



SUPREME COURT  
**FILED**

**In the Supreme Court of the State of California**

JUN 16 2015

**THE PEOPLE OF THE STATE OF CALIFORNIA,**

**Plaintiff and Respondent,**

v.

**BRYAN M. PENNINGTON,**

**Defendant and Appellant.**

Frank A. McGuire Clerk

Case No. S222227

Deputy

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

**RESPONDENT'S ANSWER BRIEF ON THE MERITS**

KAMALA D. HARRIS  
Attorney General of California  
GERALD A. ENGLER  
Chief Assistant Attorney General  
LANCE E. WINTERS  
Senior Assistant Attorney General  
MICHAEL R. JOHNSEN  
Supervising Deputy Attorney General  
VICTORIA B. WILSON  
Supervising Deputy Attorney General  
THERESA A. PATTERSON  
Deputy Attorney General  
State Bar No. 185407  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 620-6004  
Fax: (213) 897-6496  
Email: DocketingLAAWT@doj.ca.gov  
Theresa.Patterson@doj.ca.gov  
*Attorneys for Plaintiff and Respondent*



## TABLE OF CONTENTS

	Page
Issue Presented .....	1
Introduction .....	1
Statement of the Case.....	3
Summary of Argument.....	7
Argument.....	8
I.    Substantial evidence supports Appellant’s conviction for battery upon a peace officer .....	8
A.    A harbor patrol officer is a “peace officer” if his or her primary duty is the enforcement of the law or if, at the relevant time, the officer is performing necessary duties with respect to patrons, employees, and properties of the harbor or port.....	9
1.    The Applicable Statutes .....	9
2.    Section 830.33 Unambiguously Sets Forth Two Alternative Ways a Harbor Patrol Officer may Qualify as a Peace Officer .....	13
B.    Substantial evidence established that Officer Hubbard was a peace officer .....	26
1.    Evidence Relating to Officer Hubbard’s Employment as a Harbor Patrol Officer .....	26
2.    Substantial Evidence Supports Appellant’s Conviction Under Any Interpretation of Section 830.33 .....	30
II.    This Court should decline to consider Appellant’s additional claims that are not fairly included in the issue on which review was granted; in any event, any error was harmless beyond a reasonable doubt .....	34

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
A. Appellant's claims of instructional error and improper limitation on argument should not be considered, because they are not fairly included in the issue upon which review was granted.....	34
B. Any instructional error or improper limitation on argument was harmless .....	37
1. Background.....	37
2. Even Under Appellant's Interpretation Of Section 830.33, subdivision (b), Any Error Was Harmless In Light Of The Strength Of The Evidence Demonstrating That Officer Hubbard Had A Primary Duty Of Law Enforcement.....	41
Conclusion.....	42

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Baughman v. State of California</i> (1995) 38 Cal.App.4th 182 .....	20
<i>Brierton v. Department of Motor Vehicles</i> (2005) 130 Cal.App.4th 499 .....	20
<i>California Correctional Peace Officers Ass'n. v. Tilton</i> (2011) 196 Cal.App.4th 91 .....	14
<i>Chapman v. California</i> (1967) 386 U.S. 18 [87 S.Ct. 824, 17 L.Ed.2d 705] .....	41
<i>Collins v. Sutter Memorial Hospital</i> (2011) 196 Cal.App.4th 1 .....	24
<i>County of Santa Clara v. Deputy Sheriffs' Assn.</i> (1992) 3 Cal.4th 873 .....	11
<i>Davis v. Fresno Unified School District</i> (Jun. 1, 2015, F068477) __ Cal.App.4th __ [2015 WL 3454720, * 13].....	25
<i>Gauthier v. City of Red Bluff</i> (1995) 34 Cal.App.4th 1441 .....	15, 16
<i>Gordon v. Horsley</i> (2001) 86 Cal.App.4th 336 .....	19
<i>Houge v. Ford</i> (1955) 44 Cal.2d 706.....	14
<i>In re Marriage of Cornejo</i> (1996) 13 Cal.4th 381 .....	34
<i>Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.</i> (1993) 510 U.S. 27 [114 S.Ct. 425, 126 L.Ed.2d 396].....	37

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page</b>
<i>Jackson v. Virginia</i> (1979) 443 U.S. 307 [99 S.Ct. 2781, 61 L.Ed.2d 560].....	30
<i>Kurtin v. Elieff</i> (2013) 215 Cal.App.4th 455 .....	25
<i>Melamed v. City of Long Beach</i> (1993) 15 Cal.App.4th 70 .....	14
<i>Melendez v. City of Los Angeles</i> (1998) 63 Cal.App.4th 1 .....	19
<i>Neighbors for Smart Rail v. Exposition Metro Line Const. Authority</i> (2013) 57 Cal.4th 439.....	34
<i>Orange County Employees Assn., Inc. v. County of Orange</i> (1993) 14 Cal.App.4th 575 .....	19
<i>People v. Alice</i> (2007) 41 Cal.4th 668.....	34
<i>People v. Atkins</i> (1997) 56 Cal.App.4th 331 .....	30
<i>People v. Cooper</i> (2002) 101 Cal.App.4th Supp. 1 .....	20
<i>People v. Estrada</i> (1995) 11 Cal.4th 568.....	34
<i>People v. Flood</i> (1998) 18 Cal.4th 470.....	41
<i>People v. Hughes</i> (2002) 27 Cal.4th 287.....	31
<i>People v. Johnson</i> (1980) 26 Cal.3d 557.....	30

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page</b>
<i>People v. Johnson</i> (2002) 28 Cal.4th 240 .....	13, 24
<i>People v. Lewis</i> (2008) 43 Cal.4th 415 .....	13, 25
<i>People v. Miller</i> (2008) 164 Cal.App.4th 653 .....	<i>passim</i>
<i>People v. Pennington</i> (2014) 229 Cal.App.4th 1376, 178 Cal.Rptr.3d 135 .....	2, 6, 40
<i>People v. Perez</i> (2005) 35 Cal.4th 1219 .....	36
<i>People v. Tapia</i> (2005) 129 Cal.App.4th 1153 .....	13
<i>People v. Woodhead</i> (1987) 43 Cal.3d 1002 .....	14, 17, 18
<i>People v. Young</i> (2005) 34 Cal.4th 1149 .....	31
<i>Texas Commerce Bank v. Garamendi</i> (1992) 11 Cal.App.4th 460 .....	25
<i>Tiernan v. Trustees of California State University and Colleges</i> (1982) 33 Cal.3d 211 .....	14

**STATUTES**

Cal. Penal Code	
§ 243 .....	10, 19
§ 69 .....	6
§ 602 .....	35
§ 830.1 .....	11, 22, 23
§ 830.5 .....	22, 23
§ 830.33 .....	20, 22, 27, 32

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
§ 830.4.....	21
§ 830.5.....	21
§ 832.....	30
§ 836.....	22
 Gov. Code	
§ 8597 .....	22
§ 8598 .....	22
 Pub. Resources Code	
§ 4156.....	22
 <b>COURT RULES</b>	
 Cal. R. Ct.	
rule 8.204.....	35
rule 5.516 .....	34
rule 8.520 .....	34, 35
 <b>OTHER AUTHORITIES</b>	
 CALCRIM	
No. 945.....	39
 Merriam-Webster's Collegiate Dictionary (10th ed. 1997) p. 925.....	32



## ISSUE PRESENTED

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), supporting defendant's conviction for battery on a peace officer?

## INTRODUCTION

Appellant, who had been cited in the past for various violations in the Waterfront Department of the City of Santa Barbara, was observed trespassing in the marina on August 29, 2012. Two uniformed officers from the Santa Barbara Harbor Patrol approached appellant as he was carrying a hose. Appellant ignored the officers' request to stop and speak to them, and forcefully kicked Harbor Patrol Officer Richard Hubbard in the upper thigh. A Santa Barbara County jury convicted appellant of resisting an executive officer, battery on a peace officer, trespassing, and attempted petty theft. The trial court placed appellant on felony probation for five years, and ordered him to serve 365 days in county jail.

On appeal, the Court of Appeal rejected appellant's claim that there was insufficient evidence to support his conviction for battery on a peace officer. In doing so, the Court of Appeal interpreted Penal Code section 830.33, subdivision (b) (the statute conferring peace officer status on port or harbor police regularly employed and paid in that capacity by a county, city, or district) as containing two separate and alternative clauses under which peace officer status is achieved.<sup>1</sup> The Court of Appeal held that, under the plain language of the statute, such harbor or port police officers qualify as peace officers: (1) if the primary duty of the peace officer is the enforcement of the law in or about the properties owned, operated, or

---

<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise stated.

administered by the harbor or port; *or* (2) when the officer is performing necessary duties with respect to patrons, employees, and properties of the employing agency. (*People v. Pennington* (2014) 229 Cal.App.4th 1376, 1383, 178 Cal.Rptr.3d 135, 140-141.) In recognizing the second clause as an alternate means for harbor or port police officers to qualify as “peace officers,” the Court of Appeal disagreed with the interpretation of section 830.33, subdivision (b), that was set forth in *People v. Miller* (2008) 164 Cal.App.4th 653, 667, footnote 9. (*People v. Pennington, supra*, 229 Cal.App.4th at pp. 1383-1384.)

The Court of Appeal further found that the trial court erred in instructing the jury that, for purposes of the charge of battery on a peace officer, a sworn member of the Santa Barbara Harbor Patrol is a peace officer, as this was a factual question that should have been resolved by the jury. However, the Court of Appeal concluded that the instructional error was harmless beyond a reasonable doubt, because the jury necessarily resolved the peace officer issue against appellant under other instructions. Those other instructions required the jury to find that Officer Hubbard was performing the duties of a Harbor Patrol officer and that appellant knew or reasonably should have known that Officer Hubbard was a peace officer who was performing his duties. (*People v. Pennington, supra*, 229 Cal.App.4th at pp. 1384-1385.)

As will be explained, the Court of Appeal correctly determined that, for purposes of section 830.33, subdivision (b), a harbor patrol officer qualifies as a peace officer so long as the evidence shows *either*: (1) that his “primary duty is the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port”; *or* (2) that he was, at the relevant time, “performing necessary duties with respect to patrons, employees, and properties of the harbor or port.” (See § 830.33, subd. (b).)

Under this interpretation of the statute, there was substantial evidence supporting appellant's conviction for battery upon a peace officer.

### STATEMENT OF THE CASE

Appellant was brought to trial in the Santa Barbara County Superior Court. The trial evidence showed that, on the morning of August 29, 2012, Patrick Henry, a property management specialist for the City of Santa Barbara Waterfront Department, saw appellant follow some marina employees through a gate leading into the marina. A keycard was required to access this area of the marina. Appellant followed closely behind the marina employees. Appellant caught the gate before it closed, enabling him to pass through the gate without a keycard. Henry was familiar with appellant and believed his entry into the marina was unauthorized. Henry called the Harbor Patrol office and reported his observations. (1RT 84-87.)<sup>2</sup>

City of Santa Barbara Harbor Patrol Officers Ryan Kelly and Richard Hubbard drove to "Marina 3" in a marked Harbor Patrol vehicle. (1RT 128-129, 136, 253-257.) They were dressed in uniforms which identified them as Harbor Patrol Officers for the City of Santa Barbara. (1RT 126,

---

<sup>2</sup> Appellant had been involved in previous incidents in the waterfront area. On May 5, 2009, appellant exceeded the time limit for mooring his boat at the launch ramp in the harbor. Appellant refused to leave after being asked to do so by a Harbor Patrol officer. Appellant became involved in a physical confrontation with the officer, with both individuals falling into the water at one point. (2RT 430-441.) On July 7, 2012, appellant moored his boat in the harbor district without permission. When told by a Harbor Patrol officer that he could remain there for a couple of hours, appellant threatened to go to the officer's house. (2RT 267-269, 283.) Later that day, when the officer tried to give appellant a citation, appellant threatened to stab the officer in the neck with a pen. (2RT 291.)

139, 265.)<sup>3</sup> They walked down the ramp and asked two fishermen if they had seen where appellant had gone. One of the fishermen directed them to “finger 3C” of Marina 3. (1RT 134, 256-257.) The officers observed appellant in that area. Appellant was near a storage box, bent over, and holding a coiled hose over his shoulder. (1RT 135, 258.)

Officers Kelly and Hubbard walked toward appellant. Appellant stood up and walked directly toward the officers. (1RT 135, 258.) The officers told appellant they needed to speak to him and asked what he was doing in the marina. Appellant answered all questions with “fuck you” and “get the real cops here.” (1RT 138-139, 155, 157, 258-259, 261.) Appellant walked between the two officers, pushing them aside with his hands. (1RT 139, 260-261.)

Officer Hubbard placed his arm against appellant’s chest, told him to stop, and said he could not leave the marina with the hose. Appellant walked back to the storage box and dropped the hose. (1RT 136, 140-141, 158, 184, 260-262.)<sup>4</sup> Appellant then walked toward the exit of the marina, with the officers following him. (1RT 261.) Officer Kelly tried to call his supervisor, but he was unable to reach him. Appellant assumed a fighting stance and then forcefully kicked Officer Hubbard in the right upper thigh.

---

<sup>3</sup> A more detailed summary of the evidence relating to Officer Hubbard’s employment will be set forth in Argument I(A), *infra*.

<sup>4</sup> At one point, appellant stated that he was in the marina to get the hose that his friend “Carol” had given him permission to take. (1RT 186, 261.) However, Officer Kelly later determined that the hose in question belonged to Peter Crane, who had a houseboat in the marina. (1RT 192.) Crane testified that he did not know appellant and had never given him permission to use his hose. (1RT 194-197.) Crane’s hose was attached to a water spigot next to a storage box leased by Carol Holm. Holm had given Crane permission to use that spigot, as it was the one closest to his houseboat. Holm also used the hose, with Crane’s permission. (1RT 201-202, 207, 211.)

(1RT 140, 184, 262-263.) Officer Hubbard did not provoke appellant before being kicked. (1RT 88-91, 142, 221-227, 240, 262.)

Officer Kelly called the Santa Barbara Police Department, requesting backup assistance. (1RT 159.) Officers Kelly and Hubbard both drew their Tasers and ordered appellant to stop resisting. Appellant spun around and kicked Officer Kelly on the left shin. Officer Hubbard holstered his Taser and attempted to grab appellant's hands. At that point, appellant began punching wildly at Officer Hubbard's face, although he did not land any punches. Officer Kelly deployed his Taser, striking appellant in the left torso. The Taser dart did not incapacitate appellant, as it became stuck in appellant's jacket and did not penetrate his skin. (1RT 140-143, 185, 263-265.)

Appellant began running away, toward the end of the dock. (1RT 144, 146, 266.) The officers caught up to him and brought him to the ground. They tried to handcuff him, but appellant continued to resist. Appellant swore at the officers and tucked his hands underneath his body. Appellant said, "Motherfucker. You're dead. I'm going to kill you." (1RT 149, 266.) Officer Kelly told appellant repeatedly that if he did not stop resisting, the Taser would be used again. Appellant released his arms and allowed Officer Hubbard to handcuff him. (1RT 144.) After appellant was handcuffed, he continued to try to kick Officer Kelly and said, "I'm going [to] find you where you live and kill you in your house. Just wait until I get out and you're dead." (1RT 149-150.) Appellant was eventually taken into custody with the assistance of officers from the Santa Barbara Police Department. (1RT 153.)

In his defense, appellant presented evidence suggesting that his friend, Carol Holm, had given him permission to enter the marina and to use her hose. (See 2RT 357-358, 360, 367-368.) He also attempted to dispute the

prosecution's theory that the Taser darts failed to penetrate his skin. (See 2RT 513-514.)

Based on the foregoing evidence, the jury found appellant guilty of resisting an executive officer (§ 69; count 1), misdemeanor battery upon a peace officer (§ 243, subd. (b); count 2), misdemeanor trespass (§ 602, subd. (k); count 3), and attempted petty theft (§§ 484, subd. (a), 664; count 4). (2CT 324-327.) The trial court suspended imposition of sentence and placed appellant on probation for a period of five years. As a condition of probation, appellant was ordered to serve 365 days in county jail. (3RT 667-668; 2CT 351.)

Appellant appealed, arguing, among other claims, that there was insufficient evidence to support his conviction for battery upon a peace officer. Specifically, appellant argued that the evidence failed to establish that the named victim, a Harbor Patrol officer for the City of Santa Barbara's Waterfront Department, was a peace officer, since the evidence did not show that he had a primary duty of law enforcement (which appellant maintained was required to establish peace officer status under section 830.33, subdivision (b)). In another claim, appellant argued that the trial court erred in instructing the jury that a sworn member of the Santa Barbara Harbor Patrol is a peace officer. The Court of Appeal affirmed the judgment in a published opinion. (See *People v. Pennington, supra*, 229 Cal.App.4th at p. 1388.) The Court of Appeal rejected appellant's claim of insufficient evidence, concluding that the relevant statute did not require proof that the officer's primary duty was law enforcement in order to qualify as a peace officer. (*Id.* at pp. 1383-1384.) The Court of Appeal further found that, while the trial court erred in instructing the jury that a Santa Barbara Harbor Patrol Officer is a peace officer, the error was harmless beyond a reasonable doubt. (*Id.* at pp. 1384-1385.)

Appellant filed a petition for review, which this Court granted.

## SUMMARY OF ARGUMENT

The plain language of section 830.33, subdivision (b) is unambiguous.

It confers peace officer status upon:

Harbor or port police regularly employed and paid in that capacity by a county, city, or district . . . , 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.)

By giving effect to every word and phrase of the statute, the final clause, “when performing necessary duties with respect to patrons, employees, and properties of the harbor or port,” must be interpreted as providing an alternative means of achieving peace officer status for a harbor police officer. Under this final clause, a harbor police officer achieves peace officer status that is limited temporally to those times when he or she is performing necessary duties with respect to patrons, employees, and properties of the harbor or port. Thus, under the plain language of the statute, a harbor police officer qualifies as a peace officer even in the absence of a showing that his primary duty is the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port. Under this interpretation of the statute, the evidence supported a finding that Officer Hubbard was a peace officer at the time appellant kicked him.

Further, even if this Court interprets the statute as requiring proof that Officer Hubbard’s primary duty was the enforcement of the law, the evidence supported such a finding. Officer Hubbard described himself as a “law enforcement peace officer”; he attended a peace officer orientation course that gave him peace officer status under section 830.33, subdivision (b); the Harbor Patrol fell under the “umbrella” of the police department;

while on duty, Officer Hubbard dressed in a uniform identifying himself as a peace officer; he had the power to arrest and issue citations; Harbor Patrol officers had the same peace officer authority as the Santa Barbara Police Department, with similar powers and privileges; and the Harbor Patrol was responsible for patrolling the harbor and enforcing the laws therein. Based on these repeated references to law enforcement, a reasonable trier of fact could conclude that Officer Hubbard's primary, or most important duty, was the enforcement of the law.

Appellant's additional claims, alleging instructional error and improper limitation on closing argument, should not be considered by this Court. These claims are not included in the grant of review, nor are they fairly included in the issue on which review was granted. In any event, any error as alleged in these claims was harmless, in light of the strength of the evidence demonstrating that Officer Hubbard's primary duty was enforcement of the law.

## **ARGUMENT**

### **I. SUBSTANTIAL EVIDENCE SUPPORTS APPELLANT'S CONVICTION FOR BATTERY UPON A PEACE OFFICER**

Appellant contends that his conviction for battery on a peace officer (§ 243, subd. (b)) must be reversed due to insufficient evidence, because the prosecution failed to prove that the named victim, Richard Hubbard, a Harbor Patrol officer for the Waterfront Department of the City of Santa Barbara, was a "peace officer." Specifically, appellant argues that to qualify as a "peace officer" under the applicable statute conferring peace officer status on harbor or port police (§ 830.33, subd. (b)), the People were required to prove that Officer Hubbard's primary duty was "enforcement of the law," which appellant maintains the evidence failed to establish in this



case. (AOBM5 6-21.) However, for purposes of section 830.33, subdivision (b), there was no need to establish that Officer Hubbard's primary duty was enforcement of the law. Rather, Officer Hubbard qualified as a peace officer under section 830.33, subdivision (b) so long as the evidence showed either that his "primary duty was the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port" or that he was "performing necessary duties with respect to patrons, employees, and properties of the harbor or port." (§ 830.33, subd. (b).) In any event, the evidence in this case established both that Officer Hubbard's primary duty was the enforcement of the law in or about the properties owned, operated, or administered by the harbor, and that he was performing necessary duties with respect to patrons, employees, and properties of the harbor or port. Accordingly, there was substantial evidence supporting the jury's finding that Officer Hubbard was a peace officer.

- A. A Harbor Patrol Officer is a "Peace Officer" if his or her Primary Duty is the Enforcement of the Law or if, at the Relevant Time, the Officer is Performing Necessary Duties with Respect to Patrons, Employees, and Properties of the Harbor or Port**

At the threshold, it is necessary to determine the legal requirements of the statute under which appellant was convicted, section 243, subdivision (b).

### **1. The Applicable Statutes**

Appellant was convicted in count 2 of battery on a peace officer, in violation of section 243, subdivision (b), which states:

When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical

---

<sup>5</sup> "AOBM" refers to appellant's opening brief on the merits.

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, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is 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, nonsworn employee of a probation department, or a physician or nurse engaged in rendering emergency medical care, 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.

(§ 243, subd. (b).)

For purposes of section 243, a peace officer is defined as “any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.”

(§ 243, subd. (f)(1).) Chapter 4.5, commencing with section 830, was enacted in 1968, with the purpose of clarifying the law concerning peace officers. As this Court later explained:

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 essential 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.)

Section 830 provides in relevant part as follows:

Any person who comes within the provisions of this chapter [Chapter 4.5] 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.

(§ 830.)

Section 830 is followed by provisions specifying various classifications of government employees as peace officers. (See *County of Santa Clara v. Deputy Sheriffs’ Assn.*, *supra*, 3 Cal.4th at p. 880; see also *People v. Miller* (2008) 164 Cal.App.4th 653, 666 [noting that Chapter 4.5 specifies dozens of government employees as peace officers, sometimes simply by job title, and more often by reference both to a position and its primary duties].)

Section 830.1, which confers peace officer status by reference to job title, states in relevant part:

(a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, any chief of police, or police officer of a district, including police officers of the San Diego Unified Port District Harbor Police, authorized by statute to maintain a police department, any marshal or deputy marshal of a superior court or county, any port warden or port police officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office

of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves.

(2) Where the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by him or her to give consent, if the place is within a city, or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense. . . .

(§ 830.1, subd. (a).)

In contrast, section 830.33, which confers peace officer status to certain categories of police and law enforcement officers, including, *inter alia*, harbor or port police, contains qualifying language beyond mere reference to job title. Section 830.33 states in relevant part as follows:

The following persons are peace officers whose authority extends to any place in the state for purposes of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

....

(b) 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.)

**2. Section 830.33 Unambiguously Sets Forth Two Alternative Ways a Harbor Patrol Officer may Qualify as a Peace Officer**

Relying primarily on *People v. Miller, supra*, 164 Cal.App.4th at page 667, appellant contends that whether a Harbor Patrol officer qualifies as a “peace officer” depends on a finding as to the officer’s primary duties, and requires a showing that the officer’s primary duty is the enforcement of the law. (AOBM 12-17.) However, *Miller* was wrongly decided to the extent it held that peace officer status under section 830.33, subdivision (b) requires proof that the officer’s primary duty is the enforcement of the law. Rather, as the Court of Appeal in this case correctly concluded, a harbor or port police officer, regularly employed and paid in that capacity by a city, also qualifies as a peace officer *when* performing necessary duties with respect to patrons, employees and properties of the harbor or port.

In interpreting a statute, an appellate court’s objective is to ascertain and effectuate legislative intent. (*People v. Lewis* (2008) 43 Cal.4th 415, 491; *People v. Tapia* (2005) 129 Cal.App.4th 1153, 1160-1161.) Because the statutory language is generally the most reliable indicator of legislative intent, the court first looks to the words of the statute, giving them their usual and ordinary meaning and construing them in context. If the language of the statute is clear and unambiguous, the inquiry ends and the plain meaning of the statute governs. (*People v. Johnson* (2002) 28 Cal.4th 240, 244.) A court must give effect to every word and phrase of a statute,

and avoid an interpretation that renders nugatory or surplusage any part of a statute. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1010.)

Here, the language of section 830.33, subdivision (b) is unambiguous. It includes as a peace officer:

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.)

The use of the word “or” does not create ambiguity. (See *California Correctional Peace Officers Ass’n v. Tilton* (2011) 196 Cal.App.4th 91, 96.) It is well settled that the ordinary meaning of the word “or” is disjunctive in nature, marking an alternative of one option or another. (*Ibid.*; see also *Houge v. Ford* (1955) 44 Cal.2d 706, 712 [in its ordinary sense, the function of the word “or” is to mark an alternative, such as “either this or that”]; *Melamed v. City of Long Beach* (1993) 15 Cal.App.4th 70, 79 [ordinarily, the word “and” connotes a conjunctive meaning, while the word “or” implies a disjunctive or alternative meaning].)

Further, the statute should be read so as to give some effect to the Legislature’s choice of the alternate phrase, “or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.” (See *People v. Woodhead, supra*, 43 Cal.3d at p. 1010.) Unless there is a compelling reason why the customary import of statutory language should be disregarded, courts must give effect to the statute’s plain meaning. (*Tiernan v. Trustees of California State University and Colleges* (1982) 33 Cal.3d 211, 218-219.) No such compelling reason has been suggested here.

Appellant merely posits that interpreting the second clause as providing an alternate basis of conferring peace officer status on harbor or port police would broaden the category of peace officers to include those without any law enforcement functions. (See AOBM 17-18.) This concern is unfounded. The first sentence of subdivision (b) expressly refers to “Harbor or port *police* regularly employed and paid *in that capacity* by a county, city, or district . . .” (§ 830.33, subd. (b), italics added.) An individual regularly employed and paid by a city in the capacity of harbor or port “police” would unquestionably have law enforcement functions, as indeed the evidence in this case showed.

The contrary result reached in *People v. Miller, supra*, 164 Cal.App.4th at page 667, is unpersuasive. In *Miller*, Division Four of the Second Appellate District held that an individual employed by the City of Long Beach Fire Department, whose job title was alternately described as “harbor patrolman” and “rescue boat operator,” was not a “peace officer” within the meaning of section 830.33, subdivision (b), because his primary duty was operation of a rescue boat rather than law enforcement. (*Id.* at pp. 667-668.) The court held that the plain language of section 830.33, subdivision (b) required proof that enforcement of the law was a primary duty. The court drew an analogy to *Gauthier v. City of Red Bluff* (1995) 34 Cal.App.4th 1441, 1445-1447, which held that under section 830.37, subdivision (b),<sup>6</sup> a fire chief did not qualify as a “peace officer” unless his

---

<sup>6</sup> Section 830.37, subdivision (b) includes within the definition of “peace officers”:

Members other than members of an arson-investigating unit, regularly paid and employed in that capacity, of a fire department or fire protection agency of a county, city, city and county, district, or the state, if the primary duty of these peace officers, when acting in that

(continued...)

primary duty was the enforcement of laws relating to fire prevention and suppression. (*People v. Miller, supra*, 164 Cal.App.4th at p. 666.)

The *Miller* court's reliance on *Gauthier* was misplaced, since section 830.33, subdivision (b) contains a final clause providing an alternative to a primary duty of enforcement of the law as a means of qualifying a harbor patrol officer as a peace officer, namely, "when performing necessary duties with respect to patrons, employees, and properties of the harbor or port." In contrast, section 830.37, subdivision (b), the statute at issue in *Gauthier*, contains no similar clause. (See fn. 6, *supra*.)

Moreover, in declining to interpret section 830.33, subdivision (b) as conferring peace officer status to harbor or port police regularly employed and paid in that capacity when performing necessary duties with respect to patrons, employees, and properties of the harbor or port, the *Miller* court relied on a faulty rationale, as evidenced by its stated reasons for rejecting this interpretation 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.

(*People v. Miller, supra*, 164 Cal.App.4th at p. 667, fn. 9, citing *Gauthier v. City of Red Bluff, supra*, 34 Cal.App.4th at p. 1446.)

---

(...continued)

capacity, is the enforcement of laws relating to fire prevention or fire suppression.

(§ 830.37, subd. (b).)



The *Miller* court's analysis overlooked the fact that the subdivision is limited to "[h]arbor or port *police* regularly employed and paid *in that capacity . . .*" (§ 830.33, subd. (b), italics added.) Further, all of the categories of peace officers identified in section 830.33 are types of police and law enforcement officers. (§ 830.33 [identifying the following persons as peace officers: Bay Area Rapid Transit police; harbor or port police; transit police; airport law enforcement officers; and railroad police].) Thus, the *Miller* court's concern that the proposed interpretation of the statute "would bestow peace officer status on a broad category of employees who perform no law enforcement functions" appears to be unfounded, since the term "police" necessarily connotes law enforcement functions.<sup>7</sup>

Nor did the *Miller* court suggest what purpose the final clause of section 830.33, subdivision (b) serves, if not to provide an alternative basis for qualifying as a peace officer for those harbor or port police officers performing necessary duties with respect to patrons, employees, and properties of the harbor or port. The statute should be interpreted in a manner giving effect to each phrase of the statute and to avoid rendering the final clause of the statute surplusage. (*People v. Woodhead, supra*, 43 Cal.3d at p. 1010.) Thus, under section 830.33, subdivision (b), a person

---

<sup>7</sup> Further, a strict interpretation of the statute makes more sense in the context of section 830.37, subdivision (b). That statute identifies the circumstances in which members of a fire department or fire protection agency may qualify as peace officers. Unlike police officers, members of a fire department are not necessarily known for having law enforcement authority. In contrast, section 830.33 describes various categories of "police" and law enforcement officers, individuals who would be expected to have law enforcement functions. Thus, there is no reason to strictly interpret section 830.33. (See § 4 ["The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All of its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice."].)

who is regularly employed by a city as harbor or port police qualifies as a “peace officer” if it is shown *either*: (1) that the officer’s primary duty is the enforcement of law in or about the properties owned, operated, or administered by the harbor or port; *or* (2) that, at the relevant time, the officer was performing necessary duties with respect to patrons, employees, and properties of the harbor or port.

Appellant argues that the above interpretation of the statute violates a fundamental principle of statutory interpretation, by rendering the “primary duty” clause unnecessary and superfluous. (AOBM 18, citing *People v. Guzman* (2005) 35 Cal.4th 577, 588, and *People v. Woodhead*, *supra*, 43 Cal.3d at p. 1010.) This is so, appellant argues, because “[t]here 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.’” (AOBM 18, italics added, citing *People v. Miller*, *supra*, 164 Cal.App.4th 653, 667, fn. 9.) This argument is unconvincing. First, appellant’s concern about an overbroad category of peace officers is premised on his addition of the word “employee” following “harbor patrol.” But the statute does not contain the word “employee.” Rather, the statute refers to “police regularly employed and paid in that capacity . . . .” A person employed in the capacity of “police” would necessarily have law enforcement functions. Further, contrary to appellant’s assertion, there is in fact good reason to distinguish between harbor or port police officers whose primary duty is law enforcement and those without such a primary duty.

The term “peace officer” has been described as “a generic term embracing many specific classifications of public officers having law

enforcement powers and responsibilities. The term is used in different contexts to designate a class of persons to which certain legal rights, duties and consequences attach.” (65 Ops. Cal. Atty. Gen. 527, 527 (1982).) One example of the many statutes using the term “peace officer” is the one at issue here, section 243, which prescribes greater punishment for assaults committed on peace officers. (See *ibid.*) But status as a peace officer has broad significance beyond the application at issue here. (See *ibid.* [discussing examples of statutes using the term “peace officer”].)

Status as a peace officer may confer benefits and authority accompanying the officer throughout the state, even while off duty. (See *Gordon v. Horsley* (2001) 86 Cal.App.4th 336, 339; see also *Melendez v. City of Los Angeles* (1998) 63 Cal.App.4th 1, 8-9 [peace officers retain peace officer status and authority, both during and beyond regular duty hours]; *Orange County Employees Assn., Inc. v. County of Orange* (1993) 14 Cal.App.4th 575, 580 [recognizing that peace officers have general obligations that go beyond their duties to a particular agency], citing 65 Ops. Atty. Gen., *supra*, at p. 534.) For example, a peace officer is exempt from the provisions of the penal statute outlawing possession of a concealed firearm. (See *Gordon v. Horsley, supra*, 86 Cal.App.4th at p. 339, citing former § 12025 [prohibiting the possession of concealed weapons], and former § 12027 [excluding peace officers from statute prohibiting the possession of concealed weapons].)<sup>8</sup>

Also, a peace officer may have legal authority to make an arrest under circumstances in which a private citizen could not lawfully do so. (See *Gordon v. Horsley, supra*, 86 Cal.App.4th at p. 339, fn. 3 [comparing §§ 836, 837].) And in many instances, a peace officer’s authority extends

---

<sup>8</sup> Section 12025 has since been renumbered as section 25400. Section 12027 has since been renumbered as section 25450.

beyond his or her specific jurisdiction or job function. (See, e.g., *Brierton v. Department of Motor Vehicles* (2005) 130 Cal.App.4th 499, 511-512 [although a state university police officer's primary duty is the enforcement of the law in and around state university campuses, the officer nevertheless has the authority to enforce the law statewide]; *Baughman v. State of California* (1995) 38 Cal.App.4th 182, 188-189 [state university police officer had authority to execute search warrant more than one mile off campus in order to investigate theft committed on campus]; *People v. Cooper* (2002) 101 Cal.App.4th Supp. 1, 6 [city police officer had authority to make arrest outside of city boundaries for speeding violation committed inside city boundaries]; see generally 80 Ops. Cal. Atty. Gen. 293, 295-296 (1997) [identifying various powers possessed by peace officers].)

The introductory paragraph of section 830.33, which provides guidance as to the scope of authority granted peace officers classified under that statute, 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 pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code.

(§ 830.33.)

Interpreting subdivision (b) of section 830.33 as designating two separate clauses for purposes of qualifying a harbor or port police officer as a peace officer is consistent with a logical purpose of bestowing more expansive law enforcement authority on those harbor police officers whose primary duty is the enforcement of the law. A harbor or port police officer regularly employed and paid in that capacity by a county, city, or district, qualifies as a peace officer under the first clause, "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 . . . .” Thus, under the first clause, a harbor police officer would qualify as a peace officer, without temporal limits, if his or her primary duty is the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port.

In contrast, under the second clause of subdivision (b), a harbor police officer qualifies as a peace officer, “*when* performing necessary duties with respect to patrons, employees, and properties of the harbor or port.” (§ 830.33, subd. (b), italics added.) Thus, under the plain meaning of the language set forth in the second clause, peace officer status is temporally limited. (See 65 Ops. Cal. Atty. Gen. 527, 531 [noting that for purposes of interpreting former § 830.4, conferring peace officer status on security officers of the California State Police Division, the use of the words “while” and “when” to introduce the qualifying clauses is significant; the usual and ordinary import of these words is to limit the time that the security officers are peace officers; the clear implication is that at times other than those specified such security officers are not peace officers]; see also 65 Ops. Cal. Atty. Gen. 618, 625-626 (1982) [under section 830.4, airport security officers are peace officers, i.e., have the status of peace officers, depending upon whether they are performing their duties relating to the airport; such officers do not have the status of peace officers when they are off duty or not performing airport-related duties]; 72 Ops. Cal. Atty. Gen. 154, 156-157 (1989) [recognizing the distinction between the “status” of a peace officer and the “authority” of a peace officer, and that both need not exist at the same point in time; concluding that while a probation officer has the status of a peace officer at all times, his or her authority is limited to those situations identified in § 830.5, subdivision (a)].)

The import of the distinction between the two qualifying clauses contained in subdivision (b) of section 830.33 is significant. A harbor police officer whose primary duty is law enforcement would possess peace officer status without temporal limits. Thus, even when not performing his or her primary duty and/or when outside his or her jurisdiction of employment, the harbor police officer's authority would include the power to arrest under section 836, as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, as well as statewide authority to act as a peace officer in an emergency, pursuant to sections 8597<sup>9</sup> or 8598<sup>10</sup> of the Government Code.

---

<sup>9</sup> Government Code section 8597 states:

Whenever a state of emergency is proclaimed to exist within any region or area, or whenever a state of war emergency exists, the following classes of state employees who are within the region or area proclaimed or who may be assigned to duty therein shall be peace officers and shall have the full powers and duties of those officers for all purposes as provided by Section 830.1 of the Penal Code, and shall perform those duties and exercise any powers which are appropriate or which may be directed by their superior officers:

- (a) All peace officers of the Department of the California Highway Patrol.
- (b) All deputies of the Department of Fish and Game who have been appointed to enforce the provisions of the Fish and Game Code pursuant to Section 851 of that code.
- (c) The Director of Forestry and Fire Protection and the classes of the Department of Forestry and Fire Protection who are designated by the Director of Forestry and Fire Protection as having the powers of peace officers pursuant to Section 4156 of the Public Resources Code.
- (d) Peace officers who are state employees within the provisions of Section 830.5 of the Penal Code.

<sup>10</sup> Government Code section 8598 states:

(continued...)

On the other hand, a harbor police officer whose primary duty is not law enforcement (i.e., one who qualifies as a peace officer under the second clause of subdivision (b)) possesses peace officer status which is limited to those times “*when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.*” (§ 830.33, subd. (b), italics added.) Thus, aside from the limited times in which that harbor police officer is performing necessary duties with respect to patrons, employees, and properties of the harbor or port, such an officer would not possess peace officer status or the attendant broader statewide authority conferred on a harbor police officer whose primary duty is law enforcement. As previously stated, such a commonsense distinction is consistent with a logical goal of granting more comprehensive law enforcement authority to an officer whose primary duty is enforcement of the law.<sup>11</sup> Interpreting the statute in a manner giving effect to the two separate clauses as providing alternative means for qualifying as a peace

---

(...continued)

Whenever a local emergency exists within a region or area of the state and the Department of the California Highway Patrol or the Department of Corrections or the Department of the Youth Authority employing any peace officer within Section 830.5 of the Penal Code is requested by properly constituted local authorities to assist local law enforcement, the officers assigned to assist within the designated regions or areas shall have the full powers of peace officers within the meaning of Section 830.1 of the Penal Code and shall perform those duties and exercise those powers as are appropriate or as may be directed by their superior officers.

<sup>11</sup> Also, interpreting the statute as conferring peace officer status to a harbor patrol officer under the second clause is perfectly consistent with statutes such as the assault law at issue here, which aims to dissuade the public from reacting violently when contacted by a peace officer, as exemplified by the evidence here.

officer does not render the first clause superfluous. To the contrary, failing to adopt this interpretation would render the *second clause* superfluous.

As previously stated, the language set forth in the latter portion of subdivision (b) of section 830.33 (“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”) is clear and unambiguous, providing two alternative means for a harbor police officer to qualify as a peace officer. Thus, the inquiry ends, and the plain meaning of the statute governs. (*People v. Johnson, supra*, 28 Cal.4th at p. 244.) A party may demonstrate a statutory ambiguity by tendering an alternative meaning, that is, a different grammatically plausible reading of the language at issue. (*Collins v. Sutter Memorial Hospital* (2011) 196 Cal.App.4th 1, 14.) Appellant has not tendered any reading, let alone a grammatically plausible reading, of the statute which supports his position. Notably, he has not suggested any plausible meaning of the phrase “or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port” other than to provide a harbor or port police officer, whose primary duty is not “enforcement of the law in or about the properties owned, operated, or administered by the harbor or port,” an alternate, albeit temporally limited, means for qualifying as a peace officer.

Although not expressly stated, it appears that appellant’s interpretation of section 830.33, subdivision (b) would require a finding that the phrase “primary duty of the peace officer is the enforcement of law” modifies *both* the phrase that immediately follows (“in or about the properties owned, operated, or administered by the district”) *in addition to* the final phrase (“when performing necessary duties with respect to patrons, employees, and properties of the harbor or port”). Such an



interpretation of the statute is flawed. The phrase “if the primary duty of the peace officer is the enforcement of law” should be construed to modify the nearest reasonable referent, which is the phrase, “in or about the properties owned, operated, or administered by the harbor or port” as opposed to the additional and more remote phrase “when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.” (See Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (2012) pp. 152-153 [defining the “Nearest-Reasonable-Referent Canon” as follows: “When the syntax involves something other than a parallel series of nouns or verbs, a prepositive or postpositive modifier normally applies only to the nearest reasonable referent.”]; see also *Davis v. Fresno Unified School District* (Jun. 1, 2015, F068477) \_\_\_ Cal.App.4th \_\_\_ [2015 WL 3454720, \*13] [applying the nearest reasonable referent syntactic canon of statutory construction]; cf. *People v. Lewis* (2008) 43 Cal.4th 415, 492 [under the “last antecedent rule” of statutory construction, qualifying words, phrases, and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote; *Kurtin v. Elieff* (2013) 215 Cal.App.4th 455, 473 [“The last antecedent rule is the common sense presumption that the tail should not wag the dog in sentence construction, i.e., qualifiers apply to words and phrases immediately preceding them, as distinct from words and phrases more remote.”]; *Texas Commerce Bank v. Garamendi* (1992) 11 Cal.App.4th 460, 472 [relative or modifying phrases or words are presumed to modify only antecedent, enumerated terms and not more remote terms].)

The phrases “in or about the properties owned, operated, or administered by the harbor or port” and “when performing necessary duties with respect to patrons, employees, and properties of the harbor or port” are not parallel phrases. Thus, under the nearest-reasonable-referent canon, the

phrase, “primary duty of the peace officer is the enforcement of the law” modifies only the phrase “in or about the properties owned, operated, or administered by the harbor or port.” The final phrase, “or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port” stands alone and provides an alternative means of achieving peace officer status.

**B. Substantial Evidence Established that Officer Hubbard was a Peace Officer**

Under either interpretation of the statute advanced by the respective parties in this case, there was substantial evidence that Officer Hubbard qualified as a peace officer.

**1. Evidence Relating to Officer Hubbard’s Employment as a Harbor Patrol Officer**

Officer Hubbard testified that he was employed as a Harbor Patrol officer for the City of Santa Barbara, and that he had held that assignment for 12 years. (IRT 253.) When asked to describe an “average day” as a Harbor Patrol officer, Officer Hubbard replied as follows:

Sure. 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 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’re doing.

(IRT 253-254.)

When asked if he was a “law enforcement peace officer,” Officer Hubbard replied, “Yes, I am.” He carried a side arm and had the power to arrest. When asked to describe his training and experience “in particular to law enforcement,” Officer Hubbard replied, “I attended the peace officer

orientation course, which under the California Penal Code Section 830.33(b), gives me peace officer status.” When the prosecutor asked Officer Hubbard if part of his duties as a Harbor Patrol officer was to enforce the law in the harbor district, Officer Hubbard replied, “Yes, it is.” (1RT 254.)

Concerning the authority of the Harbor Patrol, Officer Hubbard was questioned in relevant part as follows:

Q And so let me ask you this. Who or under what umbrella or authority is the Harbor Patrol specifically?

A We receive - - we fall under the police department umbrella. As far as who we answer to, our training, as far as how often we need to go to the range, it all falls under the chief of the police department.

Q So chief of police - -

A Yes.

Q - - is your supervisor?

A Right.

(1RT 256; see also 2RT 347-348 [Harbor Patrol officers fall under the umbrella of the Santa Barbara Police Department for purposes of weapons training and the use of Tasers].)

On the date of the charged offenses, Officer Hubbard was on duty and dressed in his full Harbor Patrol uniform at the time he and Officer Kelly approached appellant and told him they needed to speak to him. (1RT 265; 2RT 352.) Officer Hubbard acted within the guidelines of his training and experience as a law enforcement officer and peace officer. (1RT 267; see also 2RT 295 [referring to himself and Officer Kelly as “peace officers” who commanded appellant to stop].)

Officer Kelly, who worked as Officer Hubbard’s partner on the date of the charged offenses, testified that he was employed as an officer with

the Santa Barbara Harbor Patrol. When asked to describe the training and experience required to become an officer for the Santa Barbara Harbor Patrol, Officer Kelly replied:

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 to describe the "common issues or things" that he dealt with as a Harbor Patrol officer, Officer Kelly replied:

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.)

Officer Kelly stated that he had duties outside of law enforcement, including responding to rescue calls, protecting the public in the gated areas of the marinas, acting as a lifeguard and search and rescue boat operator, fighting fires, and responding to medical emergencies. Officer Kelly then added, "And then we're responsible for the law enforcement aspect both on the water and in the land and in the harbor district." (1RT 125.)

Officer Kelly further testified that he was a peace officer, with authority to arrest and detain individuals, which derived from section 830.33, subdivision (b). The prosecutor then asked, "And that gives you what kind of authority as a law enforcement officer?" Officer Kelly replied, "Peace officer authority. Just like Santa Barbara Police

Department, we have the same powers and privilege as they do.” (1RT 125.) Officer Kelly testified that while working as a Harbor Patrol officer, he wore a uniform which made him readily identifiable as a peace officer, and that the Harbor Patrol vehicles were also clearly marked as peace officer vehicles. The Harbor Patrol uniform included Santa Barbara Harbor Patrol patches. He also wore a name tag and badge. He carried a “department-issued sidearm, [T]aser, baton, handcuffs and OC spray.” (1RT 125-126.)

On the date of the charged offenses, Officer Kelly was working as a Harbor Patrol officer. He received a call advising him of appellant entering the marina by following maintenance workers through the gate. When asked about his general response to such a call, Officer Kelly replied, “Well, one of the - - one of the things that we do *as, you know, law enforcement* while we’re patrolling is we want to make sure that only people that are authorized to be in the marinas are in there . . . .” (1RT 127, italics added.) Municipal Code Harbor Regulations, including a regulation prohibiting unauthorized entry into the marina, were posted at the locked marina gate. Officer Kelly was responsible for enforcing these regulations. (1RT 130-131.)

When asked whether he was authorized to detain appellant, Officer Kelly replied that the detention was lawful, because he and Officer Hubbard were “investigating illegal, unauthorized entry in to the marina and also possible theft of items from the marina.” (1RT 141-142.) Officer Kelly explained that Santa Barbara Police officers were called to the scene to assist, because there was no jail at the harbor, and the Santa Barbara Police Department had such resources, as well as crime scene investigation resources. (1RT 153.) Officer Kelly later expanded on the circumstances in which he was trained to call police officers for assistance: “Well, when we feel that we need backup just as they do with their own department and

sometimes with us when they need our help on a water-related emergency or situation.” (1RT 158.)

Stephen McCullough, a Harbor Patrol supervisor for the City of Santa Barbara, testified that Harbor Patrol officers complete training required by section 832, including “arrest, search and seizure, firearms training,” as well as training for emergency medical technicians, firefighting, boating safety, the enforcement of boating laws, and lifeguarding. (2RT 430-431.)

Santa Barbara Police Officer Bryan Kerr testified about a prior incident involving appellant at the marina. On July 7, 2012, Officer Kerr went to the marina to assist Harbor Patrol officers, including Officer Hubbard, in issuing a citation to appellant. (2RT 398-399, 402-404, 410.) Officer Kerr was there to help the Harbor Patrol officers “keep the peace” while they issued the citation. (2RT 417.) Officer Kerr opined that Officer Hubbard acted appropriately during the encounter, in a manner that was consistent with Officer Kerr’s training and experience as a peace officer. (2RT 408.) According to Officer Kerr, Harbor Patrol officers issued citations on behalf of the City of Santa Barbara. (2RT 418-419.)

**2. Substantial Evidence Supports Appellant’s Conviction Under Any Interpretation of Section 830.33**

On review for sufficiency of the evidence, an appellate court must consider the evidence in the light most favorable to the judgment below in determining whether it discloses substantial evidence—evidence that is reasonable, credible, and of solid value—such that a rational trier of fact could find the elements of an offense proved beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319 [99 S.Ct. 2781, 61 L.Ed.2d 560]; *People v. Johnson* (1980) 26 Cal.3d 557, 578.) A challenge to the sufficiency of the evidence entails a “massive burden” because the reviewing court’s “role on appeal is a limited one.” (*People v. Atkins*

(1997) 56 Cal.App.4th 331, 336.) Reversal is unwarranted unless “it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support the conviction.’” (*People v. Hughes* (2002) 27 Cal.4th 287, 370.)

The appellate court resolves neither credibility issues nor evidentiary conflicts. Rather, resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Under either interpretation of the statute advanced by the respective parties in this case, there was substantial evidence that Officer Hubbard qualified as a peace officer. Should this Court adopt the interpretation of section 830.33, subdivision (b) that has been advanced by respondent and that was adopted by the Court of Appeal in this case, there was overwhelming evidence that Officer Hubbard was a harbor or port police officer, regularly employed and paid as such by the City of Santa Barbara, who was performing necessary duties with respect to patrons, employees, and properties of the harbor, at the time appellant kicked him. In fact, appellant does not appear to argue otherwise. In sum, Officer Hubbard testified that he was employed as a Harbor Patrol officer for the City of Santa Barbara (1RT 253), that he qualified as a “peace officer” under section 830.33, subdivision (b) (1RT 254), that he was responsible for enforcing the laws in the harbor district (1RT 254), and that at the time of the incident, he was investigating whether appellant’s presence in the marina was authorized (1RT 262-263). Thus, the evidence unquestionably supported a finding that Officer Hubbard was a harbor or port police officer, regularly employed and paid as such by the City of Santa Barbara, who was performing necessary duties with respect to patrons, employees, and properties of the harbor, at the time of the battery.

In any event, even assuming this Court construes section 830.33, subdivision (b) as requiring proof of the officer's primary duty as enforcement of the law, the evidence presented in this case meets that standard. Officer Hubbard testified that he had been employed as a Harbor Patrol officer for the City of Santa Barbara for 12 years. (1RT 253.) He had been trained as a peace officer and was a "law enforcement peace officer." He carried a gun and had the power to arrest. His duties as a Harbor Patrol officer included enforcing the law in the harbor district. He had attended a peace officer orientation course, which gave him "peace officer status" under section 830.33, subdivision (b). (1RT 254.)

Similarly, Officer Hubbard's partner, Officer Kelly, testified that as a Harbor Patrol officer, "One of [his] duties of law enforcement as a peace officer is pursuant to California Penal Code Section 830.33(b)." (1RT 124.) Officer Kelly testified that his duties included responding to medical calls, fire service calls, acting as a lifeguard, search and rescue, and patrolling the marina "*just like the police department would patrol the city streets.*" (1RT 124, italics added.) He further testified that he had the authority to arrest and detain, which arose under section 830.33, subdivision (b). (1RT 125.)

While neither officer expressly stated that enforcement of the law in the harbor was his primary duty, a reasonable trier of fact could have drawn such a conclusion based on the foregoing evidence. Section 830.33 does not define the word "primary." In this context, the phrase "primary duty of the peace officer is enforcement of the law" implies that enforcement of the law is a duty "of first rank, importance, or value" or "fundamental." (See Merriam-Webster's Collegiate Dictionary (10th ed. 1997) p. 925 [defining "primary"].)

When asked to describe his average day, the first thing mentioned by Officer Hubbard was the fact that he was trained as a law enforcement



officer. (1RT 253.) Similarly, when asked about his training and experience, the first thing mentioned by Officer Kelly was that he had law enforcement duties as a peace officer pursuant to section 830.33, subdivision (b). (1RT 124.) And while Officer Hubbard also had duties unrelated to law enforcement, the jury could reasonably infer that the most important purpose of his employment was enforcement of the law in the harbor.

While on duty, Officer Hubbard wore a uniform which made him readily identifiable as a peace officer, and he operated vehicles clearly marked as peace officer vehicles. (1RT 126, 139, 265; 2RT 352.) Officer Hubbard described himself as a “law enforcement peace officer.” (1RT 254.) He worked under the “umbrella” of the police department. (1RT 256.) He wore a badge, carried a gun, and had the power to arrest and issue citations. (1RT 125-126, 254; 2RT 418-419.) According to Officer Kelly, Harbor Patrol officers had “[p]eace officer authority” that was “[j]ust like” the Santa Barbara Police Department, noting that Harbor Patrol officers had the “same powers and privileges as they do.” (1RT 125.) Officer Kelly also stated that Harbor Patrol officers patrol the marinas in the same manner as officers of a police department would patrol the city streets. (1RT 124.) Both Officer Hubbard and Officer Kelly testified that Harbor Patrol officers were responsible for enforcement of the laws in the harbor district. (1RT 125, 131, 254.) And quite tellingly, when property manager Henry spotted appellant trespassing, he did not attempt to personally enforce the trespassing law. Instead, he reported the suspected violation to the Harbor Patrol, the agency responsible for enforcing laws in the harbor. (See 1RT 87, 256.) Based on these facts, the jury could reasonably conclude that Officer Hubbard’s primary, or most important or fundamental duty, was enforcement of the law in or about the properties owned, operated, or administered by the harbor.

**II. THIS COURT SHOULD DECLINE TO CONSIDER APPELLANT'S ADDITIONAL CLAIMS THAT ARE NOT FAIRLY INCLUDED IN THE ISSUE ON WHICH REVIEW WAS GRANTED; IN ANY EVENT, ANY ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT**

Appellant raises additional claims on which he did not seek review and on which this Court did not grant review. Specifically, appellant argues that the trial court violated his federal and state constitutional rights to due process and a jury trial by preventing appellant from arguing that Officer Hubbard was not a peace officer, and in instructing the jury that a Harbor Patrol Officer is a peace officer. (AOBM 21-25.) This Court should decline to address these issues, which are not fairly included in the grant of review. In any event, any error was harmless beyond a reasonable doubt.

**A. Appellant's Claims of Instructional Error and Improper Limitation on Argument Should not be Considered, Because They are not Fairly Included in the Issue Upon Which Review was Granted**

This Court may decline to consider an issue that is not fairly included in the issue upon which review is granted. (See *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 447, fn. 3; *People v. Alice* (2007) 41 Cal.4th 668, 677-678; *In re Marriage of Cornejo* (1996) 13 Cal.4th 381, 388, fn. 6; *People v. Estrada* (1995) 11 Cal.4th 568, 580; see also Cal. R. Ct. 5.516;<sup>12</sup> Cal. R. Ct. 8.520, subd. (b)(3).)<sup>13</sup>

---

<sup>12</sup> California Rule of Court 8.516 states in relevant part as follows:

(a) Issues to be argued and briefed  
(1) On or after granting review, the Supreme Court may specify the issues to be briefed and argued. Unless the court orders otherwise the parties must limit their briefs and arguments to those issues and any issues fairly included in them.

(continued...)

In his petition for review, appellant presented three questions: (1) for a harbor patrol officer to be a “peace officer” within the meaning of section 830.33, subdivision (b), must the officer’s “primary duty” be the “enforcement of the law”?; (2) was the evidence insufficient to sustain appellant’s conviction for assault on a “peace officer” (§ 243, subd. (b)), in violation of his federal due process rights?; and (3) was the evidence insufficient to sustain appellant’s conviction for trespassing (§ 602, subd.

---

(...continued)

(2) Notwithstanding an order specifying issues under (1), the court may, on reasonable notice, order oral argument on fewer or additional issues or on the entire cause.

(b) Issues to be decided

(1) The Supreme Court may decide any issues that are raised or fairly included in the petition or answer.

(2) The court may decide an issue that is neither raised nor fairly included in the petition or answer if the case presents the issue and the court has given the parties reasonable notice and opportunity to brief and argue it.

(3) The court need not decide every issue the parties raise or the court specifies.

<sup>13</sup> California Rule of Court 8.520, which concerns briefs filed in the California Supreme Court, states in relevant part as follows:

.....  
(b) Form and content

(1) Briefs filed under this rule must comply with the relevant provisions of rule 8.204.

(2) The body of the petitioner’s brief on the merits must begin by quoting either:

(A) Any order specifying the issues to be briefed; or, if none,

(B) The statement of issues in the petition for review and, if any, in the answer.

(3) Unless the court orders otherwise, briefs on the merits must be limited to the issues stated in (2) and any issues fairly included in them.

.....

(k)), in violation of his federal due process rights? (Pet. for rev. 1.) In granting review, this Court indicated, “The issue to be briefed and argued is limited to the following: 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), supporting defendant’s conviction for battery on a peace officer?” (See Order granting petition for review.)

Appellant now adds additional claims that the trial court erred in instructing the jury that a sworn member of the Santa Barbara Harbor Patrol is a peace officer, and that the trial court erred in precluding argument on whether Officer Hubbard was a peace officer. (AOBM 21-25.) These claims were not included in the petition for review, and, contrary to appellant’s assertion (see AOBM 22, fn. 5), are not fairly included in the limited issue identified in this Court’s order granting review.

Appellant’s additional claims of alleged instructional error and alleged improper limitation on argument are admittedly *related* to the issue of whether the People proved that Officer Hubbard is a peace officer, as each issue involves interpretation of section 830.33, subdivision (b). But the additional claims are not fairly *included* in the latter issue, as their resolution is not necessary to decide the latter issue. Whether the People proved that Officer Hubbard is a peace officer is essentially a question of whether the evidence is legally sufficient to support a conviction. Such a claim does not require resolution of whether the jury was properly instructed, or whether argument presented by appellant was improperly restricted. Thus, the additional questions are not fairly included in the grant of review. (Cf. *People v. Perez* (2005) 35 Cal.4th 1219, 1228 [where trial court erred in instructing the jury on an impermissible legal theory of aiding and abetting, the issue of whether the defendant could have violated the statute as a direct perpetrator was “fairly embraced” in the petition for

review; in order to determine whether the instructional error was harmless, it was necessary to determine whether the defendant could have violated the applicable statute as a direct perpetrator]; cf. *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.* (1993) 510 U.S. 27, 31-32 [114 S.Ct. 425, 126 L.Ed.2d 396] [in the context of interpreting United States Supreme Court rule 14.1(a) (which states that only questions set forth in the petition for writ of certiorari, or fairly included therein, will be considered by the court), a question which is merely “complimentary” or “related” to the question presented is not fairly included therein].)

**B. Any Instructional Error or Improper Limitation on Argument was Harmless**

In any event, any error in instructing the jury that a sworn member of the Santa Barbara Harbor Patrol is a peace officer, or in precluding appellant from arguing that Officer Hubbard was not a peace officer, was harmless beyond a reasonable doubt.

**1. Background**

During a break in the cross-examination of Officer Kelly, the prosecutor asked the trial court to rule on some of the issues raised in his trial brief. The prosecutor asked that the Harbor Patrol officers be designated as peace officers and executive officers under the Penal Code and to exclude any argument to the contrary. (1RT 168-169.) The following proceedings ensued:

THE COURT: Okay. That would be appropriate. I think that would be appropriate. I think it's a legal question that Harbor Patrol officers are peace officers under the law.

THE PROSECUTOR: Your Honor, there's also - -

[APPELLANT]: Can I object to that, your Honor?

THE COURT: Object to the Harbor Patrol officers being peace officers? I think they are deemed peace officers under the

law, so it's just a legal question. It's like is a Santa Barbara Police Department officer is a peace officer.

[APPELLANT]: I would like to go into that at some point.

THE COURT: Go into what?

[APPELLANT]: Into his functions, his duties, how he came about to get that authority and how he's actually administering it.

THE COURT: Well, some of that you can get into, some of it you can't, but you can ask the question and [the prosecutor] can make the objection, but you can certainly ask him about his functions, his responsibilities, whether he's permitted to carry a gun, what his scope of authority is, whether he's a peace officer under the law. All of that you can ask him. [¶] But I think what [the prosecutor] is saying is when we get to the point of closing argument, you can't argue that Officer Kelly and Officer Rick Hubbard and the other folks who work for the harbor patrol are not peace officers within the meaning of the law, because under the law they are designated peace officers, as I understand it.

[THE PROSECUTOR]: Correct.

[APPELLANT]: Because one of the situations that has arised [*sic*], your Honor, is the Harbor Patrol gave me citations out of the name of Santa Barbara P.D. Department. Their uniform does not say Santa Barbara Police Department, it's Harbor Patrol, yet they're giving you a ticket from the Santa Barbara Police Department ticket book.

THE COURT: That's not an issue in this case. The issue in this case is whether or not the officers with the harbor patrol are considered peace officers. Now, whether or not at other times and places they're doing things that they're authorized to do or not authorized to do is another issue.

In this case, the question is, was there resisting an executive officer within the meaning of Penal Code Section 69, and are Officers Kelly and Hubbard and, I guess, Engebretson, are they considered peace officers, and the answer, I believe, is yes as a matter of law.

So it's not something the jury can decide, that they're not peace officers. It's not an issue for them to decide. So really, the only issue is - - the only issues are the ones that are set forth in this - - in the statute, if you look at the jury instructions, resisting an executive officer in the performance of duty. "The defendant unlawfully used force or violence to resist an executive officer." So did you unlawfully use force or violence to resist.

Whether Kelly and Hubbard are executive officers within the meaning of the statute is not a fact to be decided by the jury. They are executive officers as a matter of law, so there's no issue regarding that.

"When the defendant acted, the officer was performing his lawful duty." So, again, the issue to be decided is whether the officer was performing his lawful duty, not whether or not he was an officer. Do you understand what I'm saying?

[APPELLANT]: I do understand, but they're trying to give me a citation at the time for trespassing, which I said, "Call Santa Barbara P.D. This is their book. I will sign the ticket when they show up." That's when things got kind of out of hand, so - -

THE COURT: Well, you can get into that. You can ask, were you going to cite me for trespassing? Under what authority were you going to cite me? What was the nature of the ticket? You can get into that.

So you ask the questions you want to ask, and I'll rule on the objection according to the law.

(1RT 169-171.)

At the close of the evidence, the jury was instructed with a modified version of CALCRIM No. 945 as follows:

The defendant is charged in Count 2 with battery against a peace officer in violation of Penal Code section 243.

To prove that the defendant is guilty of this crime, the People must prove that:

1. Rick Hubbard was a peace officer performing the duties of a Harbor Patrol Officer;

2. The defendant willfully touched Rick Hubbard in a harmful or offensive manner;

AND

3. When the defendant acted, he knew, or reasonably should have known that Rick Hubbard was a peace officer who was performing his duties.

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

The slightest touching can be enough to commit battery if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.

A sworn member of the Santa Barbara Harbor Patrol is a *peace officer*.

(1CT 222, italics in original.)

On appeal, respondent conceded, and the Court of Appeal found, that the trial court erred in instructing the jury that a sworn member of the Santa Barbara Harbor Patrol is a peace officer, as this was an issue that should have been resolved by the jury. The Court of Appeal nevertheless concluded that the error was harmless beyond a reasonable doubt, because the jury necessarily resolved the peace officer issue against appellant under other instructions. (*People v. Pennington, supra*, 229 Cal.App.4th at pp. 1384-1385.)

Similarly, the Court of Appeal found that to the extent the trial court erred in precluding appellant from arguing to the jury that Officer Hubbard was not a peace officer, the error was harmless beyond a reasonable doubt. (*Id.* at p. 1385.)



**2. Even Under Appellant's Interpretation Of Section 830.33, subdivision (b), Any Error Was Harmless In Light Of The Strength Of The Evidence Demonstrating That Officer Hubbard Had A Primary Duty Of Law Enforcement**

Appellant does not dispute the Court of Appeal's conclusion that, if section 830.33, subdivision (b) is interpreted as requiring no proof of a primary duty of law enforcement, any error instructional error or improper limitation on argument was harmless beyond a reasonable doubt. And even if this Court adopts appellant's interpretation of section 830.33, subdivision (b) (requiring proof that Officer Hubbard had a primary duty of law enforcement), any instructional error or error in precluding appellant from challenging Officer Hubbard's status as a peace officer in his argument to the jury was harmless beyond a reasonable doubt in light of the overwhelming evidence that Officer Hubbard's primary duty was enforcement of the law. (See *Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824, 17 L.Ed.2d 705]; see also *People v. Flood* (1998) 18 Cal.4th 470, 502-503 [applying the *Chapman* harmless error standard to instructional error that improperly describes or omits an element of the offense].)

As set forth in Argument E(2), *ante*, there was very compelling evidence that Officer Hubbard's primary duty was enforcement of the law. Officer Hubbard and Officer Kelly each testified that they had peace officer status under section 830.33, subdivision (b). (1RT 124, 254.) When asked about his average day, Officer Hubbard first replied that he was trained as a law enforcement officer. (1RT 253.) Likewise, when asked about his training and experience, the first thing mentioned by Officer Kelly was the fact that he had law enforcement duties as a peace officer pursuant to section 830.33, subdivision (b). (1RT 124.) Harbor Patrol officers wear uniforms and badges identifying them as peace officers, they drive vehicles

that were marked as “peace officer” vehicles, they carry guns, they were responsible for enforcing the law in the harbor, and they have the power to arrest and issue citations. (1RT 125-126, 139, 254, 265; 2RT 352, 418-419.) They have the same peace officer authority as the Santa Barbara Police Department, and they patrol the marina areas in the same manner as a police department would patrol city streets. (1RT 124-125.) In light of the strength of the evidence demonstrating that Officer Hubbard’s primary duty is enforcement of the law, any possible error was harmless beyond a reasonable doubt.

### CONCLUSION

Accordingly, for the reasons stated, respondent respectfully requests that this Court affirm the judgment.

Dated: June 12, 2015

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
GERALD A. ENGLER  
Chief Assistant Attorney General  
LANCE E. WINTERS  
Senior Assistant Attorney General  
MICHAEL R. JOHNSEN  
Supervising Deputy Attorney General  
VICTORIA B. WILSON  
Supervising Deputy Attorney General

THERESA A. PATTERSON  
Deputy Attorney General  
*Attorneys for Plaintiff and Respondent*

TAP/cd  
LA2014615426  
51808793.doc

**CERTIFICATE OF COMPLIANCE**

I certify that the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 11,854 words.

Dated: June 12, 2015

KAMALA D. HARRIS  
Attorney General of California

THERESA A. PATTERSON  
Deputy Attorney General  
*Attorneys for Plaintiff and Respondent*



**DECLARATION OF SERVICE**

Case Name: **The People of the State of California v. Bryan M. Pennington**

Case No.: **S222227**

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 with postage thereon fully prepaid that same day in the ordinary course of business.

On **June 15, 2015**, I served the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

**MARK R. FEESER**  
**ATTORNEY AT LAW**  
**3940-7174 BROAD STREET**  
**SAN LUIS OBISPO, CA 93401**  
**MARK.R.FEESER@GMAIL.COM**

**JOYCE E. DUDLEY**  
**DISTRICT ATTORNEY**  
**1105 SANTA BARBARA STREET**  
**SANTA BARBARA, CA 93101**

**THE HONORABLE BRIAN E. HILL, JUDGE**  
**SANTA BARBARA COUNTY SUPERIOR COURT**  
**1100 ANACAPA STREET**  
**P. O. BOX 21107**  
**SANTA BARBARA, CA 93121**

**CALIFORNIA APPELLATE PROJECT (LA)**  
**520 S. GRAND AVENUE, 4<sup>TH</sup> FLOOR**  
**LOS ANGELES, CA 90071**

**CLERK OF THE COURT OF APPEAL**  
**SECOND APPELLATE DISTRICT, DIVISION SIX**  
**200 EAST SANTA CLARA STREET**  
**VENTURA, CA 93001**

On **June 15, 2015**, I caused **Nine (9)** copies of the **RESPONDENT'S ANSWER BRIEF ON THE MERITS** in this case to be delivered to the California Supreme Court at 350 McAllister Street, First Floor, San Francisco, CA 94102-4797 by Federal Express Tracking # **8055-1567-5623**

On **June 15, 2015**, I caused one electronic copy of the **Respondent's Answer Brief on the Merits** in this case to be submitted electronically to the California Supreme Court by using the Supreme Court's Electronic Document Submission system.



Case Name: *People v. Bryan M. Pennington*

Case No. S222227

On June 15, 2015, I caused one electronic copy of the Respondent's Answer Brief on the Merits in this case to be served electronically on the California Court of Appeal by using the Court's Electronic Service Document Submission system.

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 June 15, 2015, at Los Angeles, California.

Erlinda Zulueta

Declarant

Signature

TAP:ez  
LA2014615426  
51809254.doc