IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN THE MATTER OF C.H. Minor and Appellant	No. S237762
PEOPLE OF THE STATE CALIFORNIA, Plaintiff and Respondent v. C.H. Defendant and Appellant	(Court of Appeal Case No. A146120; Contra Costa Co. Superior Court No. J11-00679)

APPELLANT'S REPLY BRIEF ON THE MERITS

After Decision by the Court of Appeal
First Appellate District, Division Three
Filed August 30, 2016

Patricia N. Cooney
Attorney at Law
California State Bar No. 118198
1108 Fresno Avenue
Berkeley, California 94707
(510) 525-0584
patriciancooney@aim.com
Attorney for Minor and Appellant
C.H.

By Appointment of the Court

TABLE OF CONTENTS

TABLE OF AUTHORITIES

USSC and OTHER FEDERAL CASES

CALIFORNIA STATUTES

CONSTITUTIONAL AUTHORITY

SECONDARY AUTHORITY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN THE MATTER OF C.H. Minor and Appellant	)	No. S237762
PEOPLE OF THE STATE CALIFORNIA, Plaintiff and Respondent v. C.H. Defendant and Appellant	)	(Court of Appeal Case No. A146120; Contra Costa County Superior Court No. J11-00679)

APPELLANT'S REPLY BRIEF ON THE MERITS

INTRODUCTION

A. Summary of Appellant's Contentions.

Appellant contends that the juvenile court erred in refusing to order expungement of his DNA sample and identifying profile after redesignating his theft adjudication as a misdemeanor pursuant to Proposition 47.[1]

Appellant argues that upon redesignation of his felony theft offense to a misdemeanor for all purposes pursuant to section 1170.18, subdivisions (f), (g) and (k), he no longer has a felony adjudication which would allow

[1] Proposition 47 is the Safe Neighborhoods and Schools Act enacted by voters in 2014 and is found at Penal Code section 1170.18. All further statutory references are to the Penal Code unless otherwise indicated.

the state to retain his DNA profile and sample. (Secs. 299 and 296; *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1226-1227.) The plain and unambiguous language of section 1170.18's provisions, particularly the "misdemeanor for all purposes" phrase in section 1170.18, subdivision (k), reveals the voters intended to remove all felony collateral consequences, except for restrictions on firearm possession, upon redesignation as a misdemeanor. Further, the inclusion of the firearm exception in subdivision (k) indicates voters intended to preclude all other exceptions not expressed, such as DNA retention. Appellant maintains that the language "misdemeanor for all purposes" in section 1170.18 should not be interpreted the same way it is interpreted in section 17 because the purpose and effect of the two statutes are not the same.

Expungement of appellant's DNA is required because the redesignation of appellant's felony adjudication changed the nature of the adjudication to a misdemeanor for all purposes thereby removing the adjudication from the felony category permanently. Appellant argues that section 299, subdivision (f) does not preclude expungement of appellant's DNA from the state database because after redesignation appellant no longer has an offense which qualifies for inclusion in the database.

Appellant contends those who voted for Proposition 69[2] found no public safety need to expand DNA collection to juvenile misdemeanants such as appellant. Appellant asserts that Proposition 47 and 69 can be harmonized by acknowledging the purpose and intent of those who voted for both propositions and by adopting a reasonable interpretation of section 1170.18, particularly subdivision (k), that is consistent with these principles. Moreover, a recent amendment to section 299, subdivision (f), AB 1492[3], is an unconstitutional amendment of Proposition 47 that is inconsistent with the intent of the initiative. Appellant finally argues that retention of appellant's DNA sample violates the equal protection clauses of the California and federal constitutions.

B. Summary of Respondent's Contentions.

Respondent maintains that Proposition 69's provisions regulate and prevent the expungement of appellant's DNA. Respondent reasons that section 299, subdivision (f) is a specific act prohibiting DNA expungement "notwithstanding any other provision of law" and that it controls over Proposition 47's general provisions, particularly because Proposition 47 was silent on the subject of DNA collection and retention. Respondent suggests the shared language "misdemeanor for all purposes" in section

[2] Proposition 69 is the DNA Fingerprint, Unsolved Crime and Innocence Protection Act ["DNA Act"] passed by voters in the 2004 general election. See sections 295-302.2.

[3] AB 1492 amended section 299, subdivision (f), effective January 1, 2016, to include section 1170.18 in the list of statutes that do not authorize a judge to relieve a person of the duty to provide a DNA sample.

1170.18, subdivision (k) and section 17 means the two statutes should be interpreted the same way to preclude DNA expungement. Respondent contends that Proposition 69 and 47 can be harmonized by denying expungement to misdemeanants like appellant and that this would be consistent with their respective public safety goals. Finally, respondent argues AB 1492 is a clarification of existing law and not an unconstitutional amendment to Proposition 47, and retention of appellant's DNA sample does not violate the equal protection clauses of the California and federal constitutions.

ARGUMENT

I. THE REDESIGNATION PROCEDURE SET FORTH IN PENAL CODE SECTION 1170.18 RESULTS IN A MISDEMEANOR OFFENSE "FOR ALL PURPOSES" THAT DOES NOT QUALIFY AS AN ADJUDICATION PERMITTING DNA COLLECTION OR RETENTION.

A. Respondent's Claims Are Based On A Misconception Of The Procedural Posture Of This Case, The Precise Issue Presented And The Effects Of Proposition 47 Redesignation.

Respondent views Proposition 47, as codified in Section 1170.18, as purely a resentencing statute, in which an individual who was convicted or adjudicated of a felony offense which was reclassified as a misdemeanor by the proposition, can apply for resentencing. Resentencing on a case-by-case basis by the court is contingent on a determination of individual risk of dangerousness. Based on this misconception, respondent improperly

analogizes Section 1170.18 to Section 17. The many problems with this analogy will be discussed in more detail below.

Respondent misunderstands the provisions of Section 1170.18 at issue in this appeal. Appellant, a juvenile, did not seek resentencing pursuant to 1170.18, subdivisions (a) and (b). Rather, as a juvenile offender who was not serving a "felony sentence", appellant applied in juvenile court to have his adjudication redesignated as a misdemeanor and his application was granted with the exception of his request for DNA expungement. (Sec. 1170.18, subds. (f) and (g).) (CT 100-101, 103-104.) For redesignation applications, like appellant's, no hearing is necessary unless the eligible applicant requests one. (Sec. 1170.18, subd. (h).) More importantly, the court need not make an individualized determination of dangerousness.

In contrast, section 1170.18, subdivision (a) authorized persons serving sentences for certain low level felonies to petition for a recall of sentence and to request resentencing under the new law. (Sec. 1170.18, subd. (a).) If the court determines that the petitioner is eligible for resentencing, the court must recall the sentence and resentence the petitioner under the new misdemeanor provisions unless the petitioner poses an "unreasonable risk of danger to public safety." (Sec. 1170. 18, subd. (b).)

Respondent ignores appellant's status as a juvenile throughout the brief. Because appellant is a juvenile offender who was found, when he was 15 years old, to have committed theft of property valued at $46, he was entitled to seek redesignation under section 1170.18, subdivisions (f) and (g). (*Alejandro N. v. Superior Court*, *supra*, 238 Cal.App.4th at p. 1223.) Because of differences between the adult criminal and juvenile court procedures, a juvenile will always be applying for redesignation and not resentencing.

The juvenile wardship system and the adult criminal system are two distinct systems: the two systems use different terminology, and their underlying purposes have a different focus. (*Alejandro N. v. Superior Court*, *supra*, 238 Cal.App.4th at p. 1219.) A juvenile is not convicted of an offense, but adjudicated. (See Welf. & Inst. Code, sec. 203.) Following an adjudication – a true finding of a criminal allegation-the juvenile court imposes a "dispositional order". There are a range of dispositions. Although the seriousness of the offenses may lead to a more restrictive disposition, there are not separate dispositions for misdemeanors and felonies as there are for adults. (See sec. 17, subd. (a).) Appellant was not resentenced and could not have been resentenced under the juvenile court law.

These distinctions recognize the immutable fact that juveniles are not small adults and accordingly are treated differently in our justice system. (*Roper v. Simmons* (2005) 543 U.S. 551, 568-575, *Graham v.*

Florida (2010) 560 U.S. 48, *J.D.B. v. North Carolina* (2011) 564 U.S. 261, *Miller v. Alabama* (2012) __ U.S. __, 132 S.Ct. 2455.) It is therefore incorrect to describe appellant's redesignation of his juvenile adjudication in adult terms. See for example, Respondent's Brief on the Merits ["RBOM"], pp. 27, 34, 38, 39, 40, 41, 42, 44, 45 referring to appellant's "resentencing" or a "sentence reduction" or a "post-conviction sentence reduction."

Respondent misconstrues the scope of Proposition 47. Those who enacted Proposition 47 endorsed both its prospective and retroactive effects. Those who committed designated drug possession and theft offenses after the effective date of the initiative, November 5, 2014, would be convicted or adjudicated of misdemeanors "for all purposes". But Proposition 47 also provided for a retroactive remedy for cases like appellant's, codified in section 1170.18, by extending its benefits to persons convicted or adjudicated before its effective date and allowing them to petition to redesignate their offenses. (Sec. 1170.18, subd (f); *Alejandro N. v. Superior Court (San Diego), supra*, 238 Cal.App.4th at pp. 1217, 1222-1223.)

Upon redesignation to a misdemeanor adjudication under section 1170.18, subdivision (f), (g) and (k), the felony is removed from the felony category permanently. It is as though the felony offense never occurred making DNA collection and retention unavailable for the redesignated

misdemeanant. (Sec. 296, subd. (a) (1).) (*Alejandro N. v. Superior Court (San Diego), supra*, 238 Cal.App.4th at pp. 1229, 1230; and see Justice Pollak, dissenting in *In re C.B.*, review granted Nov. 9, 2016, No. S237801 [previously published at 2 Cal.App.5th 1112] at p. 1133.)[4]

Respondent misunderstands the effect of having an offense redesignated as a misdemeanor pursuant to section 1170.18. After redesignation, the offender stands adjudicated of a misdemeanor offense that does not qualify for DNA collection or retention. The offender no longer has an adjudication for a felony offense. This effect is expressed in section 1170.18, subdivision (k) which states that following redesignation, the offense shall be a misdemeanor for all purposes, except firearm restrictions. No other exceptions are expressed, including DNA retention.

Respondent discusses Proposition 69 and its DNA collection provisions at length. But the issue appellant presents on appeal is not a question of the interpretation of Proposition 69. Rather the issue here is the proper interpretation of Proposition 47, particularly, the interpretation of section 1170.18, subdivision (k) in relation to former felony offenses redesignated under subdivisions (f) and (g) as misdemeanors for all purposes. Nonetheless, respondent views the central issue on appeal as the proper interpretation of provisions codified by Proposition 69, a voter

[4] *In re C.B.* is on review in this Court. Cases pending on review may be cited for persuasive value. (Cal. Rules of Court, rule 8.115, subdivision (e).)

initiative passed in November 2004 – ten years before Proposition 47 – which added to the categories of persons required to provide their DNA to the state (sec. 296) and added provisions permitting expungement of DNA. (Sec. 299.)

Respondent focuses on Section 299, subdivision (f) which he interprets as precluding expungement of DNA for persons found guilty of qualifying felony offenses who subsequently receive a misdemeanor sentence or other post-conviction relief that does not alter the nature of their underlying felony convictions. As discussed below, even if this interpretation of the statutory language is correct, it does not apply to appellant. Appellant's application to redesignate his petty theft adjudication as a misdemeanor was granted, and that changed the nature of the adjudication. Further, AB 1492, the amendment to section 299, subdivision (f) which expressly added section 1170.18 to the list of statutes that do not authorize a judge to relieve a person of the duty to provide a DNA sample, is an invalid amendment of Proposition 47 and its enactment postdates the redesignation petition and order in this case making it inapplicable to appellant's case.

Respondent emphasizes that Proposition 69 reflected a recognition that non-violent offenders may have committed violent crimes yielding DNA evidence. But respondent repeatedly ignores the fact that Proposition 69 did not require collection of DNA from persons convicted or adjudicated

of most misdemeanor offenses. Apparently, the voters who enacted Proposition 69 did not view these misdemeanor offenders as raising significant public safety concerns.

The focus of this Court's analysis should properly be on applying principles of statutory construction to interpret Proposition 47 and harmonizing that more recent initiative with the pre-existing provisions of Proposition 69, properly construed. As discussed below, these two statutory schemes may be harmonized by recognizing that appellant no longer has an adjudication for a misdemeanor sex or arson offense or a felony offense entitling the state to collect or retain his DNA, and by granting appellant's request for expungement.

Granting appellant, and others like him, the remedy of DNA expungement will not significantly decrease the state's stock of DNA or negatively impact the state's crime-solving abilities. This remedy will be available to a narrow group of redesignated misdemeanants who were required, prior to November 5, 2014, to submit their DNA to the state based solely on the underlying felony conviction or adjudication. Appellant falls into this category because he committed his petty theft crime, stealing pants worth $46, in April 2011 and admitted to felony grand theft in July 2011. His DNA was collected based on this sole felony adjudication. The state has produced no evidence that in the six years since that adjudication, he

was convicted or adjudicated of any felonies or sex and arson misdemeanors or arrested as an adult for any felony.

B. Principles Of Statutory Construction Support Appellant's Interpretation of Section 1170.18, subdivision (k).

The parties agree that the issue in this case involves statutory construction, and that this is a question of law reviewed de novo. The parties also agree on the general principles aimed at determining the enactors' intent. (Opening Brief on The Merits ["OBOM"], pp. 23-25; RBOM, pp. 30-31.) However, while respondent focuses on applying these principles to interpret provisions of Proposition 69, particularly section 299, appellant asks this Court to apply the well-established principles to interpreting Proposition 47 as codified in section 1170.18.

Specifically, the question whether appellant's DNA should be expunged because his theft adjudication has been designated as a misdemeanor involves interpreting the statutory language stating that his offense is "a misdemeanor for all purposes" except for restrictions on firearm possession or ownership. (Sec. 1170.18, subd. (k).)

Appellant and respondent agree on most of the key principles of statutory construction, but respondent ignores important rules of statutory construction which are relevant to the interpretation of section 1170.18, subdivision (k).

First, if a statute states one exception, it precludes other exceptions not expressed. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852; *In re James H.* (2007) 154 Cal.App.4th 1078, 1084.)

Second, it is assumed that the Legislature or voters know of existing laws and judicial constructions when it enacts a law "and to have enacted or amended a statute in light thereof." (*People v. Superior Court* (*Cervantes*) (2014) 225 Cal.App.4th 1007, 1015.)

Third, in interpreting a statute significance should be given to every word and surplusage should be avoided. Courts are reluctant to interpret a provision of a statute or initiative in a way that renders another word or phrase unnecessary or nugatory. (*In re Anthony C.* (2006) 138 Cal.App.4th 1493, 1510.)

The plain language of section 1170.18, subdivision (k) stating that offenses redesignated as misdemeanors should be treated as misdemeanors "for all purposes" except firearm restrictions precludes DNA retention. See *Alejandro N. v. Superior Court (San Diego), supra*, 238 Cal.App.4th at p. 1227. The intent of the voters to afford redesignated misdemeanors this comprehensive retroactive and prospective treatment was expressed in clear and unambiguous language in section 1170.18, subdivision (k).

Section 1170.18, subdivision (k) included one exception for firearm restrictions to the "misdemeanor for all purposes" language. Retention of DNA after redesignation was not included as an exception. By stating one

exception for firearm restrictions, other exceptions not expressed, such as DNA retention, are precluded. (*Alejandro N. v. Superior Court (San Diego), supra*, 238 Cal.App.4th at p. 1227; *Gikas v. Zolin*, *supra*, 6 Cal.4th at p. 852; *In re James H., supra,* 154 Cal.App.4th at p. 1084.)

The drafters of Proposition 47 and the voters who enacted the initiative are assumed to have known of laws existing in 2014, including the provisions of the California DNA Act governing the collection, retention and expungement of DNA. (*People v. Superior Court (Cervantes), supra,* 225 Cal.App.4th at p. 1015, and see *Alejandro N. v. Superior Court (San Diego), supra*, 238 Cal.App.4th at pp. 1227-1228.) However, they did not include DNA collection or retention as an exception to the misdemeanor treatment of the offense. (*Ibid.*)

The Court in *Alejandro N.* concluded that the voters did not intend for an offense redesignated as a misdemeanor pursuant to Proposition 47, to be deemed a felony for purposes of retaining DNA samples. The clear statement that the offense should be treated as a misdemeanor "for all purposes", excepting firearm restrictions, required the court to expunge Alejandro's DNA. (*Id.* at pp. 1228, 1230.) Justice Pollak, dissenting in *In re C.B*, concurred with *Alejandro N.* (*In re C.B.*, *supra,* 2 Cal.App.5th at p. 1130.)

That conclusion, based on applying well-established principles of statutory construction, applies to appellant.

C. The Redesignation Of An Offense Under Section 1170.18, Subdivision (f) Results In A Misdemeanor Adjudication Which Is Different From The Effect Of Reducing A Wobbler To A Misdemeanor For Sentencing Under Section 17, Subdivision (b), And Thus Similar Language In The Two Provisions Should Not Be Given The Same Interpretation.

Throughout his brief, respondent contends that persons whose felony convictions or adjudications are redesignated as misdemeanors pursuant to section 1170.18 should be treated exactly like offenders who are found guilty of felonies and then sentenced or resentenced as misdemeanants under section 17, subdivision (b), specifically (b) (1) and (3). Consequently they should be denied expungement. (RBOM, pp. 27, 34-42.) Respondent reasons that the language "misdemeanor for all purposes" in section 1170.18 should be interpreted the same way it is interpreted in section 17. (RBOM, pp. 35-42.)

Respondent maintains that section 1170.18, subdivision (k) and section 17 use the same language, "misdemeanor for all purposes", to "[accomplish] the same task of reducing a felony to a misdemeanor." (RBOM, pp. 35, 39.) Respondent misstates the task performed by section 1170.18 in this matter and in so doing, errs in his analysis. First, section 1170.18 is not merely a resentencing statute, and appellant did not apply for resentencing. He applied for and was granted redesignation of his adjudication from a felony to a misdemeanor. Second, the redesignation of appellant's theft adjudication to a misdemeanor petty theft pursuant to

section 1170.18, subdivisions (f) and (g) is not a "reduction" of charges under the individual circumstances. The redesignation of a felony offense under section 1170.18 removes the offense from the felony category permanently making DNA collection and retention unavailable. (*Alejandro N. v. Superior Court (San Diego), supra*, 238 Cal.App.4th at p. 1229-1230; see also *In re C.B., supra*, 2 Cal.App.5th at pp. 1132-1133, dis. opn. of Pollak, J.) Post-redesignation, appellant stands adjudicated of a misdemeanor petty theft which no longer qualifies for inclusion in the state's DNA database.[5] Unlike section 1170.18 redesignation which changes the nature of the underlying offense from a felony to a misdemeanor, section 17, subdivision (b) offers no such retroactive remedy. Thus, a felony offense that is sentenced or resentenced as a misdemeanor pursuant to section 17 would be treated as a misdemeanor "for all purposes" only from that time forward.

Justice Pollak, dissenting in *In re C. B., supra*, 2 Cal.App.5th 1112, 1132-1133, emphasized the critical distinction between section 17, subdivision (b) and section 1170.18. Under section 17, reduction of a wobbler offense to a misdemeanor offense requires a court to exercise discretion in determining that the circumstances of a particular case justify

[5] Appellant does not challenge the validity of the order that entitled the state to collect his DNA at the time that appellant admitted to felony theft in July 2011. Rather, appellant argues that the state has no right to retain his DNA because by virtue of section 1170.18 redesignation, appellant now stands adjudicated of misdemeanor petty theft, a non-qualifying offense. He is entitled to the remedy of expungement. (*In re C.B., supra*, 2 Cal.App.5th at p. 1136, dis. opn. of Pollak, J.)

treatment of the offense as less serious than a felony. However, the offender remains guilty of a felony. The offense itself remains a felony under law and in the particular case, even though the offender has received a reduced sentence based on individual circumstances. In contrast, under section 1170.18, upon redesignation of a felony offense to a misdemeanor, the nature of the offense changes and the offense is removed from the felony category. (*Ibid.*, citing *Alejandro N. v. Superior Court (San Diego), supra*, 238 Cal.App.4th at p. 1230.) See also *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978.

Thus, the task performed by the trial court pursuant to section 17 is a discretionary choice based on the offender's profile. The task performed by the court upon redesignation of a felony adjudication pursuant to section 1170.18, subdivision (f) and (g) is an automatic redesignation based on the type of offense. The focus is not on the offender but on the category of offense originally adjudicated. By voting to enact Proposition 47 the voters decided that a petty theft valued under $950.00, as in the present case, was a nonserious and nonviolent crime that was to be redesignated from a felony to a misdemeanor, unless the offense was committed by certain ineligible offenders of which appellant is not one. (Sec. 1170.18, subd. (i).)

In addition, while the language used in sections 17 and 1170.18 is substantially similar, there is an important difference in the two phrases. Respondent ignores the fact that the language in section 1170.18 states an

express exception to the "misdemeanor for all purposes" treatment-specifically, firearms restrictions. Retention of DNA after redesignation was not included as an exception. By stating one exception for firearm restrictions, other exceptions not expressed, such as DNA retention, are precluded. (*Gikas v. Zolin, supra,* 6 Cal.4th at p. 852; *In re James H., supra,* 154 Cal.App.4th at p. 1084.)

Respondent's reliance on *Coffey v. Superior Court* (2005) 129 Cal.App.4th 809 is misplaced. *Coffey* is distinguishable as it involved the effects of resentencing under section 17, subdivision (b) and not the effects of redesignation under section 1170.18.

Coffey involved the defendant's request to have his previously collected DNA expunged after sentencing reduction pursuant to section 17, subdivision (b). The defendant pled guilty to battery, a wobbler offense, as a felony. He received a sentence for misdemeanor battery. The defendant challenged the validity of the order that required him to submit his DNA after the felony plea, claiming he was not "convicted" until sentencing and that he was sentenced as a misdemeanant. The Court of Appeal held that the duty to provide DNA arose at the time defendant pled guilty to a felony and that the imposition of the misdemeanor sentence did not obviate that duty, because the offense would be treated as a misdemeanor only from the time of resentencing onward.

The defendant in *Coffey* had not requested expungement by arguing that he no longer had a qualifying offense, nor could he have done so. As established above, the reduction of a felony offense to a misdemeanor at sentencing based on the individual offender's facts under section 17, subdivision (b), does not change the nature of the offense of which the offender was found guilty. Defendant still had a conviction for felony battery-that offense had not been reclassified-although it would be treated as a misdemeanor from sentencing onward.

Appellant's situation is distinguishable. When appellant's application for redesignation of his theft adjudication was granted pursuant to section 1170.18, subdivision (f) and (g), it was because the classification of the offense had changed from felony theft to misdemeanor petty theft "for all purposes" except firearm restrictions. That misdemeanor offense was not a qualifying offense for purposes of DNA collection and retention. He was entitled to expungement.

Respondent also cites *People v. Rivera* (2015) 233 Cal.App.4th 1085 in support of his contention that the "misdemeanor for all purposes" language of section 1170.18, subdivision (k) and section 17 should be construed the same way. (RBOM, p. 37.) *Rivera* is not dispositive. *Rivera* involved an adult criminal case in which a defendant was charged in an information with a felony and was convicted of a felony. The defendant was resentenced to a misdemeanor under Proposition 47, pursuant to

section 1170.18, subdivisions (a) and (b). (*Id.* at pp. 1090-1091.) The question for the Court in *Rivera* was whether the Court of Appeal, as opposed to the Superior Court Appellate Division, had appellate jurisdiction over the appeal of the resentenced misdemeanor offense. (*Id.* at p.1089.)

Rivera concerned established rules of appellate jurisdiction, which focus on whether a felony is charged in an information, not whether the defendant was convicted of a felony or a misdemeanor. The fact that the defendant's offense was redesignated as a misdemeanor for all purposes following resentencing was irrelevant. Changing the nature of the conviction offense from a felony to a misdemeanor did not alter appellate jurisdiction. Further, unlike the *Rivera* case, the instant matter is a juvenile case. Appeals in juvenile cases are heard in the Court of Appeal regardless of offense category. (See, Cal. Rules of Court, rules 8.400, 8.401, 8.405.)

Thus, *Rivera* is not dispositive on the question presented here. (See *People v. Knoller* (2007) 41 Cal.4th 139, 154-155.)

Consequently, the language "misdemeanor for all purposes" in section 1170.18 should not be interpreted in the same way it is interpreted in section 17. The redesignation of an offense under section 1170.18, subdivision (f) results in a misdemeanor adjudication that is not eligible for DNA collection or DNA retention if previously collected.

D. The Expungement Of Appellant's DNA Is Consistent With The Intent Of Proposition 69, Permitted By Section 299, Subdivision (a), And Not Precluded By The Version Of Section 299, Subdivision (f) In Effect At The Time That Appellant's Adjudication Was Redesignated As A Misdemeanor.

1. The Provisions Of Proposition 69 Demonstrate The Voters Found No Public Safety Need To Expand DNA Collection To Juvenile Misdemeanants.

Respondent's principal argument is that expunging appellant's DNA, following the redesignation of his petty theft offense from a felony to a misdemeanor for all purposes, is inconsistent with the purpose and the provisions of Proposition 69, the initiative passed in 2004 to amend the California DNA Act. (RBOM, pp. 18-23, 31-34.) Respondent is incorrect.

The purpose of Proposition 69 was to use DNA to effectively identify the unknown perpetrators of past and future crimes, when those perpetrators left DNA at the crime scene. (RBOM, pp. 18-20, 43.) Those crimes yielding DNA evidence are usually violent crimes, particularly murders and sex offenses. (See *Rise v. Oregon* (9th Cir. 1995) 59 F.3d 1556, 1561.) Yet the passage of Proposition 69 reflected an understanding that violent crimes may be committed by persons previously convicted of non-violent offenses. (RBOM, pp. 19-20.)

Consequently, when Proposition 69 was enacted the voters chose to expand the categories of offenders required to provide their DNA to the state. (RBOM, pp. 19-20.) The requirement was extended to include all

offenders found to have committed any felony, all offenders found to have committed sex or arson misdemeanors, and all adults arrested for felonies.[6] The voters purposely excluded from the DNA collection requirement adults convicted and juveniles adjudicated of any misdemeanors, except arson and sex offenses. (Sec. 296, subd. (a).) Further, juveniles were excluded from the requirement to provide DNA upon their arrest and prior to adjudication. (Sec. 296, subd. (a) (2).) These provisions demonstrate that the voters believed there was no public safety need to collect DNA from almost all misdemeanants, adult or juvenile.

The public safety concern underlying Proposition 69 is therefore consistent with appellant's interpretation of section 1170.18, subdivision (k): that upon redesignation, appellant now had a misdemeanor adjudication. It is a misdemeanor for all purposes, except firearm restrictions. Having a misdemeanor adjudication, appellant no longer qualifies for DNA collection and retention.

Respondent maintains that DNA retention is required for juvenile misdemeanants who have had their felony adjudications redesignated as misdemeanors because the "majority of violent criminals have non-violent criminal prior convictions." (RBOM, pp. 33, 43, and see pp. 56-57.)

---

[6] The provision to allow the collection of DNA samples from adults arrested for any felony offense was struck down by *People v. Buza* (2014) 231 Cal.App.4th 1446. The California Supreme Court granted review of *Buza* on February 18, 2015, S223698, but a decision has not yet issued.

Respondent cites two limited Department of Justice ["DOJ"] studies in support of this assertion.[7]

Before discussing the problems with these studies appellant emphasizes that he now stands adjudicated of a crime, misdemeanor petty theft, that the voters of California recently decided should be treated as a misdemeanor. Respondent disregards the fact that concerns with public safety and the possible dangerousness of non-violent offenders did not compel the voters who passed Proposition 69 to require persons convicted or adjudicated of almost all misdemeanors to submit their DNA. Nor did they require collection from adults arrested for misdemeanors.

Nevertheless, the studies of adult felony arrestees are of minimal probative value. The first DOJ study in 2012 was of 100 adult felony arrestees with no prior felony convictions. The second study in 2013 was of 3,778 adult felony arrestees. Both studies found the majority of DNA database hits between these persons and murder, rape & robbery crimes came from DNA database samples collected at their arrest for lower level crimes. However, respondent's authority is unpersuasive and inapposite. Both studies involved a very small sample size of adult felony arrestees

---

[7] Cal. DOJ, DNA Database Hits to Murder, Rape, and Robbery: Two Studies of the Correlations Between Crime of Arrest and DNA Database Hits to Murder, Rape, Robbery Offenses found here https://oag.ca.gov/sites/all/files/agweb/pdfs/bfs/arrestee_2013.pdf?

compared to the number of total adult felony arrestees.[8] In particular, a sample of 100 adult arrestees is not statistically significant. Moreover, the studies compared adult felony arrestees. In this case appellant is a juvenile adjudicated for misdemeanor conduct and thus the two DOJ studies are inapplicable to this case and should not be considered by the Court.

2. The Expungement Of Appellant's DNA After His Offense Has Been Redesignated As A Misdemeanor Petty Theft Is Permitted By Section 299, Subdivisions (a) And (b) Because Appellant No Longer Has An Offense Which Qualifies His DNA For Inclusion In The State's Database.

Section 299, subdivision (a) permits a person to seek expungement "if the person has no past or present offense or pending charge which qualifies that person for inclusion" in the state's DNA database and if "there otherwise is no legal basis for retaining the specimen or sample or searchable profile." When subdivision (a) conditions are met, subdivision (b) describes the four circumstances where a person may ask that the specimen and sample be destroyed and searchable database profile expunged.

In the instant case, appellant's redesignated adjudication is not a qualifying offense for inclusion in the state DNA database. (Secs. 299,

---

[8] The number of adults arrested for felonies was 295,465 in 2012 and 305, 503 in 2013. See California Department of Justice, Crime in California 2015, Tables 37 & 38A at pp. 49-50, found at https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd15/cd15.pdf.

subd. (a), 296.) The state has produced no evidence indicating that appellant has any subsequent juvenile adjudications or adult convictions which would authorize the state to collect his DNA. Yet it is evident that appellant does not fall within any of the four conditions permitted by section 299, subdivision (b). The fact that appellant does not fall within the statutory provisions for expungement does not mean the remedy of expungement is not available for his redesignated misdemeanor adjudication. In this case, appellant's redesignated misdemeanor no longer qualifies as an offense permitting DNA collection. This brings appellant within the scope of section 299, subdivision (a), even though the redesignation process which created the right to expungement is not described within section 299, subdivision (b) (See *In re C. B.*, *supra*, 2 Cal.App.5th at p. 1137, dis. opn. of Pollak, J.) Furthermore, when section 299, subdivision (b) was enacted in 2004 the condition precedent for expungement as a result of redesignation pursuant to section 1170.18 – the successful misdemeanor redesignation of a previously qualifying offense for DNA inclusion in the state database - did not exist. (*Ibid.*)

However, the redesignation of appellant's felony adjudication pursuant to section 1170.18, subdivision (f) is analogous to the process permitting DNA expungement referenced in section 299, subdivision (b) (2). Section 299, subdivision (b) (2) provides for expungement of a DNA sample where "[t]he underlying conviction or disposition serving as the

basis for including the DNA profile has been reversed and the case dismissed." Where a person successfully seeks expungement pursuant to section 299, subdivision (b) (2) the underlying felony which provided the basis for collection of the person's DNA is reversed. Thus, the offender no longer has a qualifying conviction for inclusion in the DNA database. Similarly, in appellant's case, pursuant to a successful section 1170.18, subdivision (f) petition, appellant no longer has a qualifying adjudication for DNA retention. While appellant had a qualifying adjudication at the time of his admission, upon redesignation the nature of his adjudication was changed to a misdemeanor petty theft which does not qualify for inclusion in the state's DNA database. (Sec. 296, subd. (a).)

3. The Version Of Section 299, Subdivision (f) In Effect When Appellant's Adjudication Was Redesignated As A Misdemeanor Did Not Preclude Expungement Of Appellant's DNA.

Section 299, subdivision (f) prohibits a judge from "[relieving] a person of the separate administrative duty to provide" DNA samples "notwithstanding any other law." (Sec. 299, subd. (f).) At the time appellant requested expungement upon redesignation of his petty theft offense to a misdemeanor, section 299, subdivision (f) listed three statutes as examples of laws that did not allow relief from the duty to provide DNA to the state-sections 17, 1203.4 and 1203.4a. Subdivision (f) was amended by AB 1492 to add section 1170.18 to the list, effective January 1, 2016. This argument

addresses the version of the statute in effect when appellant applied for redesignation and expungement.

Respondent contends that even before its amendment by AB 1492, section 299, subdivision (f) prohibited DNA expungement when a felony is reduced to a misdemeanor in a post-conviction proceeding. Respondent also contends that section 299, subdivision (f) is a specific act prohibiting DNA expungement "notwithstanding any other provision of law" and that it controls over Proposition 47's general provisions, particularly because Proposition 47 was silent on the subject of DNA collection and retention. (RBOM, p. 46.) Respondent is incorrect.

Section 299, subdivision (f) does not affect appellant's eligibility for expungement because the redesignation procedure under Proposition 47 results in a misdemeanor offense that does not qualify as an offense permitting DNA collection. (Sec. 296, subd. (a).) Appellant is entitled to expungement under section 299, subdivision (a) and 296, subdivision (a). This circumstance is outside the matters contemplated by Proposition 69. (See *Alejandro N. v. Superior Court, supra,* 238 Cal.App.4th at p. 1229; and see *In re C.B., supra,* 2 Cal.App.5th at p. 1131, and see p. 1137, dis. opn. of Pollak J.) As a result, section 299, subdivision (f) does not preclude expungement of appellant's DNA from the state database.

Respondent's interpretation of section 299, subdivision (f) conflates the "duty to provide" a DNA sample in subdivision (f) with "expungement"

of DNA samples which is specifically provided for in section 299, subdivisions (a) and (b) or the preclusion thereof discussed in subdivision (e). Justice Pollak, dissenting in *C.B*,. pointed out the Court in *In re J.C.* (2016) 246 Cal.App.4th 1462 impermissibly rewrote section 299, subdivision (f) when it found that the section was intended to preclude expungement. (*In re C. B.*, *supra*, 2 Cal.App.5th at pp. 1133-1134 and footnotes therein, dis. opn of Pollak, J.)

By emphasizing that Proposition 47, and particularly section 1170.18, subdivision (k), is silent on the issue of DNA expungement, respondent ignores principles of statutory construction which support appellant's interpretation of section 1170.18, subdivision (k). See OBOM, pp. 31-32 [drafters of Proposition 47 and voters presumably aware of then-existing DNA collection and expungement provisions of Penal Code and enacted Proposition 47 in light of this knowledge]. Further, the Legislature deliberately decided that redesignated offenses were misdemeanors "for all purposes" with one exception for firearm restrictions. "We presume the Legislature intended everything in a statutory scheme, and we should not read statutes to omit expressed language." (*In re Christian S.* (1994) 7 Cal.4th 768, 776.)

The redesignation procedure under section 1170.18 changed the nature of the offense for which appellant was adjudicated from a felony theft to a misdemeanor petty theft. However, the effect of a section 1170.18

redesignation is different from the effect of the reduction and dismissal statutes-sections 17, 1203.4 and 1203.4a-listed in section 299, subdivision (f). The reduction of a felony offense to a misdemeanor at sentencing is based on the individual offender's facts under section 17, subdivision (b) and does not have the retroactive effect of changing the nature of the offense of which the offender was found guilty. Like section 17, the section 1203.4 and 1203.4a dismissals are based on the individual offender's behavior and facts of each case: the offender's successful performance on probation (sec. 1203.4, subd. (a) (1)) and the completion of a misdemeanor sentence (sec. 1203.4a, subd. (a)). Moreover, like section 17, the dismissals under section 1203.4 and 1203.4a are not due to the reclassification of the nature of the offense for which the offender was convicted or adjudicated. Accordingly, the effect of a section 17 reduction and dismissal under sections 1203.4 and 1203.4a is different from the effect of a redesignation under section 1170.18 which changes the nature of the underlying felony offense. As a result, section 299, subdivision (f) does not preclude DNA expungement here.

E. The Provisions of Proposition 47 and Proposition 69 Can Be Harmonized In A Manner Consistent With The Intent And Purpose Of Each Statute.

Contrary to respondent's claims, the intent in enacting Proposition 47 as applied to juveniles is not to "reduce the number of non-violent" juvenile offenders in state prison or to reduce incarceration of juveniles.

(RBOM, pp. 23, 44.) That is an impossibility. (Welf. and Inst. Code, secs. 702, 726, subd. (d) (5); Cal. Rules of Court, rule 5.778, subd. (f); *In re Derrick B.* (2006) 39 Cal.4th 535, 540.) The intent in enacting Proposition 47 as applied to juveniles is to change the nature of their adjudications from felonies to misdemeanors, for all purposes but firearm restrictions, to assure that they are treated as misdemeanants and not felons, consistent with their nonviolent, nonserious drug possession and theft offenses.

The intent in enacting Proposition 69 was to identify felons and arson-and sex-related misdemeanants who commit unsolved crimes yielding DNA evidence in order to aid crime-solving. The voters decided that because offenders who were found to have committed more serious offenses were the ones likely to commit violent crimes yielding DNA evidence, only adults convicted and juveniles adjudicated of felony offenses and of misdemeanors requiring sex and arson registration were required to submit DNA to the state. (Sec. 296.) (See *Rise v. Oregon, supra,* 59 F.3d 1556, 1561.)

Respondent claims Proposition 47 and 69 can be harmonized by treating a redesignated misdemeanor as a felony for purposes of DNA retention, but not for other purposes except firearm restrictions. (RBOM, p. 42.) This "harmonization" is contrary to the provisions of both statutes. (See secs. 296, subd. (a) (3); 296.1, subd. (a) (2) (A), 299 and 1170.18.) The harmonization proposed by respondent ignores the plain language of

section 1170.18 and ignores the rule of statutory construction that the express statement of one exception to a rule precludes others. (*Gikas v. Zolin*, *supra*, 6 Cal.4th 841, 852; *Alejandro N. v. Superior Court*, *supra*, 238 Cal.App.4th at p. 1227.) With the passage of Proposition 47 the voters never intended that the redesignated misdemeanant would suffer any of the other consequences of a felony conviction or adjudication, other than firearm restrictions. Most importantly, the harmonization proposed by respondent ignores the intent of the enactors and the purpose of each statute. (*T.W. v. Superior Court*, *supra*, 236 Cal.App.4th at pp. 651-652.) See *In re C. B.*, *supra*, 2 Cal.App.5th at p. 1137, dis. opn. of Pollak, J. [interest in crime-solving provides no support for retaining DNA of redesignated misdemeanant in DNA databank].

Because Proposition 47 changed the nature of the qualifying drug possession or theft offense from a felony to a misdemeanor (*Alejandro N. v. Superior Court*, *supra*, 238 Cal.App.4th at p. 1229) juveniles like appellant no longer have qualifying offenses for DNA collection entitling them to expungement under section 299. This interpretation reconciles any perceived inconsistencies and construes section 1170.18 and sections 296 and 299 to give force and effect to *all* their provisions.

F. AB 1492 Unconstitutionally Amended Proposition 47 In A Manner That Is Inconsistent With The Intent Of The Initiative.

AB 1492, passed by the Legislature in September 2015 and effective January 1, 2016, added section 1170.18 to the list of statutes that do not authorize a judge to relieve a person of the duty to provide a DNA sample. (AB 1492, Sec. 5, subd. (f); sec. 299, subd. (f).)

AB 1492 unconstitutionally amended Proposition 47. AB 1492 substantially changed the legal consequences of the redesignation provisions of Proposition 47 and upset voter expectations by drafting an additional "exception" to the "misdemeanor for all purposes" provision of section 1170.18, subdivision (k) by prohibiting DNA expungement for crimes reclassified as misdemeanors pursuant to Proposition 47. (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 922.)

The amendment to section 299, subdivision (f) postdates the redesignation/expungement petition and order granting redesignation of appellant's felony theft adjudication to misdemeanor petty theft in this case. If the addition to 299, subdivision (f) is interpreted as precluding expungement and not merely the duty to collect DNA, and if it is not a clarification of existing law, it is an invalid amendment to Proposition 47. The amendment may not be applied to require retention of petitioner's DNA.

AB 1492's amendment to section 299, subdivision (f) is not merely a clarification of existing law relating to prohibitions on DNA sample expungement as respondent suggests. (RBOM, pp. 48-50.) As argued above, the prior version of section 299, subdivision (f) did not preclude expungement for an offender, like appellant, whose offense had been redesignated as a misdemeanor pursuant to Proposition 47. Further, redesignation under section 1170.18 changed the nature of appellant's adjudication from a felony to a misdemeanor that is not a qualifying offense for purposes of DNA collection and retention. (Sec. 296.)

Significantly, there is no express statement in AB 1492 which indicated the statute intended to clarify the scope of section 299, subdivision (f) or the availability of expungement in light of Proposition 47. Instead AB 1492 indicated that the statute was enacted in response to *People v. Buza, supra,* 231 Cal.App.4th 1446 and to "further the purposes" of the DNA Act *in light of the Buza case*. (See AB 1492, section 1.)[9]

Respondent claims that Proposition 47 had no impact on the state's right to retain a person's DNA. Respondent claims that Proposition 47 merely addressed reduction of punishment for specified crimes and cost savings related to reduced incarceration. This is a limited and inaccurate view of Proposition 47's purpose and effect, particularly for juveniles like

[9] *People v. Buza*, review granted Feb. 18, 2015, No. S223698 [previously published at 231 Cal.App.4th 1446].

appellant. Proposition 47 reclassified low-level drug possession and theft crimes as misdemeanors "for all purposes". It provided a retroactive remedy. (Sec. 1170.18, subd. (f), (g) and (k).) By redesignating certain felony offenses as misdemeanors "for all purposes" the voters determined that collection and retention of DNA for less serious crimes was not warranted and did not include it as part of the initiative. An offender like appellant who has had his offense redesignated as a misdemeanor pursuant to section 1170.18 is no longer adjudicated of a qualifying offense for DNA collection/retention. (Sec. 296.)[10]

If AB 1492's amendment to section 299, subdivision (f) is interpreted as precluding expungement, it amended Proposition 47 by adding another exception to the "misdemeanor for all purposes" treatment provided by section 1170.18, subdivision (k). Proposition 47 expressly allows amendment "so long as the amendments are *consistent with and further* the intent of this act." (Prop. 47, sec.15. [Italics added.]) To construe section 299, subdivision (f) to prohibit expungement of reclassified offenses is contrary to the intent of the initiative voters: to reduce the severity of the treatment and consequences for the crimes

[10] Importantly, appellant does not contend Proposition 47 regulates the subject of DNA expungement, or that voters sought to "upend" Proposition 69 or "silently change" it, and does not contest the provisions of Proposition 69, or the rules regulating DNA collection and expungement. (RBOM, pp. 52, 53, 54.) Rather, appellant contends his redesignated misdemeanor under section 1170.18 does not qualify for inclusion in the state DNA database and so his DNA sample must be expunged.

redesignated pursuant to section 1170.18. Therefore, retaining felony level treatment by allowing retention of DNA samples for crimes that will not be felonies in the future does not comply with the will of the voters.

If interpreted to prohibit expungement AB 1492 will amend Proposition 47 by modifying the directive that redesignated offenses be treated as misdemeanors for all purposes except firearms restrictions. The *Alejandro N.* court correctly held that DNA expungement for reclassified offenses was permissible and warranted under the law. AB1492 does not affect that holding. Justice Pollak agreed with this analysis. *(In re C. B., supra*, 2 Cal.App.5th at pp. 1134-1135, dis. opn. of Pollak, J., and see footnotes therein.)

The amendment to section 299, subdivision (f) relating to DNA collection does not change the court's authority to order expungement after a successful redesignation of an offense to a misdemeanor under section 1170.18. The Court of Appeal erred in affirming the juvenile court order denying expungement of appellant's DNA sample.

II. RETENTION OF APPELLANT'S DNA SAMPLE VIOLATES THE EQUAL PROTECTION CLAUSES OF THE CALIFORNIA AND FEDERAL CONSTITUTIONS.

Appellant's DNA was collected pursuant to section 296, subdivision (a), due to his 2011 felony adjudication for grand theft, shoplifting a pair of pants worth $46.00. That felony adjudication no longer exists – it has been redesignated as a misdemeanor petty theft "for all purposes." (Sec. 1170.18, subd. (k).) If appellant were adjudicated today, or if he had committed the identical crime on or after November 5, 2014, section 296, subdivision (a) would not apply, as adults and juveniles convicted or adjudicated of misdemeanors, except for sex or arson offenses, need not provide their DNA to the state. (Sec. 296.)

The voters who enacted Proposition 47 chose to give the reclassification of nonserious theft and drug possession offenses retroactive effect. Section 1170.18, subdivisions (a), allowing resentencing, and (f), allowing redesignation, puts offenders who committed their crimes prior to November 5, 2014, in the same position as offenders who commit the same crimes after the initiative's passage. Section 1170.18 permits these earlier offenders to have their felony convictions and adjudications changed to misdemeanor convictions and adjudications for all purposes except firearm possession and ownership. Appellant's adjudication has been redesignated as misdemeanor petty theft. Removal of his DNA from the state database is required in order to effectuate the mandate that he be treated the same as an

offender who committed the identical crime after passage of Proposition 47.

Allowing appellant's DNA sample to remain in the state database violates the equal protection clauses of the state and federal constitutions because there is no rational basis for treating offenders who become misdemeanants, pursuant to section 1170.18, differently from persons who committed the same misdemeanor crimes on or after November 5, 2014. (Cal. Const., art. I, sec. 7, subd. (a); U.S. Const., Fourteenth Amend.)

Respondent cites *People v. Morales* (2016) 63 Cal.4th 399 in support of his argument that former felony offenders who received the benefit of section 1170.18 are not similarly situated to offenders who commit the same crimes after the initiative's passage who are not required to provide DNA. (RBOM, p. 56.) *Morales* held that credit for time served did not reduce the discretionary parole period mandated by section 1170.18, subdivision (d). (*Id.* at p. 403.) Defendant argued principles of equal protection mandated treating those resentenced under Proposition 47 the same as those originally sentenced under section 2900.5 which provides that credit for time served can reduce a parole period. The Court found no equal protection violation: "The voters could rationally conclude that those who receive the benefit of a new misdemeanor sentence should at least be placed on parole when released on the reduced sentence." (*Id.* at p. 409.)

Morales is distinguishable from the present matter. Unlike the *Morales* case appellant is a juvenile who is not subject to resentencing, or the parole period mandated by section 1170.18, subdivision (d). Further, the voters who enacted Proposition 47 rationally concluded that those who receive the benefit of a redesignated misdemeanor adjudication under section 1170.18, received that benefit "for all purposes" except for firearm restrictions. (Sec. 1170.18, subd. (k).) These purposes include DNA collection and retention.

Contrary to respondent's claim, Proposition 69 and the concern for identifying the unknown perpetrators of crime yielding DNA evidence does not provide a rational basis for retaining the DNA of misdemeanants like appellant. Proposition 69 does not require collecting, much less retaining, DNA samples from misdemeanants other than those committing sex and arson crimes. The vast majority of misdemeanors are not qualifying offenses for DNA collection and retention. (Sec. 296.) The voters who enacted Proposition 69 made a policy decision that the vast majority of persons convicted or adjudicated of misdemeanors were not likely recidivists.

Proposition 47 established that certain less serious behavior, drug possession and theft offenses, specifically theft of property worth less than $950, did not warrant felony treatment and instead warranted misdemeanor treatment for all purposes except firearm restrictions. Considering the intent

behind both Proposition 69 and Proposition 47, there is no reasonable basis for finding, as respondent argues, that those adjudicated for misdemeanor petty theft in the future should be excluded from providing DNA samples, "but DNA from persons previously convicted of the same offense should be retained in the [DNA] databank." See *In re C. B.*, *supra*, 2 Cal.App.5th at pp. 1137-1138, dis. opn. of Pollak, J.

Accordingly, the retention of appellant's DNA in the state database violates his equal protection rights under the state and federal constitutions. (Cal. Const., art. I, sec. 7, subd. (a); U.S. Const., Fourteenth Amend.)

CONCLUSION

Appellant respectfully requests that this Court remand his case to the juvenile court and order that appellant's DNA sample be removed from the state DNA databank.

Respectfully submitted,

Patricia Cooney

Dated: July 10, 2017

Patricia Cooney
Attorney for C.H.
Defendant and Appellant

PROOF OF SERVICE BY MAIL

I, Patricia N. Cooney, declare that I am over 18 years of age, and am not a party to the action described in the document attached. My business address is 1108 Fresno Avenue, Berkeley, California, 94707. I am employed in Alameda County.

On July 10, 2017 I served a true copy of the attached APPELLANT'S REPLY BRIEF ON THE MERITS

on each of the following via the True Filing system:

California Court of Appeal
First Appellate District, Div. Three
350 McAllister Street
San Francisco, CA. 94102

Xavier Becerra
Attorney General
455 Golden Gate Avenue, Ste. 11000
San Francisco, CA. 94102

First District Appellate Project
475 Fourteenth Street, Suite 650
Oakland, CA 94612

and on each of the following via the USPS:

District Attorney
Contra Costa County
725 Court Street, 4th Fl. Room 402
Martinez, CA. 94553

Contra Costa County Superior Court
725 Court Street
Martinez, CA. 94553
Attn.: Hon. Thomas M. Maddock

Karen Moghtader, Deputy Public Defender
Contra Costa County Office of the Public Defender
800 Ferry Street
Martinez, CA. 94553

C.H.
c/o Karen Moghtader, Deputy Public Defender
Contra Costa County Office of the Public Defender
800 Ferry St.
Martinez, CA. 94553

by placing same in sealed envelopes, addressed to each of the individuals named above, with first class postage thereon, and then depositing same in the U.S. mail at Berkeley, California.

I declare under penalty of perjury that the foregoing is true and correct.

Patricia Cooney

WORD COUNT CERTIFICATE

I hereby certify, under penalty of perjury, that the attached Appellant's Reply Brief on the Merits, minus the Tables, Proof of Service and Word Count Certificate, contains 8,375 words, as determined by the computer program used to prepare this document.

Respectfully submitted,

Dated: July 10, 2017

Patricia Cooney
Attorney for Appellant