting to commission of an offense punishable by state prison sentence].) This felonious criminal conduct can satisfy section 186.22, subdivision (a)'s third element. Where the person is also an active participant in the criminal street gang, all of section 186.22, subdivision (a)'s elements are satisfied independent of any proof under section 12031 or 12025. All of the elements needed to prove a violation of section 12031 and section 12025 are satisfied. Accordingly, a violation of section 12021, subdivision (a)(1) constitutes independent felonious criminal conduct and properly elevates sections 12031 and 12025 to felonies.

B. THIS CASE IS CONSISTENT WITH THIS COURT'S DECISION IN *LAMAS*

Defendant, and *In re Jorge P.* (2011) 197 Cal.App.4th 628, rely upon one line in *Lamas* wherein the Court stated,

> Stated conversely, section 12031, subdivision (a)(2)(C) applies only *after* section 186.22, subdivision (a) has been *completely* satisfied by conduct *distinct from* the otherwise misdemeanor conduct of carrying a loaded weapon in violation of section 12031, subdivision (a)(1).

(*People v. Lamas, supra*, 42 Cal.4th 516, 524, italics in original.)

Defendant claims this line means felonious criminal conduct that involves the possession of a firearm cannot be used to elevate section 12031 or section 12025 violations to felonies. As we explain, defendant misreads and misunderstands this Court's statement. *Lamas* does not support defendant's position.

When properly read in context, this Court's statement in *Lamas* simply means that a gang member's misdemeanor firearm possession under section 12031 or section 12025 cannot be used to *first* elevate those charges to felonies and *thereafter* satisfy section 186.22, subdivision (a)'s "felonious criminal conduct" element within sections 12031 and 12025.

This interpretation is supported by the issue presented in *Lamas*. In contrast to our case, there was no felonious criminal conduct in *Lamas*. The only criminal conduct was the "defendant's misdemeanor conduct – being a gang member who carries a loaded firearm in public ...." (*People v. Lamas, supra*, 42 Cal.4th 516, 524.)[3] The issue presented was whether that misdemeanor conduct could satisfy section 186.22, subdivision (a)'s "felonious conduct" element within the elements sections 12031 and 12025. (*People v. Lamas, supra*, 42 Cal.4th 516, 524.) Obviously, misdemeanor conduct cannot be used to prove felonious conduct. (*Ibid.*)

Therefore, this Court clarified that the People could not elevate the firearm charges to felonies because section 186.22, subdivision (a)'s "felonious conduct" element must be proved *before* either section 12031, subdivision (a)(2)(C) or section 12025, subdivision (b)(3) applies to elevate a defendant's otherwise misdemeanor conduct to a felony. (*People v. Lamas, supra*, 42 Cal.4th 516, 524.) The Court's language in *Lamas* had nothing to do with preventing the People from using felonious conduct based in part upon the defendant's unlawful firearm possession to satisfy section 186.22, subdivision (a)'s third element.

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[3] The defendant in *Lamas* was found not guilty of receiving stolen property. (*People v. Lamas, supra*, 42 Cal.4th 516, 521.)

This Court's language in *Lamas* further illustrates this point. The Court stated,

> *[A]ll* of section 186.22(a)'s elements must be satisfied, including [the felonious conduct element] *before* section 12031(a)(2)(C) applies to elevate defendant's section 12031, subdivision (a)(1) misdemeanor offense to a felony.

(*People v. Lamas, supra*, 42 Cal.4th 516, 524.) The Court then reiterated that, "[s]tated conversely," misdemeanor firearm possession under section 12031 can only be elevated to a felony

> *[A]fter* section 186.22(a) has been *completely* satisfied by conduct *distinct from* the otherwise misdemeanor conduct of carrying a loaded weapon in violation of section 12031, subdivision (a)(1).

(*People v. Lamas, supra*, 42 Cal.4th 516, 524.)

When read in context, the pertinent statement in *Lamas* was meant to clarify the Court's preceding sentence concerning the order of proof. The statement merely meant: misdemeanor firearm possession, without more, cannot be used to prove section 186.22, subdivision (a)'s felonious criminal conduct element. The Court's subsequent conclusion illustrates this point.

The court concluded,

> Therefore, defendant's misdemeanor conduct – being a gang member who carries a loaded firearm in public – cannot satisfy section 186.22(a)'s third element, felonious conduct, and then be used to elevate the otherwise misdemeanor offense to a felony.

(*People v. Lamas, supra*, 42 Cal.4th 516, 524.)

Our case and *Jorge P.* are different than *Lamas*. In both cases, the accused committed felonious criminal conduct. In *Jorge P.*, the minor violated section 12101, subdivision (a)(1) and the court's discussion assumed it would be a felony violation. (*In re Jorge P., supra*, 197 Cal.App.4th 628, 635, 637.) In our case, defendant violated section 12021, subdivision (a)(1) – felon in possession of a firearm. That felonious criminal conduct can satisfy section 186.22, subdivision (a)'s third element independent of any gang allegations under section 12031, subdivision (a)(2)(C) or section 12025, subdivision (b)(3). That separate felonious criminal conduct can elevate violations of section 12031 and section 12025 to felonies. Nothing in our case runs afoul of this Court's opinion in *Lamas*.

C. THERE IS NO MEANINGFUL REASON TO ADOPT DEFENDANT'S LIMITATION

Conspicuously missing from both defendant's brief and from the opinion in *Jorge P.* is any meaningful explanation of why a defendant's separate felonious criminal conduct under section 12021 (convicted felon in possession of a firearm) cannot satisfy section 186.22, subdivision (a)'s "felonious criminal conduct" element to elevate misdemeanor firearm offenses under sections 12031 and 12025 to felonies. If the Legislature wanted to exclude such felonious conduct, it could have done so. Neither section 12031, nor section 12025, however, suggests the felonious criminal conduct must be unrelated to the defendant's firearm offenses.

Nonetheless, defendant suggests his conclusion and the decision in *Jorge P.* are based upon his asserted "distinction between felony conduct, and a felony offense." (Def. brief at p. 10.) Neither defendant, nor the court in *Jorge P.*, defined the terms or explained why any purported "distinction" between them would make a difference in this case. When properly understood, any distinction between felony "conduct" and a felony "offense" leads to the opposite conclusion defendant draws.

As used in section 186.22, subdivision (a), "felonious criminal conduct" means "conduct which is clearly felonious, i.e., conduct which amounts to the commission of an offense punishable by imprisonment in state prison." (*People v. Green, supra*, 227 Cal.App.3d 692, 704; *In re Alberto R.* (1991) 235 Cal.App.3d 1309, 1320; see also CALCRIM No. 1400 [felonious criminal conduct is the commission or attempted commission of a felony offense].) Thus, whether conduct is "felonious" depends upon whether it can be prosecuted as a felony – an offense punishable by imprisonment in state prison or in county jail under section 1170, subdivision (h). (See Pen. Code, § 17, subd. (a).) "Misdemeanor conduct" is conduct that amounts to the commission of any other non-felony offense except an infraction. (See Pen. Code, § 17, subd. (a).)

This distinction was illustrated in the context of petty theft in *People v. Stevens* (1996) 48 Cal.App.4th 982. "Petty theft is ordinarily a misdemeanor because of the manner in which it is usually punished: ...." (*Id.* at p. 987.) When section 666, a sentencing statute applies, "a subsequent petty theft can be a felony. [Citation.]" (*People v. Stevens, supra*, 48 Cal.App.4th 982, 987.) If the court selects a felony punishment, "the subsequent petty theft is not merely *punished* as a felony: *it is* a felony." (*Ibid.*, italics in original; see also

People v. Morgan (2011) 194 Cal.App.4th 79, 83 [hate crime penalty provision elevates "otherwise misdemeanor conduct to felony conduct because" crime was committed for purpose of interfering with victim's civil rights].)

This distinction was also illustrated in *Lamas* wherein the Court noted the People's agreement that "'misdemeanor convictions do not constitute "felonious criminal conduct[,]" ....'" (*People v. Lamas, supra*, 42 Cal.4th 516, 524, modification in original.) Felonious criminal conduct is conduct that amounts to a felony offense. Misdemeanor convictions do not qualify. As this Court subsequently stated in *Lamas*, "*misdemeanor conduct* [] cannot constitute 'felonious criminal conduct' within the meaning of section 186.22." (*People v. Lamas, supra*, 42 Cal.4th 516, 524, italics in original.)

The relevant distinction under section 12031 and *Lamas* is between "felony conduct" and "misdemeanor conduct," not between "criminal conduct" and a "criminal offense." Because a felony or misdemeanor "offense" is defined by the "conduct" required for its commission, there is no meaningful distinction between "criminal conduct" and a "criminal offense." Instead of stating "felonious criminal conduct" in section 186.22, subdivision (a)'s third element, the Legislature could have used the phrase "the commission of a felony offense" and obtained the same meaning. Accordingly, defendant's

reliance upon some asserted distinction between felony conduct and a felony offense does not help him.

Defendant's claim regarding legislative intent is also unavailing. Defendant claims the Legislature purposefully used "conduct" rather than "offense" in section 186.22, subdivision (a) to preclude the prosecution from using gun-related felonious criminal conduct to satisfy section 186.22, subdivision (a)'s third element under section 12031, subdivision (a)(2)(C) or section 12025, subdivision (b)(3). As mentioned above, defendant misunderstands the meaning of felony conduct and felony offense. They could have been used interchangeably to define section 186.22, subdivision (a)'s third element.

In any event, the Legislature enacted section 186.22 eight years before adding section 12031, subdivision (a)(2)(C) and section 12025, subdivision (b)(3). (Stats. 1988, ch. 1256, § 1; Stats. 1996, ch. 787.) It makes no sense to claim the Legislature's choice of words in section 186.22 reflects an intent regarding the type of conduct needed to elevate section 12031 or section 12025 misdemeanors to felonies.

Defendant suggests the Legislature used the word "conduct" in section 186.22, subdivision (a) to reject "the use of a single physical act to bootstrap a misdemeanor into a felony." (Def. brief at p. 12.) Defendant's position is

undermined by *Jorge P.* – the case he relies upon. In *Jorge P.*, the court acknowledged its case did not involve the impermissible bootstrapping of gang statutes to impose additional penalties as discussed in *People v. Briceno* (2004) 34 Cal.4th 451 and *People v. Arroyas* (2002) 96 Cal.App.4th 1439. (*In re Jorge P., supra*, 197 Cal.App.4th 628, 637.)

In *People v. Jones* (2009) 47 Cal.4th 566, this Court identified the problem discussed in *Briceno* and *Arroyas*. In those cases, the same gang-related fact – that the crime was committed to benefit a criminal street gang – would be used to obtain increased punishment under two different gang statutes. (*People v. Jones, supra*, 47 Cal.4th 566, 574-575.) In *Briceno*, it would make a felony a serious felony under section 1192.7, subdivision (c)(28) and then impose additional punishment for gang-related serious felonies under section 186.22, subdivision (b)(1)(B). (*People v. Jones, supra*, 47 Cal.4th 566, 574.) In *Arroyas*, it would elevate a misdemeanor to a felony under section 186.22, subdivision (d) and then impose additional punishment for a gang-related felony under section 186.22, subdivision (b)(1). (*People v. Jones, supra*, 47 Cal.4th 566, 574.)

Our case is different. There is no impermissible bootstrapping and no dual use of the same gang-related fact. Section 186.22, subdivision (a)'s third element is satisfied by the defendant's felonious criminal conduct of

possessing a firearm as a convicted felon in violation of section 12021. This conduct is not gang-related. Sections 12031 and 12025 are then elevated to felonies because, as required by *Robles*, all of section 186.22, subdivision (a)'s elements are met. Our case bears no resemblance to *Briceno* or *Arroyas*.

Defendant's reference to one act giving rise to more than one criminal offense and section 654 does not help him. Nothing prevents the prosecution from using a felon's possession of a firearm to satisfy section 186.22, subdivision (a)'s third element and then using that same possession and the defendant's gang participation to elevate section 12031 and section 12025 misdemeanors to felonies.

Penal Code section 654 shows a person may be convicted of different crimes for the same underlying "act or omission." (Pen. Code, § 654, subd. (a).) The same act may increase a defendant's criminal liability under different code sections. This Court illustrated one such example in *People v. Jones, supra*, 47 Cal.4th 566. There, the defendant shot at an inhabited dwelling (§ 246). His maximum sentence increased from 7 years to 15 years to life for gang misconduct under section 186.22, subdivision (b)(4). A 20-year sentence enhancement was then added under section 12022.53 (shooting a gun during the commission of a felony punishable by life) even though the defendant's "underlying conduct" (shooting a gun) remained the same. This Court

explained the additional 20-year enhancement applied, not because the defendant committed a gang-related offense, but because he committed a crime so serious it was punishable by life imprisonment. (*People v. Jones, supra*, 47 Cal.4th 566, 575.)

Similarly, in our case, defendant's felonious criminal conduct was unrelated to his gang activity. He was a felon in possession of a firearm under section 12021. This felonious criminal conduct elevated sections 12031 and 12025 to felonies.[4] Contrary to defendant's suggestion, this case does not involve impermissible bootstrapping.

Defendant's reference to *People v. Jones* (2012) 54 Cal.4th 350 and multiple punishment under section 654 is misplaced. Nothing in *Jones* reversed the defendant's convictions for violating the sections 12021, 12025 and 12031. Rather, the Court addressed whether he could be punished for more than one of those crimes. (*People v. Jones, supra*, 54 Cal.4th 350, 352.)

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[4] In *Jones*, this Court also distinguished *Briceno* and *Arroyas* because the relevant statutes in those cases were enacted through a single initiative and pertained to criminal street gangs. In *Jones*, the statutes were enacted in different sections at different times and only one pertained to criminal street gangs. (*People v. Jones, supra*, 47 Cal.4th 566, 575.) The same is true in our case. Section 12021 does not pertain to criminal street gangs and it was enacted at a different time and in a different section than sections 12031 and 12025.

The issue in our case concerns the defendant's potential conviction, not the potential multiple punishment for the same act.

"In general, a person may be *convicted* of, although not *punished* for, more than one crime arising out of the same act or course of conduct." (*People v. Reed* (2006) 38 Cal.4th 1224, 1226, italics in original.) In *Reed*, the Court held the defendant could be convicted of being a felon in possession of a firearm (§ 12021) even though he was also convicted of carrying a concealed firearm (§ 12025) and carrying a loaded firearm in public (§ 12031). (*People v. Reed, supra*, 38 Cal.4th 1224, 1230.)

The Court explained the defendant had committed each of the alleged crimes, "albeit during the same course of conduct." (*People v. Reed, supra*, 38 Cal.4th 1224, 1230.) The Court saw "no reason to prohibit multiple convictions that section 954 permits simply because of the way the offenses are charged." (*People v. Reed, supra*, 38 Cal.4th 1224, 1230.)

> "To immunize" defendant from conviction of being a felon in possession of a firearm simply because the felony conviction was alleged as to each of the weapons offenses "would be irrational and would frustrate the strong legislative purpose behind [all three] statutes." [Citation.].

(*People v. Reed, supra*, 38 Cal.4th 1224, 1230, modification in original.) The Court also noted a contrary result could lead to absurd results. (*Ibid.*)

The same is true in our case. Defendant seeks immunization from felony liability under sections 12031 and 12025 simply because of how the offenses were charged. This would frustrate the strong desire that active participants in criminal street gangs who engage in felonious criminal conduct be subject to felony liability when they carry firearms in violation of section 12031, subdivision (a)(2)(C) or section 12025, subdivision (b)(3).

As discussed above, a violation of section 12021 constitutes felonious criminal conduct, not misdemeanor conduct. Nothing in *Lamas* prohibits using that felonious conduct to satisfy section 186.22, subdivision (a)'s felonious conduct element within section 12031, subdivision (a)(2)(C) or section 12025, subdivision (b)(3).

D. DEFENDANT'S POSITION IS CONTRARY TO COMMON SENSE

Defendant's position in our case (adopted from *Jorge P.*) would lead to absurd results. Defendant could argue that, under *Jorge P.*, the prosecution cannot file a section 186.22, subdivision (a) charge when the "underlying conduct" alleged to satisfy section 186.22's "felonious conduct" element could

also be charged as a misdemeanor offense.[5] Under *Jorge P.*, defendant would claim the underlying conduct "remained the same" and was misdemeanor conduct. (See *In re Jorge P., supra*, 197 Cal.App.4th 628, 636.) Defendant would argue that the underlying misdemeanor conduct cannot satisfy section 186.22, subdivision (a)'s felonious conduct element even though it could be charged as a felony offense under a different statute. (See *In re Jorge P., supra*, 197 Cal.App.4th 628, 636.)

Consider, for example, if the People had filed the section 12031 and section 12025 charges in this case as misdemeanors without the gang-participant allegations. The information would have alleged the misdemeanor section 12031 and section 12025 offenses, a section 12021 felony offense, and a section 186.22, subdivision (a) felony offense based on the section 12021 "felonious conduct." Under *Jorge P.*, defendant could argue the section 186.22, subdivision (a) charge cannot stand because the "felonious conduct" underlying the felon-in-possession charge is the same as the "misdemeanor conduct" of carrying or having a firearm under section 12031

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[5] The People do not agree with *Jorge P.*'s claim that carrying a firearm and being a minor (or in our case a felon) in possession of a firearm are the "same" conduct. As explained above, they are not. Among other things, without more the former conduct is misdemeanor conduct and the latter conduct can be felonious conduct.

or section 12025. As *Jorge P.* states, "[t]he underlying conduct ... here is the same, notwithstanding it being charged as both a misdemeanor and a felony offense. [Fn. omitted.]" (*In re Jorge P., supra*, 197 Cal.App.4th 628, 637.)[6] Defendant could argue the prosecution cannot "transform" the otherwise misdemeanor conduct "into viable felonious conduct simply by charging a different offense." (*Ibid.*) Thus, defendant could argue there is no "felonious conduct" to satisfy the felonious conduct element of the section 186.22, subdivision (a) charge.[7] This illustration shows how defendant's position and the opinion in *Jorge P.* lead to absurd results.[8]

Both defendant and the *Jorge P.* court misunderstood *Lamas*. There was no underlying felony in *Lamas*, and thus, no felonious conduct. In our case and in *Jorge P.*, there was a separate felony, which amounted to separate felonious criminal conduct. That felonious conduct satisfies section 186.22,

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[6] All so-called wobbler offenses – those that can be charged as either a misdemeanor or a felony offense – would be subject to the same argument under *Jorge P.* because the "underlying conduct" could be "misdemeanor conduct."

[7] Defendant could make these same arguments even if the People did not actually allege the section 12031 and section 12025 misdemeanors. Defendant could still argue under *Jorge P.* the underlying conduct was misdemeanor conduct, which could not satisfy the felonious conduct element of section 186.22, subdivision (a).

[8] The Court of Appeal in our case noted this potential absurd result in its opinion. (*People v. Infante* (2012) 209 Cal.App.4th 987.)

subdivision (a)'s "felonious conduct" element regardless whether the section 186.22 charge is alleged as a separate offense or is contained within section 12031, subdivision (a)(2)(C) and section 12025, subdivision (b)(3).

CONCLUSION

For the foregoing reasons, the People respectfully request this Court affirm the Court of Appeal's decision in this case.

Dated this 28th day of May, 2013.

Respectfully submitted,

TONY RACKAUCKAS, DISTRICT ATTORNEY
COUNTY OF ORANGE, STATE OF CALIFORNIA

BY: _____
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CERTIFICATE OF WORD COUNT
[California Rules of Court, Rule 8.204(c)]

The text of the Answer Brief on the Merits consists of 3,985 words as counted by the word-processing program used to generate this brief.

Dated this 28th day of May, 2013.

Respectfully submitted,

TONY RACKAUCKAS, DISTRICT ATTORNEY
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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

RE: PEOPLE v. DANIEL INFANTE
SUPREME COURT CASE NO. S206084; COURT OF APPEAL NO. G046177
(SUPERIOR COURT CASE NO. 10NF1137)

I am a citizen of the United States; I am over the age of eighteen years and not a party to the within entitled action; my business address is: Office of the District Attorney, County of Orange, 401 Civic Center Drive West Santa Ana, California 92701.

On, May 28, 2013, I served the within **ANSWER BRIEF ON THE MERITS** on interested parties in said action by placing a true copy thereof enclosed in a sealed envelope, in the United States mail at Santa Ana, California, that same day, in the ordinary course of business, postage thereon fully prepaid, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.
Executed on May 28, 2013, at Santa Ana, California.

LISA GOMEZ
ATTORNEY CLERK II