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No. S263923

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.
VICTOR WARE, ET AL.,
Defendant and Appellant.

Fourth Appellate District, Division One, Case No. D072515
San Diego County Superior Court, Case No.
The Honorable Leo Valentine, Jr., Judge

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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QUESTIONS PRESENTED

Does sufficient evidence support Hoskins's count 1 conviction of conspiracy to commit murder?

INTRODUCTION

Appellant Nicholas Hoskins, a member of the San Diego 5/9 Brim ("Brim") criminal street gang, a Blood-affiliated gang, conspired with fellow gang members to kill several individuals who were members of rival Crip gangs. This "gang war" was sparked by the April 2011 murder of Brim member Dereck Peppers by Crip gang members. Between June 2011 and April 2014, a subset of the Brim gang, collectively known as the Hit Squad, committed several shootings, murders, and attempted murders against members or suspected members of two of their rival gangs, the Neighborhood Crip (NC) and West Coast Crip (WCC) gangs. The conduct of Hoskins, a high-level member of the Hit Squad, over the life of the conspiracy established his participation and intent in this ongoing conspiracy to kill rival Crips.

On appeal, Hoskins claimed that insufficient evidence supported his conviction for conspiracy to commit murder because the conviction was based on circumstantial evidence of a conspiracy, and the only connection Hoskins had to the conspirators was common gang affiliation and social media posts. The Court of Appeal rejected this contention and concluded that the evidence supported the reasonable inference that Hoskins and his co-conspirators tacitly reached a mutual agreement to

kill rival NC and WCC gang members. Accordingly, the Court of Appeal held that substantial evidence supported Hoskins's conviction for conspiracy to commit murder.

The Court of Appeal was correct. Viewing the evidence as a whole, there was ample evidence that Hoskins was part of the ongoing conspiracy and had the intent to kill rival gang members. This evidence comprised of, among other things, Hoskins's common gang affiliation with his co-conspirators, including his involvement in the gang's Hit Squad; his social media posts over the life of the conspiracy, through which he not only encouraged and promoted Crip killing but also tried to influence witnesses, threaten snitches, and encourage Hit Squad members not to back down in order to ensure the success and continuation of the conspiracy; and his possession of guns for the benefit of the gang.

STATEMENT OF THE CASE

A. Hoskins conspires with his fellow Brim members to kill rival Crip gang members

1. Hoskins is an active member of the Brim gang and Hit Squad subset

Brim is a criminal street gang in San Diego that has between 200 and 220 members at any given time. (19 RT 2551, 2558, 2574-2576; 28 RT 4213; 35 RT 4983, 4993, 4996-4998.) Brim has several cliques or subsets that include Tiny Hit Squad, Young Hit Squad, and Hound Unit Mafia, and because there was

a lot of crossover between these subsets, they were often referred to collectively as the Hit Squad.¹ (19 RT 2627; 34 RT 4814-4815.)

Hoskins, aka Bick Nick, Mikey 3, or Baby Mikey, is a documented Brim gang member who had a “B” tattooed on his chest, like the Superman emblem, to show his support. (28 RT 4213; 35 RT 4996-4998.) Hoskins is also member of the Hit Squad. (19 RT 2627; 34 RT 4814-4815.) Members of the Hit Squad included Hoskins’s co-conspirators and co-defendants at trial Dionte Simpson and Victor Ware, as well as co-conspirators Mykein Price, Jamon Smith, Timothy Hurst, Lamont Holman, Norman Sanchez, Nino Sanchez, Damonte Lucas, Clyde Ellis, Deondre Cooper, Edward Laplanche, Aaron Hurst, Jontae Jones, Leron Johnson, Steven Mahaney, Brandin Orchard, Edward Paris, Maurice Chavarry, Rahman Taylor, and Sherbly Gordon. (19 RT 2586-2588; 27 RT 3980, 4096-4097; 34 RT 4811-4812, 4815; 35 RT 4856; 36 RT 5115-5159; 2 Supp. CT 222-225.)

Brim has a violent rivalry with Crip gangs, and Neighborhood Crips (NC) and West Coast Crips (WCC) are their main rivals. (19 RT 2557-2558; 34 RT 4800.) Brim gang members used social media, such as Facebook and Instagram, to disrespect and challenge their rival gang members, and to brag about their violent activities. (36 RT 5159-5160, 5180-5181.) They also posted videos, songs, and photographs showing their goal to kill Crips. (See, e.g., 36 RT 5112-5113.)

¹ In gang terms, a “hit” means to kill someone. (38 RT 5561.)

At trial, Investigator David Collins² testified as a gang expert. (19 RT 2540-2542.) While with the San Diego Police Department, Investigator Collins worked on the Gang Suppression Team, which was a group of officers who targeted a particular area that had recent gang violence, and they would saturate it with officer presence. (19 RT 2542-2543.) Between October 2011 and October 2015, he focused on the Brim gang and he gathered intelligence on gang members and their activities, including having conversations with gang members as well as victims and witnesses of gang crimes. (19 RT 2545-2547, 2550.) He also monitored social media accounts of Brim gang members. (34 RT 4806.)

2. The conspiracy is formed after Brim gang member Dereck Peppers was killed by rival gang members

On April 11, 2011, Dereck Peppers, a well-known and prominent Brim gang member was shot and killed in a drive-by shooting. (19 RT 2576; 28 RT 4218-4219; 34 RT 4790-4792; 35 RT 4943-4944.) His murder triggered a series of shootings and murders between Brim and rival Crip gang members, which formed the basis for the conspiracy to commit murder charge. (19 RT 2576; 28 RT 4218-4219; 34 RT 4790-4792; 35 RT 4943-4944.)

² Investigator Collins worked for the San Diego Police Department for almost 20 years, nine of which as a gang detective. In October 2015, he left the police department, and went to work as an investigator for the San Diego District Attorney's office. (19 RT 2539-2540; 37 RT 5374.)

In support of the ongoing conspiracy, the prosecution presented evidence of 101 overt acts, which included 13 shootings committed by Brim gang members and co-conspirators occurring over an approximate two-and-a-half-year timeframe. (4 CT 870-882.)

As described below, during the duration of the gang war, Hoskins was actively involved with the gang's kill squad and his co-conspirators. Hoskins used social media to not only boast about the shootings and violence, but to also encourage and ensure the continuation of the conspiracy to kill rival gang members.

3. June 14, 2011 shooting by Simpson on behalf of the Brim gang at Crips near Monroe Clark Middle School

On June 14, 2011, co-conspirators Dionte Simpson, Brandin Orchard, and Edward Paris got into an altercation with two rival Crip gang members. (17 RT 2051, 2061-2063, 2077-2079, 2184-2186, 2207-2210, 2215-2216; 18 RT 2306, 2414-2418, 2422-2423; 19 RT 2487; 21 RT 2862-2866, 2874-2875, 2881.) Paris and Orchard began throwing up gang signs with their hands. (17 RT 2211, 2217; 18 RT 2306-2308, 2310, 2316-2318, 2331-2332, 2336, 2428-2429.) As the two Crip gang members started to walk away, Simpson pulled out a gun, said "Fuck Crabs,"³ and fired two shots. (17 RT 2052-2057, 2060-2066, 2187-2189, 2195-2196, 2211-2212, 2225-2229, 2239, 2243; 18 RT 2344-2349, 2423, 2430-

³ A "crab" is a derogatory term for a rival Crip gang member. (18 RT 2421.)

2432, 2434; 19 RT 2487-2490.) The two rival gang members fled the scene. (17 RT 2213, 2227.)

After the shooting, officers located Orchard, Paris, and Simpson, as well as Brim gang members Maurice Chavarry and Damonte Lucas in Orchard's apartment, which was near the scene of the shooting. (17 RT 2080, 2089-2091, 2093-2097, 2103, 2113, 2213-2214, 2228; 19 RT 2511-2513; 21 RT 2867-2871.)

Officers searched the garage of the apartment and found Brim gang graffiti, including the number "311," which commonly referred to "CK" or "Crip Killer," because "c" is the third letter of the alphabet, and "k" is the eleventh letter. (17 RT 2080-2081, 2163; 18 RT 2465; 19 RT 2588-2590, 2638; 35 RT 4834-4844.)

Several gang monikers were written on the walls of the garage, including Paris's (Baby Dell), Chavarry's (Reese Bo), Ware's (CK Vick), and Hoskins's (Baby Black Mikey). (19 RT 2589; 35 RT 4835-4844.)

4. Hoskins starts posting on Facebook about killing Crips

On December 12, 2011, Hoskins posted a Facebook status update that said, "Every day I turn more and more into a demon. There was a point in time when I had conskienke⁴, when I valued another human's life, had morals and akctually gave a fuck. Been hungry so long all I kare about is eatin dnt matter or who I'm eating. Bick Nick 5/9." (35 RT 5007.)

⁴ Blood gang members often used a "k" in place of a "c." (35 RT 5007.)

5. January 2012 shootings back and forth between Brims and Crips (Overt Acts 1-3), and Hoskins's Facebook post encouraging and promoting the shootings

On the afternoon of January 3, 2012, shots were fired at a house in WCC gang territory. (20 RT 2679-2680, 2686-2687, 2692-2698; 35 RT 4844-4845.) WCC gang member Michael Jasper later stated he was the target of this shooting. (20 RT 2794, 2797-2800; 35 RT 4845.) About six hours later, a drive-by shooting occurred in the heart of Brim territory. (19 RT 2643-2644; 20 RT 2820; 21 RT 2887-2888; 35 RT 4845.) Two days later, ten gunshots were fired into WCC gang members Michael and Marcus Jasper's house on South 32nd Street. (20 RT 2752, 2755, 2781, 2785, 2789-2790; 35 RT 4846-4847.) And two days after that, another drive-by shooting occurred in Brim gang territory. (20 RT 2719; 21 RT 2887-2888; 34 RT 4760.)

A little over a year later, Hoskins posted a photograph on his Facebook account of fellow gang member Hurst standing in WCC territory on the same corner and about 50 to 75 feet from the location of the shooter during the January 3rd shooting. (35 RT 4932-4934.) The gang expert opined that the fact this photograph was taken near the shooter's location confirmed the ongoing war and rivalry between Brims and WCC. (35 RT 4934.)

6. Hoskins possesses a loaded firearm hidden in his waistband

About a month after the January shootings, on February 19, 2012, officers conducted a vehicle stop of a vehicle driven by Laplanche, a Brim gang member who was on probation. (20 RT 2722, 2808-2809.) Hoskins was the front seat passenger and,

because he appeared to be very nervous, officers searched Hoskins and found a loaded firearm in his waistband. (20 RT 2748, 2809-2811.) Officers later searched Hoskins's cell phone and found several gang related photographs showing Hoskins throwing up Brim gang signs. In many of the photographs, Hoskins was with other Brim gang members, including one with co-conspirator Simpson throwing up Brim gang signs. (20 RT 2722-2730.)

During a recorded conversation between Hoskins and Laplanche while they were in the back of the patrol car, Hoskins said he would take the rap for possession of the firearm. (20 RT 2730-2731, 2733; 1 Supp. CT 31.) Hoskins also said that they found the "gig" on him, which is a street term for a firearm or handgun, and that he should have left it at the house of a fellow gang member, Timothy Hurst. (1 Supp. CT 34; 20 RT 2741, 2749.) The two gang members talked about whether Hoskins would serve time in jail, and Laplanche said he would have access to money for bail. (20 RT 2736, 2738-2740; 1 Supp. CT 31-34.) Hoskins said that he knew he was going to get locked up sooner or later—"I knew it was coming." (1 Supp. CT 39.)

Hoskins also said that he would not be in the system until he was booked, and he told Laplanche to put him on Facebook. (1 Supp. CT 35-36; 20 RT 2742.) The gang expert explained that when a gang member was arrested, he would reach out on Facebook so everyone on the streets would know he was out of play, and also so fellow gang members would visit or put money

on his books—gang members used Facebook “to get the word out.” (20 RT 2742-2743.)

7. April 2012 shootings by Brim gang members (Overt Acts 4-10)

On April 1, 2012, Marquee Battle, who was not a gang member but was wearing a blue shirt, blue sweatshirt, and blue jeans in Crips’ gang territory, was fatally shot by a Brim gang member. (21 RT 2900-2901, 2904, 2912-2913, 2921-2928, 2931; 35 RT 4856-4857.) Two days later, Wydell Littleton was fatally shot in the head by a black male driving a white SUV. (21 RT 2936-2937, 2945-2946, 2963, 2965-2966; 34 RT 4764.) The shooting occurred in NC territory. (34 RT 4764; 35 RT 4857.) The next day, on April 4th, Wydell’s son and NC affiliate Tito Littleton was shot by co-conspirators Norman Sanchez and Damonte Lucas as he was standing at a memorial set up for his father. (21 RT 2939-2942, 2972-2974, 2978; 22 RT 3151-3162, 3164-3165; 34 RT 4761; 35 RT 4857.)

The same gun was used in the shooting of Battle and Tito Littleton, and was recovered from Brim gang member Norman Sanchez on April 5, 2012. (21 RT 2974-2978, 2989-2992, 2997-2998; 34 RT 4761, 4763; 35 RT 4872-4873.) The gun used to shoot Wydell Littleton was recovered on September 19, 2012, when Brim member Clyde Ellis was arrested with the murder weapon. (35 RT 4889-4890.)

On April 8, 2012,⁵ respectively four and five days after the Littleton shootings, Hoskins posted to his Facebook account, “Son was Born healthy, cKrossys got Hit, all I need is some Dro and my day is set lol #HappyEaster!” (35 RT 5006-5007; 37 RT 5392-5393.) One of the victims of the shooting, Tito Littleton, would have been considered a “crossy” or rival of Brim. (35 RT 5006-5007; 37 RT 5392-5393.)

8. Further confirmation that Hoskins is part of the Hit Squad, the subset with more shooters and “kills”

On May 2, 2012, Adrianna Person, the girlfriend of fellow Brim member and co-conspirator Simpson, was detained by police. (21 RT 2999-3000, 3011-3012, 3018; 24 RT 3472-3473, 3481, 3493; 34 RT 4730.) Officers recovered a loaded 9-millimeter firearm in her purse. (21 RT 3002-3003; 24 RT 3482; 34 RT 4763; 35 RT 4876.) This gun had been used in at least three recent shootings. (34 RT 4763; 35 RT 4876.) Person admitted that the firearm belonged to Simpson, and that he had handed it to her just moments before the officer contacted her that night, and he then ran. (24 RT 3483-3484; 34 RT 4733-4734; 35 RT 4878-4879; 2 Supp. CT 244, 250.) Person also said that at one point, Simpson asked her to put in work, i.e. commit a shooting at a rival gang member. However, she told him she was scared to do that. (2 Supp. CT 244-245; 34 RT 4730-4731.)

⁵ Because the time stamp on Facebook is in the UTC time zone, although the date on the post showed April 9th, factoring in the time difference, it was really posted on April 8th. (37 RT 5393.)

Person said that at that time, Simpson was “running for” Tiny Hit Squad, he was the one who got the guns, and that he was somebody that everybody admired. (2 Supp. CT 239, 246-247; 34 RT 4731.) In the past, Simpson had given guns to Brim gang members Norman Sanchez, Damonte Lucas, and Edward Paris, and told them to put in work for the gang. (2 Supp. CT 244, 247; 34 RT 4732-4733; 35 RT 4879.)

During a subsequent interview, Person confirmed that “Baby Mikey” was Hoskins, who also went by Bick Nick, and he was part of Tiny Hit Squad. (2 Supp. CT 255; 34 RT 4734.) In some of her Instagram photographs, which were recovered from her phone, she was with Simpson and one of the photographs was the same photograph that was found on Hoskins’s cell phone, showing the connection between the two Hit Squad members. (35 RT 4881-4882.) In her interview, Person also said she knew or was familiar with Mykein Price and Sherbly Gordon, who were “about that life and guns” and brought into the gang by Edward Paris. (2 Supp. CT 213-214.) She said that Paris started Hound Unit, and “[h]e about that life.” (2 Supp. CT 214-216.) Person said the difference between Hound Unit and Tiny Hit Squad was that Tiny Hit Squad had more shooters and more “k’s” or kills. (2 Supp. CT 214-215.) She said that Hoskins was originally part of Young Hit Squad, but that they stopped calling it Young Hit and started calling them Tiny Hit Squad. (2 Supp. CT 215.)

On May 9, 2012, Hoskins posted on Facebook, “Souwoup to dem Ocean [N words]. Huddah to ma Block Boys. We out here #Brim gang basement views hit.” (35 RT 5012.) The gang expert

explained that Hoskins was advertising that the Brim gang members were out on the streets if people wanted to find them—in other words, putting out a challenge to rival gang members. (35 RT 5012.) The next day, Hoskins posted on Facebook, “I’m making a lot of stupid decisions but IDAF. Deal with the consequences when they get there. #YOBO⁶.” (35 RT 5012.)

**9. May 11, 2012 murder of Clyde Thompson
(Overt Acts 12-14)**

On May 11, 2012, Clyde Thompson was shot multiple times in front of the Black Sabbath Motorcycle Club on Market Street, which was in NC territory. (21 RT 3020-3021, 3027; 22 RT 3117; 27 RT 4063, 4065-4067, 4071; 34 RT 4765; 35 RT 4888.) Police found five expended .40 caliber casings at the scene of the shooting, which were later linked to a firearm recovered from Brim gang member Calvin Hunt upon his arrest on June 4, 2012. (27 RT 4069-4071; 34 RT 4765; 35 RT 4888-4889.) Brim gang member Clyde Ellis’s DNA was found on the gun, which was consistent with it being a gang gun. (34 RT 4766; 35 RT 4889.)

10. Hoskins is found near another loaded firearm

On August 17, 2012, gang suppression team officers came into contact with Hoskins, who was standing in front of a house with another male. (28 RT 4228-4229.) Hoskins tried to walk away from the officers, and then initially lied about his name. (28 RT 4229-4230.) The unidentified male walked into the backyard. (28 RT 4230-4231.) A loaded .357 revolver was found

⁶ The gang expert testified that “YOBO” was a take-off from “YOLO,” and means you only Brim once. (35 RT 5012.)

in the backyard of the house where Hoskins was first observed. (28 RT 4230-4231.)

11. Hoskins continues to promote killing Crips

On December 21, 2012, Hoskins posted on Facebook, “Willing to die for gang signs. Yeah that.” (35 RT 5011.) About two months later, on February 14, 2013, Hoskins posted a photograph of himself tossing up the CK hand sign with the caption, “Spell it, Bick Nick. Tell he really about his CK’s.” (35 RT 5008-5009.)

12. June 18, 2013 attempted murder of Deondre Southall (Overt Acts 31-34)

On the night of June 18, 2013, Miranda White went to Deondre Southall’s residence under the premise that she had a hair appointment with Southall. (22 RT 3102-3104.) When Southall, who was not a gang member, opened his door, Brim member and co-conspirator Brandin Orchard stepped out from behind White, said “What’s up Blood,” and shot Southall in the upper left chest. Orchard and White then fled. (22 RT 3104-3105; 34 RT 4766; 35 RT 4893-4894.)

The next day, Brim member and co-conspirator Edward Paris posted on his public Facebook page a photograph of himself, Orchard, Mykein Price, and Rahman Taylor that was entitled “Ckrabs say the brims ain’t here, Don’t near nigga won’t war with us.” (23 RT 3381-3382, 3384.) In the photograph, Paris had a revolver pointed at a “W” made with his other hand, which represented “shooting/killing my enemy.” Taylor was holding a black handgun, and Price was spelling out “Bloods” with both of his hands. (23 RT 3381-3382.) Detective Collins interpreted this

post to be a “complete threat” to rival Crip gang members. (23 RT 3381-3382.)

After seeing this post, gang suppression team officers tried to contact Brim gang members in their known hangouts to try to find the gun. (23 RT 3383; 24 RT 3561-3562; 37 RT 5371.) They contacted a group in Mountain View Park and saw Jontae Jones, a known Brim gang member, discard a firearm in a nearby trashcan. (23 RT 3383; 24 RT 3562, 3564-3567, 3583.) It was the same gun used to shoot Southall. (23 RT 3387; 24 RT 3567-3568; 34 RT 4766.) Orchard’s DNA was on the gun. (34 RT 4766-4767.)

Paris and Orchard were part of the group at the park, and they appeared to be wearing the same clothing as they were in the Facebook post. (23 RT 3383-3386.) Gang suppression team officers arrested several individuals at the park, including Paris and Simpson. (23 RT 3385; 24 RT 3565; 37 RT 5371-5373.) Paris and Simpson were placed together in the back of a patrol car where their conversation was recorded. In the recording, Simpson swore his loyalty to Brim and referenced the Hit Squad. (1 Supp. CT 74-75; 23 RT 3389-3390, 3392.) Simpson said, “You all took Grim Reaper from me.” (1 Supp. CT 74.) This was a reference to Adam Lembrick, a Brim gang member who was incarcerated at the time. He went by the Facebook screen name “At’em Iam,” and still posted on Facebook from prison. (23 RT 3391.) When Paris, a younger gang member, said he thought he was going to jail, Simpson told Paris that he knew what he signed up for by becoming a gang member. (23 RT 3392-3394; 1 Supp. CT 74-75.)

13. August 27, 2013 attempted murder of Byreese Taylor by Brim gang members in Crips' territory (Overt Acts 38-42)

On August 27, 2013, at approximately 5:00 p.m., Byreese Taylor, a Lincoln Park gang member, was walking home in an area that was a hub of WCC's territory.⁷ (21 RT 2948-2949; 22 RT 3223-3226; 24 RT 3451-3452, 3457-3458, 3462-3463; 27 RT 4008; 35 RT 4926-4927; 1 Supp. CT 82-83.) As he was walking, a white minivan later determined to be registered to Brim gang member Timothy Hurst approached and a passenger leaned out of the window and began firing in Taylor's direction.⁸ (21 RT 2949-2952, 2960; 22 RT 3128-3130, 3142, 3232-3247, 3262-3263; 24 RT 3454; 34 RT 4767; 1 Supp. CT 47, 51, 54-55, 78, 80.) The shooter was described as a Black male wearing a black t-shirt with a red bandana over his face. (21 RT 2958; 22 RT 3130, 3135-3136, 3226; 1 Supp. CT 45-46, 51, 55-56, 80-81, 83.)

Two days after the shooting, Hurst was arrested while driving the white minivan, and the minivan was impounded. (22 RT 3245-3247.) Hoskins's DNA was found inside the passenger side of the minivan. (24 RT 3587-3591.) The firearm used in this shooting was later recovered from other Brim gang members, and had been used in two other gang shootings. (34 RT 4768.)

⁷ Although Lincoln Park was usually an ally of Brim, Investigator Collins explained that when gang members were on a hunting mission to shoot rivals, they do not stop to confirm that the intended target is a rival. (35 RT 4927.)

⁸ Hurst was arrested for, and later pled guilty to, a crime relating to the August 27th shooting. (22 RT 3244-3245; 35 RT 4928.)

About six months before the August 2013 shooting, on February 21, 2013, Hoskins had posted on Facebook a photograph of Hurst in front of Memorial Recreation Center, a WCC hangout about a mile from the August 27th shooting site. In the photograph, Hurst was tossing up Brim and Crip killer hand signs. (35 RT 4929.) Then, on the morning of August 27, 2013, Brim member Edward Paris posted on Instagram two photographs of Hoskins and Paris in WCC territory, also about a mile or so from the shooting location, throwing up gang signs challenging and promoting the killing of Crips. In one of the photographs, Hoskins and Paris were making a “W” for West Coast with one hand, and flipping it off with their other hand. (22 RT 3249-3253, 3264-3265; 35 RT 5020-5022.)

After Hurst was in custody for the August 27, 2013, shooting of Byreese Taylor, there was a string of messages between Hurst’s girlfriend, Brittany Marie Brown, and Hoskins, that began in December 14, 2013. In the first message, Brown said that Hurst wanted Hoskins to “email him about what’s going on in the streets.” (36 RT 5039-5041.)

Ten days later, Brown wrote to Hoskins: “I got info on the case, and Tim wants me to talk to you in person, ASAP. Let me know if I can come by. Byreese Taylor. Handle that accordingly.” (36 RT 5041-5042.) A few days later, Brown asked Hoskins when he was going to look at “the paperwork.”⁹ (36 RT 5042.) Hoskins

⁹ At some point, Brown sent discovery to Hoskins that she had received from Hurst’s attorney. (36 RT 5042.)

said he would try to get it tomorrow, and said, “I got at him. He said he’s not about to testify. He want to know what the paperwork say. Take a pic and send it to my email.” (36 RT 5042-5043.) On December 31, 2013, Hoskins and Brown exchanged the following messages:

HOSKINS: This [N word] even put it on Lincoln.
SMH¹⁰. LOL.

BROWN: Now he lying. And Aaron is my witness. I showed him the paperwork last night.

BROWN: Hold on. I’m finna show you.

HOSKINS: He said on Lincoln he not going to testify.

BROWN: He better not.

(36 RT 5043-5045.)

The gang expert explained that Byreese Taylor had provided a statement to law enforcement that was referenced in a police report, and after receiving a copy of the report through discovery, Brown provided a copy of it to Hoskins. (36 RT 5045-5047.) Hoskins appears to be referencing this report in a message he sent to Brown on December 31, 2013, that said, “Is that all they got against him?” (36 RT 5047.) Brown replied, “No. Multiple other witnesses too,” and “It’s a whole stack of shit.” (36 RT 5047.)

Brown and Hoskins also talked about other police reports they reviewed. At trial, Investigator Collins highlighted the following messages from December 31, 2013:

¹⁰ “Shaking my head.” (36 RT 5044.)

HOSKINS: But this the only one saying they seen anything.

BROWN: Now other people are all saying a guy hanging out the front seat shooting with a red rag around they *[sic]* face.

BROWN: Also a car was shot nearby, and they have a bullet, I think.

HOSKINS: Triv¹¹.

BROWN: I'm hoping all goes well. IDK what else to say. Seems like they have enough but not really.

HOSKINS: Not really. It wasn't too good of a pick. Did N-E thing come up on the van?

BROWN: I think just a palm print, but I think that's it.

BROWN: Email him and tell him that the thing is taken care of. Also tell him about the other guy.

HOSKINS: Okay.

(36 RT 5047-5051.)

Investigator Collins testified that Byreese Taylor was a Lincoln Park gang member, who normally would be an ally of Brim, but by talking and cooperating with law enforcement, he put his life in jeopardy, especially here where the police reports—i.e., “paperwork”—were being sent through Facebook. (36 RT 5051.)

¹¹ According to Investigator Collins, this means it is bad. (36 RT 5050.)

There were also communications between Hoskins and Byreese Taylor on Hoskins's Facebook account. On December 31, 2013, Hoskins wrote to Taylor, "A, gangster. I ain't on no disrespect. Nothing of the sort. I just want you to know I go the papers on an incident with my boy, and I want to ask you to please don't testify on TB so he can beat his case. It's triv now. But if you leave it be, he'll beat it. I won't share this paper. Nothing. I just want my bro to come home." (36 RT 5053.) Investigator Collins explained that Hoskins was reaching out to Taylor and asking him not to testify against "TB," which stood for Tim Brim, aka Timothy Hurst. The comment about not sharing the paper meant that Hoskins did not want to share the paperwork because then people would know that Taylor was a snitch. (36 RT 5063-5064.)

Through Facebook, Taylor replied to Hoskins: "On Lincoln. I'm not testifying on Blood what the paperwork say?" (36 RT 5064.) Hoskins said, "Brim that. When I get home tomorrow, I'm a take a pic and send a pic and Brim that?" This meant Hoskins would send Taylor a picture of the paperwork. (36 RT 5064-5065.)

On January 7, 2014, Taylor sent Hoskins a Facebook message that said, "What's up?" (36 RT 5065.) Two days later, Hoskins replied, "What do you mean?" (36 RT 5065-5066.) On January 10, 2014, Taylor wrote, "I been hearing your name," and the next day, Hoskins asked, "Who said my name?" (36 RT 5066.)

On January 12th, Taylor wrote, “I went to the Vista,¹² and people speaking on you name about I’m snitching.” (36 RT 5066.) The back and forth between Hoskins and Taylor on Facebook messenger continued, with Taylor wanting to know why Hoskins was calling him a snitch, and Hoskins telling him he had the paperwork, he planned to go to Bay Vista to “knock out one of your homies,” and he had the right to talk about anybody who was snitching. (36 RT 5067-5069.)

Taylor responded that he was not a snitch, and he wanted to know when Hoskins was coming down to his set. (36 RT 5070-5071.) There was more back and forth about when Hoskins would be going there, and Hoskins’s last message said, “2:00. And we’re going to read your shit to Bay Vista after the fade. As a matter of fact, I’m about to post the shit on FB.” (36 RT 5073.) Taylor then told Hoskins to “Do your thang, G.”—in other words, do what you have to do. (36 RT 5073-5074.)

After Hoskins and Taylor were messaging, Hoskins and Brown resumed their message conversation beginning on January 8, 2014:

BROWN: They found the gun and searching it for prints.

BROWN: Okay. When I’m finna see him at 12:30, he was asking who touched it.

¹² This was a reference to Bay Vista apartments, which was in Lincoln Park territory. Taylor was telling Hoskins that other gang members told him that Hoskins was saying that Taylor had been snitching. (36 RT 5067.)

HOSKINS: I have no idea. I don't even want to know.
I just hope God with them.

BROWN: He said stay on top of that. Okay.

HOSKINS: Yeah. I talked to him already.

BROWN: It is but he stand strong, though. I'm
really proud of him for staying solid.

HOSKINS: Same here. It's going to take a lot to break
him.

BROWN: Right.

HOSKINS: Tell Tim it's getting funky with the L's.
His snitch called me out, and they riding
with him saying he ain't snitching.

BROWN: Wow. Are you serious?

BROWN: So is he gon [sic] cooperate?

BROWN: Show them wat I sent you.

HOSKINS: Nah. He saying he not snitching.

HOSKINS: I want to post that shit. Make it
worldwide.

BROWN: I swear he lying. And I sent back his
paperwork too. So I don't have it anymore.

HOSKINS: I got it.

BROWN: This is all bad, dot com. His auntie
snitching too.

BROWN: He just said keep it cool with "them" until
he out. And to come with me on Fri to see
him. He really want to talk to you.

HOSKINS: Tell him it got real funky. They saying at
da end of the day it's Lincoln.

BROWN: I went today and we still waiting on them prints. Hopefully by the end of this week we should know. But next Wednesday is the preliminary hearing.

BROWN: They continued it again. I saw Oh Boy [aka Byreese Taylor], though. He tried to explain why he told. SMH, I believe - - yes.

HOSKINS: He went to kourt?

BROWN: Yes. And he will be back on the 25th. SMH. They made us swear to come. Me, him, and Jannell.

HOSKINS: Why he said he did it?

BROWN: He said he didn't know it was him [meaning Timothy Hurst] and that his auntie was the one who called the cops.

BROWN: Right. He kept asking me what do they have? What evidence? And I'm like IDK. WTF. He gave me his number and begged to have Tim call him, but I told him he ain't. He looked heated too seeing him in the crowd.

HOSKINS: But he was TU [turned up] in the Vista saying he ain't talk.

HOSKINS: What's Byreese hit?

(36 RT 5074-5089.) This last question was asking for Taylor's phone number and Brown gave it to him. (36 RT 5088-5089.)

About six months after Hurst's arrest and after the exchange of Facebook messages regarding the August 27th shooting, on February 27, 2014, Hoskins posted a threat to Hurst on Facebook, "I switch up on bitckh [N word], fast. I love my bros,

but I'm truer to the code shit. I turn on TB if he does some gay shit and vice versa. Nothing personal. #one Brims." (34 RT 4793.) The gang expert explained that Hoskins was accusing Hurst of snitching, and was saying that if somebody snitched on Hoskins, he would go after him because he was truer to the code of no snitching. (34 RT 4793-4794.)

14. October 2013 shootings by Brim gang members (Overt Acts 46-50)

In October 2013, two more shootings were committed by Brim gang members. First, on October 22nd, in an area on the border of territory claimed by NC and WCC, gunshots were fired from a vehicle at a well-known WCC house. (22 RT 3111-3112, 3169; 35 RT 4936-4937.) A WCC affiliate who was standing in front of the house was hit with a bullet in his left abdomen area as he ran towards the door of this house. (22 RT 3167-3169, 3191, 3193; 34 RT 4767.)

The next day, a shooting occurred on East Lexington Street in El Cajon. (22 RT 3267-3268; 24 RT 3465-3466; 27 RT 4047-4048, 4058; 34 RT 4767.) The intended victims were three African-American males who were inside a garage at a nearby apartment. (22 RT 3268-3271; 24 RT 3467-3469; 27 RT 4049-4052, 4058-4060.) Gary Antione, an affiliate of WCC, lived in an adjacent apartment. (27 RT 4059-4060; 35 RT 4937.) The firearm used in this shooting was the same firearm used in the August 27, and October 22, 2013 shootings. (34 RT 4768.)

15. December 2013 shootings by Brim gang members and Hoskins's endorsement of these shootings (Overt Acts 61-66)

On December 14, 2013, gunshots were fired at Norman Spencer and Thomas Williamson, who were standing in the driveway of a house in Brim territory. (23 RT 3337-3340, 3343, 3350-3351; 35 RT 4950.) Spencer, an affiliate of O'Farrell Park and a Brim rival, was shot in the foot as he tried to flee, requiring amputation of his second toe. (23 RT 3340-3341; 35 RT 950.) Williamson, an associate of WCC, suffered a gunshot wound to his right calf. (23 RT 3339, 3341; 35 RT 4950.) Brim member Nino Sanchez's DNA was found on a loaded magazine located at the scene. (23 RT 3344-3347; 34 RT 4769-4770; 35 RT 4951.) One of the firearms used in this shooting was later recovered from Brim gang member Mykein Price on January 15, 2014. (34 RT 4770.)

The next day, two Black males wearing black hooded sweatshirts approached a residence on 32nd Street, in the heart of WCC gang territory, where several people were sitting at a table in front of the house. (32 RT 3284-3285, 3324-3325.) The two males were on foot and they split apart as they moved towards the house, firing shots towards the group of people. WCC gang member Robert Shannon was sitting at the table when the shots were fired. (22 RT 3284, 3286, 3324-3328; 27 RT 4007-4008; 35 RT 4952.) One of the guns used in this shooting was used in the shooting the day before. (34 RT 4770.)

On December 16, 2013, the day after the second December shooting, Hoskins posted on Facebook, "I'm tired of grinding, fighting, running, jail, death, stress, betrayal, and everything

else this game has to offer. But it's what we signed up for. Right?" (22 RT 3284, 3286, 3324-3328; 27 RT 3976, 4007-4008; 32 RT 3284-3285, 3324-3325; 35 RT 4952, 4968, 4985, 5006.)

On January 13, 2014, Hoskins posted a Facebook status update that read, "Violence may be the easy thing to do, but I like easy. It makes sense. #9's." (35 RT 5005.) That same day, Hoskins also posted, "Never back down. It's the mother fucking motto." (35 RT 5005.) The gang expert said this demonstrated that a gang member is not allowed to back down from a challenge because doing so makes that gang member look weak, and the gang is only as strong as its weakest member. (35 RT 5005.)

Two days later, Brim member and co-conspirator Mykein Price was arrested after gang suppression team officers conducted a traffic stop on a vehicle in which he was the front passenger. Price attempted to resist, but was apprehended. (24 RT 3568-3572; 34 RT 4770.) After handcuffing Price, officers found a loaded .40-caliber semi-automatic firearm in his waistband. Price smiled when they found the gun. (24 RT 3572-3573; 34 RT 4770; 35 RT 4952.) This firearm was the second firearm used in the December 15, 2013 shooting. (34 RT 4770.)

16. January 29, 2014 arrest of co-conspirator Ware for possessing a firearm

On January 29, 2014, gang suppression team officers contacted Ware near Lincoln Park High School. (24 RT 3574-3575, 3579.) Ware had a loaded nine-millimeter handgun tucked into his waistband. (24 RT 3576-3577; 35 RT 4962.) After his arrest, Ware made a jailhouse call to a female and he talked about being arrested with one "chally" or gun, and he said that he

needed to slow down because he was “doing a gang of shit,” and was glad he only got locked up for that. (35 RT 4993.)

17. March 2, 2014 shooting and more Facebook posts demonstrating Hoskins’s participation in the ongoing conspiracy

On March 1, 2014, Hoskins posted on Facebook, “I realize why they want me off the streets. I’m a loose kannon. Unprediktable. Threat to society and myself. LOL. #FucKit.” (35 RT 5004.)

The next day, shots were fired at WCC affiliate Carlton Blue and his girlfriend, who were in WCC territory. (25 RT 3677-3689, 3709-3711, 3713-3717, 3720-3730, 3833-3834; 35 RT 4962.) A silver Ford Taurus had been driving around the area for several minutes before the shooting. (25 RT 3829-3832.) The shooter was African-American and wearing a gray and black beanie with a red ball on top and a gray or black hooded sweater. (25 RT 3690-3692.) The gun used in this shooting was used in three other shootings involving Brim gang members, and the same silver Taurus was used in an April 15, 2014 shooting. (27 RT 3962-3969, 3976, 3980-3981; 28 RT 4166; 34 RT 4773; 35 RT 4968, 4985.)

Shortly after the shooting, Hoskins, who was Facebook friends with Carlton Blue, posted on Facebook, “That’s some gay shit. Not gangster. You all get back. Tagging in the set. That’s all your dead homie’s worth. That’s why I call y’all crabs.” (25 RT 3677-3689, 3709-3711, 3713-3717, 3720-3730; 35 RT 4962, 4999-5000.) The gang expert explained that this message was derogatory to Blue and demonstrated disrespect to WCC by

saying that they were nothing more than taggers as opposed to actual gangsters. (35 RT 5000-5001.)

About a week later, on March 10, 2014, Hoskins posted on Facebook, “No one could ever harm me, stop me, none of that. Why? Because IDGAF¹³ about nothing. Can’t hurt a [N word] that don’t GAF.” (35 RT 5010-5011.) And about a week after that, Hoskins posted, “My occupation: steal, kill and deal. Everything got a price even your life.” (35 RT 5010.)

**18. March 25, 2014 attempted murder of WCC
Monte Webb by co-conspirator Ware (Overt
Acts 76-81)**

On the afternoon of March 25, 2014, Ware drove his gold Lexus into WCC territory, drove around the block several times, and made a U-turn at the intersection of 32nd Street and K Street. (25 RT 3796-3797, 3807, 3835, 3840-3841, 3847-3851; 27 RT 3951-3956, 3982-3983, 3995, 4002-4003, 4006-4007, 4035-4036; 35 RT 4963.) The passenger, a young African-American male with cornrows wearing a black hoodie and red and white shirt, fired several shots at Monte Webb, a WCC gang member. (25 RT 3738-3746, 3755, 3773-3780, 3786, 3837; 27 RT 4002-4003, 4009-4013, 4025; 35 RT 4963; 2 Supp. CT 270-272.)

A letter written by Ware was later found in the Lexus. The letter contained several references to Brim and “CK.” (25 RT 3842, 3846-3847; 27 RT 3982-3984, 3996-3997; 35 RT 4962; 37 RT 5288-5289.) In the letter, Ware talks about taking responsibility for the guns that were found— “I have nothing to

¹³ “I don’t give a fuck.” (35 RT 5011.)

talk about. I'll take it all on the chin. Then do it again. Brim gang." This means that Ware was not going to talk or snitch, but he would take responsibility for the guns. (27 RT 3984-3985, 3998; 35 RT 4989-4990.) Ware also wrote about things being weird in the gang because there were possible snitches or people in the gang cooperating with law enforcement. (27 RT 3985.) Ware signed the letter "H\$," which stands for Hit Squad. (27 RT 3986, 4000-4001; 37 RT 5289.)

19. April 12, 2014 murder of WCC Gregory Benton by Brim members and co-conspirators Peavy and Holman (Overt Acts 89-94)

On the night of April 12, 2014, a black car with tinted windows pulled up, and Peavy and Holman walked up to Gregory Benton, a WCC gang member, and his cousin. (25 RT 3759-3762; 27 RT 3974-3975, 4106-4108, 4114-4115, 4117, 4128; 28 RT 4147-4148, 4150-4151; 34 RT 4772; 35 RT 4963-4964.) One of the men asked, "How's that Brim life?" and both opened fire on Benton. (25 RT 3761-3762.) Benton died after being shot multiple times. (25 RT 3759-3760; 27 RT 3975, 4106, 4109-4112; 34 RT 4772.) His cousin escaped without injury. (25 RT 3763.) Shots were also fired at a group of individuals outside of the house, but they quickly ran for cover. (27 RT 4115-4116; 28 RT 4148.)

20. April 15, 2014 attempted murder of Bodeke Traylor and Hoskins's subsequent Facebook posts (Overt Acts 96-100)

On April 15, 2014, at approximately 2:10 a.m., Bodeke Traylor, a WCC associate, and two other individuals were hanging out in an area known to be frequented and primarily controlled by WCC gang members. (27 RT 3957-3959, 3964-3965,

4041, 4044; 28 RT 4165; 35 RT 4968-4969.) A silver Ford Taurus that matched the vehicle involved in the March 2nd shooting of Carlton Blue, was parked nearby. Co-conspirator and Brim member Emanuel Peavy got out of the driver's side, approached the three males and asked, "This is Crip? This is Crip?" Traylor responded, "Ain't nobody on no gangbangin' shit out here." (27 RT 3962-3969, 3980-3981; 28 RT 4165-4167.) Peavy pulled from his waistband a semi-automatic firearm and, as Traylor put his hands up and turned to run, he opened fire on him. Seven rounds were fired at Traylor, with one hitting him in the foot. (27 RT 3960-3961, 3966, 4044-4045, 4123; 28 RT 4165, 4167-4168.)

After this shooting, Hoskins made several Facebook posts, including one on the day of the shooting that said, "I ain't going to survive too much longer in Dago¹⁴. Too much shit going on, and I can't keep my ass out of the mix." (35 RT 5004-5005.) The next day, Hoskins posted, "The status of an OG isn't established by age or how long you been around. I mean it count but you need the stripes and reputation to match. Big homie. LOL." (35 RT 5003.) The gang expert opined that this meant that just having the age and time in the gang does not make someone an OG or original gangster. It is necessary to put in work to get that reputation and work counts more than time in order to obtain true OG status. (35 RT 5003.)

Two days later, Hoskins posted on Facebook, "Think about it. We all young, dumb, black, and ain't turning down shit. We

¹⁴ This is slang for "San Diego."

all think we tough. All of us got too much pride to take a loss. What you think going to happen when we butt heads. B159d. That's what." (35 RT 5002-5003.) The gang expert explained that Hoskins was saying they had too much pride to walk away or take a loss, so they would not turn down a fight or gunfight, and would move forward to the end. (35 RT 5002-5003.)

Three days later, on April 20, 2014, Brim gang member and co-conspirator Sherbly Gordon posted on Facebook a photograph of himself tossing up "fuck nappy heads," and captioned, "The Blood, Little Bick Nick." (36 RT 5115.) Brim member Gordon also posted a status update that said, "It's a new Brim and town, and he mash on everybody. Ain't fucking with the Brims or him. They call him Little Bick Nick." (36 RT 5117.) Hoskins aka Bick Nick commented on this Facebook post: "I'm Big Bick Nick. CKA Baby Mikey. Sherb know what's bracking. Brim bidness." (36 RT 5118.) The gang expert explained that "CKA" was a reference to Crip killing and was used instead of putting "aka." (36 RT 5118-5119.) The expert further said that in order for a young gang member to take someone's name, such as Gordon taking Hoskins's, there had to be a level of respect and it meant the older gang member, i.e. Hoskins, was working towards rider or OG status. (36 RT 5119.)

On May 11, 2014, Hoskins posted on Facebook, "B159ds kill rips and rips kill Blood. [N words] cheap. Bitches choose. Get a job or hustle. Go to jail. These are all things we already know. So why do we trip. Started with a choice." (35 RT 5014.) The gang expert explained that this was referring to the fact that

Bloods kill Crips and Crips kill Bloods, and it was a choice to either go out there and hustle, or get a job. (35 RT 5015.) That same day, Hoskins also posted, “Can’t complain about the game I chose to play. Pros and cons. Got to love it all. Signed up for that.” (35 RT 5015-5016.) Hoskins was basically saying that he knew what he signed up for when he joined the gang. (35 RT 5016.)

And on May 20, 2014, Hoskins posted, “Gangsters don’t flick it with gigs. They use it.” (35 RT 5013.) The gang expert said this meant that real gangsters do not take pictures with their guns, they use them. (35 RT 5013-5014.)

21. Brim gang members promote their gang life through social media (Overt Acts 11, 15–30, 35–37, 43–45, 51–60, 67–69, 72–75, 82–89, 95, 101–104)

Between April 9, 2012 and May 10, 2014, Brim gang members, including Hoskins, used social media to promote and confirm the success and continuation of the ongoing conspiracy.

The co-conspirators posted to social media about their exploits and their hostility toward Crips for the killing of Dereck Peppers. (See, e.g., 35 RT 4894-4934, 4938-4951, 4964-4968; 36 RT 5106-5108.) The social media postings also showed the connection between the co-conspirators and their vengeance towards Crips for the killing of Peppers. (See, e.g., 35 RT 4894-4934, 4938-4951, 4953-4956, 4964-4973; 36 RT 5106-5108; 37 RT 5396-5398.) For example, a photograph posted on Facebook at an unknown date showed Simpson tossing up Brims signs. Hoskins and other Brim gang members were also in the photograph. (35 RT 4971-4972; 37 RT 5393-5394.) On January 1, 2012, Mykein

Price posted on Facebook a photograph of himself, Hoskins, Timothy Hurst, Rahman Taylor and William Washington, all tossing up Brim gang signs. (35 RT 4956-4957.)

On July 1, 2012, Brim member and co-conspirator Sherbly Gordon posted, “BIP to Little Red Ocean (Michael Taylor). I miss you bro. On Bleeds.” (36 RT 5102-5103.) Several months later, Gordon posted a status update that read, “When they killed Little Red Ocean, that shit killed me. On Bloods. That shit still hurt. On Bloods. So I’m going to kill for him. Did you all make traumatized. I love you, Bro. On Bloods.” (36 RT 5101-5102.) This posting showed that he was going to get payback for the Crips killing Little Red Ocean. (36 RT 5102.)

On August 23, 2012, Brim member and co-conspirator Maurice Chavarry posted a photograph on his Facebook page of the late Dereck Peppers and it was captioned, “Why they got to take the real ones. VIP to the rally. Fat Ocean.” As stated above, the killing of Peppers ignited a gang war between Brims and WCC and NC. (34 RT 4790-4792.)

A November 28, 2012, Instagram post on Brim member and co-conspirator Edward Paris’s account showed a photograph of Simpson making the sign for Crip Killer, Paris motioning his hand like he had a gun, co-conspirator Jontae Jones tossing up “Fuck Nappy Heads,” and co-conspirator Emanuel Peavy also making the sign for Crip killer. (35 RT 4977-4978.)

In November 2013, Paris posted a few status updates on his Facebook account that talked about going to war with WCC, and warned anyone who was not a Brim gang member not to enter

their territory. (35 RT 4904-4906.) One post referenced, “Hit my block. Red rags and guns out,” which meant the Brims were armed and willing to protect their territory. (35 RT 4906-4907.) Paris made several other Facebook posts referencing Crip killing. (35 RT 4898-4902, 4904, 4907-4915.)

A photograph from Hoskins’s Facebook shows Hoskins with a bandana over his face, with other Brim gang members including Paris, and they are making Brim hand signs. (35 RT 5016-5018.) This photograph was titled, “Rags around our face to beat the case in case [N word] look. 5/9 Brim gang. Nap bashing. Toe smashing. 3K, 4K, YH\$.” (35 RT 5017-5018.) This meant that gang members put a bandana over their faces to conceal their identity. (35 RT 5018.) “YH\$” referred to Young Hit Squad, and this post referenced WCC and NC. (35 RT 5018.) The gang expert pointed out that the shooter in the August 27, 2013, shooting had a red bandana around his face. (35 RT 5018-5019.)

Another photograph from Hoskins’s Facebook account showed Hoskins at Memorial Park, which was in rival territory, and it said, “Come out and play. We out here. Earth is my #turf.” (35 RT 5019.) The gang expert explained that Hoskins was standing at an easily recognizable location in the photograph and he was challenging rival gang members and saying he was laying claim to their turf. (35 RT 5019-5020.)

A status update on Hoskins’s Facebook account referred to being a fulltime gang member in custody, and said that because several WCC members were in county jail, Brim members in custody needed to represent the set. (34 RT 4809-4810.) This

update was posted after several Brim members, including Edward Paris and Sherbly Gordon, had been arrested. (34 RT 4811.)

**22. Additional Facebook messages evidence
Hoskins's participation in the conspiracy to
kill rival gang members**

In addition to the above-referenced messages, the People also introduced various Facebook messages between Hoskins and other Brim gang members. On April 20, 2012, Jamon Smith sent a private Facebook message to Hoskins and Paris, which said, "Dis Poe. Y'all stay on y'all c187k tipk." Hoskins replied, "Yep." (36 RT 5039.) The "187" stood for homicide and Crip killing, and Hoskins's response meant he understood. (36 RT 5039.) The gang expert interpreted this message to mean that Hoskins understood to stay on his game, i.e. killing Crips. (36 RT 5039.)

During a conversation with Keshawn Williams, a Brim gang member, Hoskins referred to Crip gang member Tiny G. Loc. (36 RT 5038.) On March 10, 2014, Hoskins had posted a status update on Facebook that said, "Funny how the crab [N word] called us all bitch [N words], and ran into the liquor store when I try and run a fade." (34 RT 4807.) Tiny G. was tagged in this post, meaning that the post would show up on Tiny G.'s Facebook page and all of Tiny G.'s Facebook friends could see this post. (34 RT 4698-4699, 4807.) Tiny G. commented on this post, "LMAO [N word] rolling. Didn't pull up my pants, come outside and wave the car down." (34 RT 4807-4808.) The gang expert said that this post was referencing a run-in that Hoskins and Tiny G. had on the streets. (34 RT 4808.) This Facebook post was an example

of how rival gang members monitored each other's social media accounts. (34 RT 4808.)

Later that day, there was a Facebook message string describing the encounter:

WILLIAMS: Brim dat. Hit me if you need me, Blood.
On 9s. And, we can handle that.

HOSKINS: Ain't nothing to handle. Just 'bout my \$
feel me.

WILLIAMS: Brim dat. That's exactly what I'm doing
Mon through Sun. Work status. But I'm
talking about that crab [N word], Tiny G.

HOSKINS: Oh, yeah. I can handle that myself.

WILLIAMS: Brim dat. Just know I got your back,
Blood. On 9s.

(36 RT 5036-5038.)

The gang expert testified that this conversation supported his opinion that as part of a gang, a gang member has certain responsibilities, and if a gang member runs, it will catch up to him, not only from his rivals, but also from his own set. A gang member is expected "to stand there and take it on the chin, and do not back down from a fade or fight." (36 RT 5038-5039.)

Investigator Collins also read excerpts from Facebook messages in March and April 2014 between Hoskins and Adam Limbrick, where they discussed imposing discipline on Brim member Gordon because he was associating with Lincoln Park and not representing Brim. (36 RT 5090-5094.) They also talked about getting the gang members together for a meeting to make sure they were on the same page, and Hoskins said there were

only five of them from Young Hit Squad and Hound Unit that were out of custody. (36 RT 5094-5098.)

B. A jury convicts Hoskins of conspiracy to commit murder

A San Diego County jury found Hoskins guilty of conspiracy to commit murder (count 1; Pen. Code, §§ 182, subd. (a), 187) with a true finding on a criminal street gang enhancement (Pen. Code, § 186.22, subd. (b)(1)), and criminal street gang conspiracy (count 7; Pen. Code, § 182.5). (7 CT 1762-1767.) He is serving 25 years to life in prison. (7 CT 1810-1813, 1900-1902.)

C. The court of appeal affirms the conviction for conspiracy to commit murder

On appeal, Hoskins claimed that insufficient evidence supported his conviction for conspiracy to commit murder because his only connection to the co-conspirators was common gang affiliation and social media posts, which failed to prove his involvement in the conspiracy. The Court of Appeal rejected this argument, concluding that the record supported the reasonable inference that Hoskins and his co-conspirators tacitly reached a mutual agreement to kill rival WCC and NC gang members, and Hoskins had a deliberate, knowing, and specific intent to join the conspiracy.¹⁵ (*Ware, supra*, 52 Cal.App.5th at pp. 941-942.)

¹⁵ The Court of Appeal reversed Hoskins's conviction for criminal street gang conspiracy, concluding that there was insufficient evidence that a felony was committed or attempted to be committed, as required by the statute. (*People v. Ware* (2020), 52 Cal.App.5th 919, 950-952.)

ARGUMENT

I. THE EVIDENCE AT TRIAL ESTABLISHED THAT HOSKINS CONSPIRED WITH HIS FELLOW BRIM GANG MEMBERS TO KILL RIVAL GANG MEMBERS

The evidence presented at trial was sufficient to support the jury's verdict that Hoskins was guilty of conspiracy to commit murder. Between January 2012 and April 2014, Hoskins's gang was in a war with rival gang members, and he was an active leader in the Hit Squad, the gang's subset responsible for killing their rivals. Frequently before or after the shootings, members of the Hit Squad, including Hoskins himself, bragged on social media about Crips being shot. Hoskins and his fellow Hit Squad members used social media to encourage and ensure the success of the ongoing conspiracy. The social media evidence combined with evidence of Hoskins's relationship to the co-conspirators and evidence of the co-conspirators' activities was sufficient to establish that Hoskins entered into an ongoing conspiracy with his fellow gang members to kill rival gang members.

A. A deferential standard of review applies to claims of insufficient evidence

The standard of review for a claim that the evidence was insufficient to support a conviction is whether, after reviewing all "the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*Jackson v. Virginia* (1979) 443 U.S. 307, 319, original italics; *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) In making this determination, the reviewing court must presume every fact in support of the judgment that could have reasonably been deduced from the evidence. (*People v.*

Lindberg (2008) 45 Cal.4th 1, 27.) A reviewing court does not reweigh the evidence or re-evaluate the credibility of witnesses in reviewing a claim of insufficiency of the evidence. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129.) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” the jury’s verdict.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

“The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence.” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) “Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant’s guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment.” (*Kraft, supra*, 23 Cal.4th at pp. 1053-1054, internal citations and quotation marks omitted.)

“The traditional deference accorded to a jury’s verdict is especially important when reviewing a conviction for conspiracy because a conspiracy by its very nature is a secretive operation, and it is a rare case where all aspects of a conspiracy can be laid bare in court with the precision of a surgeon’s scalpel.” (*United*

States v. Jackson (2d Cir. 2003) 335 F.3d 170, 180 (internal quotation marks and ellipsis omitted)).

B. Conspiracy convictions are often based solely on circumstantial evidence

The evidence as a whole established that Hoskins conspired with his fellow Brim gang members to kill rival gang members over the life of the conspiracy. To prove criminal conspiracy, there must be evidence of an agreement among two or more people, made with the specific intent of agreeing to commit and of committing a particular public offense, along with one or more overt acts committed by one or more individuals in furtherance of the conspiracy. (*People v. Morante* (1999) 20 Cal.4th 403, 416; *People v. Swain* (1996) 12 Cal.4th 593, 600.) Conspiracy to commit murder requires proof not only that the conspirators intended to agree, but that they specifically intended to unlawfully kill another person. (*People v. Cortez* (1998) 18 Cal.4th 1223, 1237-1238.)

There is no requirement that the prosecution prove an express agreement to murder; it is sufficient to show there was a tacit agreement. (See *People v. Superior Court (Quinteros)* (1993) 13 Cal.App.4th 12, 20 [agreement required for conspiracy may be proved without showing the conspirators met and actually agreed to commit the specific offense that was the goal of the conspiracy]; *People v. Cooks* (1983) 141 Cal.App.3d 224, 311 [substantial evidence of conspiracy whenever the evidence permits an inference that the parties “positively or tacitly came to a mutual understanding to commit a crime”].)

In fact, due to the secrecy usually involved in a conspiracy, direct evidence of an agreement is not necessary to support a conviction. “Circumstantial evidence often is the only means to prove conspiracy. [Citations.] There is no need to show that the parties met and expressly agreed to commit a crime in order to prove a conspiracy.” (*In re Nathaniel C.* (1991) 228 Cal.App.3d 990, 999.) “The existence of a conspiracy may be inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy.” (*People v. Maciel* (2013) 57 Cal.4th 482, 515-516; *Munoz v. Superior Court* (2020) 45 Cal.App.5th 774, 780 quoting *People v. Thompson* (2016) 1 Cal.5th 1043, 1111.)

Furthermore, “[c]ommon design is the essence of a conspiracy and the crime can be committed whether the parties comprehend its entire scope, whether they act in separate groups or together, by the same or different means known or unknown to them, if their actions are consistently leading to the same unlawful result” (*People v. Means* (1960) 179 Cal.App.2d 72, 80.) Thus, a conspirator need not personally participate in any of the overt acts associated with the conspiracy as long as he or she conspired to commit the crime and an overt act is committed by a co-conspirator. (*Morante, supra*, 20 Cal.4th at p. 417; *Cooks, supra*, 141 Cal.App.3d at p. 312.)

Throughout the duration of the conspiracy, the act of one conspirator is the act of all members of the conspiracy. Each co-conspirator is responsible for the criminal acts of all other conspirators where those acts are within the scope of the

conspiracy and reasonably foreseeable as the natural consequence of the conspiratorial agreement. (*People v. Hardy* (1992) 2 Cal.4th 86, 188; *Morante, supra*, at p. 417.) “Once the defendant’s participation in the conspiracy is shown, it will be presumed to continue unless he is able to prove, as a matter of defense, that he effectively withdrew from the conspiracy.” (*People v. Sconce* (1991) 228 Cal.App.3d 693, 701.)

Lastly, “[a] conspiracy is not necessarily a single event which unalterably takes place at a particular point in time when the participants reach a formal agreement; it may be flexible, occurring over a period of time and changing in response to changed circumstances. [Citation.]” (*People v. Vargas* (2001) 91 Cal.App.4th 506, 553.)

C. Sufficient evidence supports the conspiracy to commit murder conviction

Hoskins contends that the evidence was insufficient to prove he intended to agree and did agree with one or more members of the alleged conspiracy to commit murder because there was no direct evidence of an express agreement and no evidence that Hoskins directly participated in the crimes that were alleged as overt acts. (OBM 39-56.) However, as discussed below, Hoskins conduct over the life of the conspiracy, including his gang membership, his possession of or proximity to firearms, and social media posts, viewed in conjunction with the actions and social media posts of his co-conspirators, established that he was a member of the ongoing conspiracy. Accordingly, the jury could have reasonably inferred from the totality of the evidence that Hoskins participated in the ongoing conspiracy with his fellow

Hit Squad members, and had the intent to kill rival gang members.

1. Hoskins’s role in the Hit Squad and his relationship with fellow co-conspirators established his participation in the ongoing conspiracy

As a threshold matter, it was undisputed that Hoskins was a Brim gang member, and member of the collective Hit Squad subset. (See, i.e., 19 RT 2622-2627, 2638-2640; 34 RT 4811-4812, 4815.) Hit Squad members were known to be the “hitters” or killers in the gang, and they were responsible for or involved in the killings. (See, i.e., 34 RT 4736; 35 RT 4834-4844, 4859, 4882-4883, 4892-4894; 2 Supp. CT 214-215.) In addition, Brims were in an undisputed gang war against the Crips, which was ignited by the killing of Brim member Dereck Peppers. (19 RT 2576; 28 RT 4219; 34 RT 4791-4792; 35 RT 4943-4944.) In that regard, Hoskins had motive to kill the rival gang members—retaliation for the killing of a respected fellow gang member.

Furthermore, Hoskins does not dispute that his fellow Brim gang members and alleged co-conspirators were committing murders and attempted murders against rival and perceived rival gang members during the timeframe of the ongoing conspiracy. (See OBM 10.) Thus, as described more fully below, the evidence established that Hoskins was not only aware of his gang’s war on rival Crip gang members, but actively advocated for it and participated in it and, therefore, was a member of the ongoing conspiracy that spanned over an approximate two-and-a-half-year period.

Hoskins was a member of the Brim gang's Hit Squad, whose mission was to kill Crips, and the evidence showed that he was a very dedicated and high-level member of the gang who consistently advocated for and promoted Crip killing. Hoskins was consistently found in the company of his fellow co-conspirators, who were also Hit Squad members. (See, i.e., 20 RT 2722-2741, 2743, 2807-2810; 28 RT 4212-4213, 4216.) Hoskins's moniker, Bick Nick, was also strong circumstantial evidence of his intent to kill Crips, with both words ending in "ck" for Crip killer. (17 RT 2081; 18 RT 2465.)

Contrary to Hoskins's assertion, his conviction was not based solely on his gang membership. (OBM 41, 43-45.) First, as stated above, although association, by itself, does not prove criminal conspiracy, it is a fact to be considered. (*People v. Manson* (1976) 61 Cal.App.3d 102, 126.) Thus, association or gang membership may be a factor in finding substantial evidence of a conspiratorial agreement. (See *People v. Tran* (1996) 47 Cal.App.4th 759, 772-773; *Superior Court (Quinteros)*, *supra*, 13 Cal.App.4th 12, at pp. 20-21 ["circumstances from which a conspiratorial agreement may be inferred include 'the conduct of defendants in mutually carrying out a common illegal purpose, the nature of the act done, the relationship of the parties [and] the interests of the alleged conspirators'"].) Here, evidence of Hoskins's membership in the Brim gang and the Hit Squad was a relevant factor in establishing Hoskins agreement with his fellow gang members to kill rival Crip gang members.

Hoskins was not just a gang member—he was a part of the gang’s subset responsible for killing rival and perceived rival gang members. As Adrianna Persons said during her law enforcement interview, Tiny Hit Squad, to which Hoskins belonged, had more shooters and more “k’s” or kills. (34 RT 4734; 2 Supp. CT 214-215, 255.) Hoskins’s relationships with his fellow Hit Squad members and co-conspirators also demonstrated his involvement in the conspiracy. Even though Hoskins was not charged or convicted for any of the shootings that were alleged as overt acts, his actions, such as taking and posting a photograph with co-conspirator Hurst in WWC territory shortly before a shooting showed that WCC boundaries were weak and they were not protecting their territory, leaving the rival gang susceptible to attack. Hoskins was thus endorsing and promoting the shooting of rival Crips.

Hoskins asserts that *United States v. Garcia* (9th Cir. 1998) 151 F.3d 1243 is instructive and similar to this case. (OBM 43-44.) As an initial matter, decisions from the lower federal courts are not binding on this Court. (See *People v. Williams* (2013) 56 Cal.4th 630, 668; *People v. Bradford* (1997) 15 Cal.4th 1229, 1292.) In any event, Hoskins’s reliance on *Garcia* is unavailing.

In *Garcia*, a confrontation resulting in gunfire broke out between rival Blood and Crips gangs at a party in territory (the Pasqua Yaqui Indian reservation) controlled by the Crips. (*Garcia, supra*, 151 F.3d at p. 1244.) *Garcia* (a Bloods gang member) was “talking smack” to Crips gang members before the

shooting. (*Ibid.*) There was no evidence that the other Bloods involved arrived with Garcia at the party. (*Ibid.*)

The Ninth Circuit held,

The government presented no witnesses who could explain the series of events immediately preceding the shooting, so there is nothing to suggest that the violence began in accordance with some prearrangement. The facts establish only that perceived insults escalated tensions between members of rival gangs and that an ongoing gang-related dispute erupted into shooting. Testimony presented at trial suggest more chaos than concert. Such evidence does not establish that parties to a conspiracy “work[ed] together understandingly, with a single design for the accomplishment of a common purpose.” *United States v. Melchor-Lopez*, 627 F.2d 886, 890 (9th Cir. 1980) (quoting *United States v. Monroe*, 552 F.2d 860, 862–63 (9th Cir. 1977)).

(*Garcia, supra*, 151 F.3d at p. 1245.)

Unlike *Garcia*, the evidence in this case shows more than a mere “implicit agreement” between fellow gang members to back up each other. The present case does not involve a dynamic and rapidly evolving situation at a party in which the ostensible conspirators had little time to plan their course of action. Rather, the evidence established a definite and repeatedly acted-upon agreement between Hoskins and his fellow co-conspirators and Hit Squad members to hunt down and try to kill rival Crip gang members and suspected gang members. Also, unlike the single incident in *Garcia*, the prosecution presented evidence here of a series events that took place over an almost three-year period and included 13 separate shootings that supported the ongoing conspiracy.

Moreover, the cases Hoskins cites from the Second Circuit Court of Appeal do not help. (OBM 41.) Unlike the fact patterns in those cases, where the defendant either said he would not participate in a conspiracy to sell drugs or the defendants disassociated themselves from the conspiracy (see, i.e., *United States v. Ceballos* (2d Cir. 2003) 340 F.3d 115, 125), here, the evidence showed that Hoskins was not just merely aware of the conspiracy to kill; instead, he joined it and furthered the conspiracy's purpose by promoting and encouraging the killing of rival Crip gang members, trying to dissuade witnesses or snitches who tried to defeat the conspiracy's objective, or admonishing his fellow Hit Squad members not to back down.

2. Evidence tying Hoskins to firearms verified his intent to kill

Hoskins's possession of and proximity to firearms showed he was ready and able to kill. It also showed he was willing to back up his fellow co-conspirators. In February 2012, when he was arrested with Laplanche in a vehicle, Hoskins had a loaded firearm tucked into his waistband.¹⁶ (20 RT 2722-2723, 2807-

¹⁶ Hoskins claims this evidence has "superficial value or negligible worth" because the gun he possessed in his waistband was not linked to any of the target offenses committed in furtherance of the conspiracy. (OBM 46.) However, this assertion overlooks the fact that Hoskins advocated for the use of guns and killing Crips, and as the gang expert explained, gang members possess guns for power, to gain respect, and when needed to back up fellow gang members. (19 RT 2556-2557, 2616-2619; 34 RT 4800-4801.) A gang member's possession of a gun also shows a willingness to commit violent crimes and that

(continued...)

2810.) The fact that Hoskins was willing to take the fall for possession of this gun demonstrated his loyalty to the ongoing conspiracy and showed was trying to enable his co-conspirators to continue the conspiracy. During a contact with law enforcement on August 17, 2012, after officers detained Hoskins and returned to the location where he and others were congregating, a loaded .357 revolver was found in the backyard, the location to where Hoskins's cohort had fled. (28 RT 4228-4231.) Thus, this evidence showed that Hoskins either was, or could easily be armed, if the opportunity to shoot rival Crip gang members arose. Hoskins's subsequent Facebook status update, in May 2014, "Gangsters don't flick it with gigs. They use it," confirmed his intent to use a gun. (35 RT 5013-5014.)

3. Hoskins's conduct surrounding the August 2013 drive-by shooting showed his involvement in the conspiracy

Hoskins connection to the August 27, 2013 shooting also provided strong evidence of his participation in the ongoing conspiracy. Even if the evidence was not sufficient to establish that Hoskins was in the van during the shooting¹⁷, his

(...continued)

the gang member is armed and ready to shoot at any given time. (19 RT 2616-2617, 2635-2636.)

¹⁷ Contrary to Hoskins's suggestion that the gang conspiracy conviction was reversed because of failure of proof that Hoskins was involved in the shooting (OBM 32), as stated above, the Court of Appeal reversed this conviction for failure of proof that a felony or attempted felony was committed, as
(continued...)

subsequent actions, including trying to dissuade the victim and primary witness from testifying, demonstrate his efforts to further the ongoing conspiracy. After the August 27, 2013, shooting, Hoskins reached out to the victim Byreese Taylor through social media, asking him not to testify so that Hurst could beat his case. (36 RT 5053-5074.) Hoskins also exchanged messages with Hurst's girlfriend about the case, asking questions about what the police knew about who touched the gun and what witnesses were saying. (36 RT 5039-5051, 5074-5089.) This evidence showed that Hoskins was trying to get his co-conspirator Hurst out of custody and back on the streets where he could continue his role in the ongoing conspiracy.

Hoskins's later accusation of Hurst of being a snitch was also in furtherance of the conspiracy. (34 RT 4793-4794.) By threatening Hurst in attempt to prevent him from snitching, Hoskins was keeping the conspiracy alive by preventing other co-conspirators who were involved in the shooting from being arrested and taken out of play.

Moreover, both six months before the August 2013 shooting, and then on the morning of the shooting, Hoskins was photographed in WCC territory, about a mile from where the shooting occurred, making gang-related hand signs that were disrespectful to WCC. At trial, the gang expert explained that

(...continued)

required by the statute. (See *Ware, supra*, 52 Cal.App.5th at pp. 950-952.)

acts of disrespect like this were expected to result in violent retaliation. (19 RT 2556-2557.) Thus, these photographs were further circumstantial evidence of Hoskins's involvement in the conspiracy because they showed that Hoskins and his co-conspirators were advertising that they were not afraid to go into their rival gang members' territory and claim it as their own. The photographs also showed that Hoskins and his co-conspirators were challenging and calling out to rival Crips to come defend their territory and give the Hit Squad members an opportunity to shoot them.

4. Hoskins committed three overt acts in furtherance of the conspiracy

Although it is not required that a co-conspirator commit any of the overt acts, as he acknowledges, Hoskins committed three of the alleged overt acts. (OBM 15-18, 32.) Overt act number 11 was based on Hoskins's Facebook post a few days after Tito Littleton, a rival NC gang member, was shot near a memorial set up for his father, Wydell Littleton, who was fatally shot the day before. (21 RT 2936-2937, 2945-2946, 2963, 2965-2966; 34 RT 4764; 35 RT 4857.) Both shootings were attributed to Brim members and co-conspirators. (21 RT 2939-2942, 2978; 22 RT 3152-3162, 3164-3165; 34 RT 4761; 35 RT 4889-4890.) After co-conspirator Norman Sanchez was arrested for the shooting of Tito Littleton, Norman said, during a recorded conversation, that he committed the shooting "for the homie" meaning to get pay-back or avenge a shooting. (23 RT 3379-3380; 35 RT 4874; 1 Supp. CT 60.) This was consistent with the goal of the ongoing

conspiracy—to kill rival Crip gang members because they killed Brim gang member Peppers.

Hoskins subsequent post and basis of the overt act, “Son was Born healthy, cKrossys got Hit, all I need is some Dro and my day is set lol #HappyEaster!” showed his endorsement of the shooting. (35 RT 5006-5007; 37 RT 5392-5393.) This post also occurred less than two months after Hoskins was found with a loaded firearm in his waistband. (20 RT 2722, 2748, 2808-2811.) Accordingly, this post furthered the ongoing conspiracy by glorifying and endorsing the shooting of a rival NC gang member, thereby encouraging future shootings as well.

The second overt act involving Hoskins, overt act number 21, was based on Hoskins’s Facebook post from February 14, 2013¹⁸ showing a photograph of Hoskins in WCC territory, displaying Crip killer hand signs. The photograph was entitled “Spell it, Bick Nick. Tell he really about his CK’s.” (35 RT 5008-5009; 4 CT 874.) Again, this post, which was made about one year into the conspiracy, furthered the ongoing conspiracy by Hoskins advertising that he is “really about” his Crip killings. In other words, he is promoting and endorsing the killing of Crips, and indicating his intent to do so.

The third over act, number 73, was based on a March 3, 2014, Facebook post, where Hoskins wrote, “That’s some gay shit

¹⁸ The allegation in the Information mistakenly lists the date as February 21, 2013, perhaps, as Hoskins suggests, it was a typographical error because it supported alleged overt act number 21.

not gangster. Y'all get BacK tagging in the set? That's all you Dead Homie worth? That's why I kall yall cKraBs." (35 RT 4999-5000; 4 CT 879.) This was posted a few hours after an unidentified Brim member shot at Carlton Blue, a WCC affiliate in WCC territory. (25 RT 3677-3689, 3709-3711, 3713-3717, 3720-3730, 3829-3833; 34 RT 4773; 35 RT 4962.) Although the "dead homie" referred to was a WCC gang member killed the day before, and the killing was not suspected to involve Brims, in this post, Hoskins was accusing Carlton Blue, with whom he was Facebook friends, of doing nothing more than tagging or writing graffiti to avenge the killing of his fellow WCC gang member. The inference being that Brims did more to avenge the killing of their own gang members—they hunted down their rivals and killed them.

Furthermore, contrary to Hoskins's contention, it was not necessary to establish that Hoskins directly participated in or aided and abetted any of the shootings that were the basis for some of the alleged overt acts. (OBM 39.) As the Court of Appeal correctly pointed out, "[o]ther than the agreement, the only act required is an overt act by *any* of the conspirators, not necessarily the defendant, and that overt act need not itself be criminal." (*Ware, supra*, 52 Cal.App.5th at p. 938 quoting *People v. Smith* (2014) 60 Cal.4th 603, 616.) Thus, when an overt act was committed by one Brim gang member charged in the conspiracy, all Brim gang members in the conspiracy were bound by that overt act. (*People v. Aday* (1964) 226 Cal.App.2d 520, 534; *People*

v. Sica (1952) 112 Cal.App.2d 574, 581.) In any event, as shown above, Hoskins committed at least three overt acts.

5. Hoskins's social media posts further confirmed his participation in the conspiracy and his intent to kill rival Crip gang members

As noted, to be guilty of conspiracy to commit murder, the prosecution did not have to prove that Hoskins either directly participated in or aided and abetted in any of the shootings. All that was required was that he knew of the common unlawful enterprise and agreed to join it. Through his social media posts, Hoskins promoted the ongoing conspiracy not only by acknowledging the shootings and killings that had occurred, but by encouraging and inciting the shootings. The social media posts provided a window into Hoskins's mind and evidenced his intent to kill rival Crips. As described above, Hoskins also used his social media posts to further the goals of the ongoing conspiracy.

Through social media, Hoskins bragged that his job was to kill, he affirmed that he liked violence and would never back down, that he did not value another human's life, and he announced that he is "really about" his Crip killing. (35 RT 5003-5011.) Thus, Hoskins's social media posts showed that he knew of the common unlawful endeavor of his co-conspirators and that he agreed to join it.

Every social media post by Hoskins urged and encouraged his co-conspirators to continue the shootings and to meet the objective of the ongoing conspiracy—kill rival Crips. By posting photographs of himself and/or fellow Brim and Hit Squad

members, Hoskins showed his co-conspirators that there was nothing to be afraid of by going into rival territory. Thus, even if a photograph was posted on social media months or days before a shooting took place, Hoskins was setting up the groundwork for these events, i.e. overt acts, to occur. Viewing the social media posts in conjunction with the actions and social media posts of Hoskins's co-conspirators established that he was part of the ongoing conspiracy.

Hoskins focuses on the evidence that is missing and asks this Court to reweigh the evidence. However, the reviewing court does not “focus on evidence that did not exist rather than on the evidence that did exist.” (*People v. Story* (2009) 45 Cal.4th 1282, 1299; *Rodriguez, supra*, 20 Cal.4th at pp. 1, 12.)

Further, the social media evidence combined with the gang evidence effectively established that Hoskins was part of the ongoing conspiracy. Hoskins used social media to advocate, encourage, and rejoice in the killings of the rival gang members. His social media posts constituted purposeful behavior aimed at furthering the goals of the ongoing conspiracy. In several posts, Hoskins is with other Hit Squad members, tossing up Brim gang signs and Crip killing signs. In fact, Hoskins made numerous social media posts referencing killing Crips or “Nap bashing,” and in one post, stated that they put “rags around [their] face,” so they do not get caught committing the crimes. (34 RT 4793-4794; 35 RT 4956-4957, 5004-5007, 5009-5019.) Hoskins boasts about his moniker, “Bick Nick,” pointing out the “ck” in his name stands for Crip killer. (35 RT 5008-5009.) He used social media

to disrespect and taunt rival Crip gang members. (22 RT 3249-3250, 3253; 35 RT 4929-4934, 5012, 5017-5022.) As the gang expert opined, it was the totality of the evidence, and not just the social media posts, that showed Hoskins was part of the conspiracy to kill. (See 36 RT 5190, 5203.)

Hoskins further questions the value of the social media evidence, stating it was unknown whether the data was stored privately or was publicly viewable. (OBM 52.) Yet, the reasonable inference was that rival Crip gang members had access to the social media posts. The gang expert explained rival gang members monitored each other's social media accounts as shown by WCC member Tiny G. Loc's comment on Hoskins's Facebook post. (34 RT 4807-4808.) Law enforcement officers also monitored gang members' social media accounts. (See, i.e. 34 RT 4806; 37 RT 5371, 5386.) In addition, gang members used Facebook to "get the word out," for example, if one of them was incarcerated. (20 RT 2742-2743.) Hoskins was a member of the Facebook group account for the Southside Brim gang, which meant that all of the individuals on this group account could see his posts. (34 RT 4690.) And Detective Collins opined that the Facebook posts showed that gang members within the set knew of the members who engaged in criminal activity and used Facebook to show their support for the ones who were caught. (36 RT 5159-5160.)

Although there was no definitive evidence that Hoskins's Facebook account was public, the evidence showed he was Facebook friends with two rival gang members—Carlton Blue

and Troy McKay, aka Tiny D.C., demonstrating that at least two of his rival gang members could see his posts. (35 RT 4999-5000.) Also, based on some of the comments on Hoskins's Facebook posts, the FBI special agent who testified regarding the mechanics of social media believed that either Hoskins's account was public, or at least some of his status updates were public. (34 RT 4721-4723.) Moreover, Investigator Collins testified that when he subpoenaed the Facebook records, he was not told what the specific security settings were for each individual account, but he concluded that some were public based on the comments by rival gang members. (37 RT 5248.)

In addition, the evidence established that Paris had a public Facebook account, and he made several posts threatening Crip gang members, including a photograph of himself pointing a revolver at a "W" hand sign. (23 RT 3381-3382, 3384; 35 RT 4905-4906.) And during a recorded conversation between Hit Squad members Smith and Norman Sanchez, they discussed that they did not put pictures on Facebook because law enforcement would find the pictures and put them on the walls of their office. (1 Supp. CT 69.) The inference being that the gang members knew that law enforcement monitored their social media accounts.

Accordingly, based on the totality of the evidence, the jurors could have drawn the reasonable inference that Hoskins and his fellow Brim gang members used social media as a tool to promote and communicate about the ongoing conspiracy to kill rival Crip gang members.

Finally, Hoskins's argument that his Facebook posts were just "generic musings" was presented to, and rejected by the jury. (OBM 47-49.) At trial, Hoskins presented gang expert Reginald Washington who opined that some of Hoskins's Facebook posts referenced Hoskins being under the influence of drugs or alcohol, and other posts sounded like rap lyrics. (38 RT 5528-5539.) Washington also testified that not every gang member who used "CK" when spelling words or tossed up "CK" in photographs had the intent to kill Crips. (38 RT 5524-5527.) Washington said that Hoskins's Facebook posts did not show consistency, one way or the other, about participating when other gang members committed crimes. (38 RT 5537-5538.) After listening to the patrol car recording of the conversation between Hoskins and Laplanche, Washington opined that the two were saying that they were not the perpetrators who were out there shooting people, and if Hoskins was saying he was going to take responsibility for what he had in the car, it would not bolster his status in the gang for doing so. (38 RT 5546-5549.)

Thus, Hoskins presented his defense that the social media postings were misinterpreted by the prosecution and did not prove his involvement in the conspiracy. Hoskins's argument now amounts to an attempt to reargue inferences the jury necessarily rejected with its guilty verdict. That is not the function of the reviewing court. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

In sum, Hoskins takes an unduly narrow view of the evidence and disregards the governing standard of review.

Looking at the evidence as a whole, the circumstantial evidence showed that after the killing of Dereck Peppers, several members of the Hit Squad subset of the Brim criminal street gang agreed to hunt down and kill rival WCC and NC gang members, thus forming an ongoing conspiracy. As the Court of Appeal concluded, when viewing evidence of Hoskins's gang membership and social media posts, along with the evidence of the co-conspirators' activities and Hoskins's relationship to the co-conspirators, there was sufficient evidence from which the jurors could find that Hoskins "knew of the conspiracy and had the deliberate, knowing, and specific intent to join the conspiracy." (*Ware, supra*, 52 Cal.App.5th at p. 942.)

CONCLUSION

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

Respectfully submitted,

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June 16, 2021

CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** uses a 13 point Century Schoolbook font and contains 14,513 words.

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June 16, 2021

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 16, 2021, at San Diego, California.

Walter Hernandez



Declarant

Signature

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STATE OF CALIFORNIA
Supreme Court of California

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6/16/2021

Date

/s/Walter Hernandez

Signature

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