

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

THE PEOPLE OF THE STATE)	Case No. S263923
OF CALIFORNIA,)	
)	Court of Appeal
Plaintiff and Respondent,)	No. D072515
)	
v.)	Superior Court
)	No. SCD255884
VICTOR WARE et al.,)	
)	
Defendants and Appellant.)	
)	
_____)	

**On Review Of A Decision Of The Court Of Appeal
Fourth Appellate District, Division One,
(Case No. D072515)**

**Appeal From The Superior Court of San Diego County
The Honorable Leo Valentine, Jr., Judge
(Case No. SCD255884)**

**NICHOLAS HOSKINS'S
REPLY BRIEF ON THE MERITS**

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Supreme Court

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ARGUMENT

**I. HOSKINS’S FACEBOOK POSTS AND OTHER
SOCIAL MEDIA EVIDENCE ARE INSUFFICIENT
EVIDENCE OF HIS PARTICIPATION IN THE
CONSPIRACY TO COMMIT MURDER.**

The central issue in this appeal is whether the inferences drawn from the social media evidence, primarily Hoskins’s Facebook posts, provide sufficient evidence to support his conspiracy conviction. Indeed, in the entirety of the immense record, the prosecution has not identified any participation by Hoskins in any act of violence – no assault, no shooting, *nothing*.

Hoskins contends his conviction is based only on his membership in the 5/9 Brim gang and a subset of that gang, in addition to the generalized social media evidence, which, even considered together, fail to prove his involvement in the conspiracy to commit murder. (*People v. Johnson* (1980) 26 Cal.3d 557, 578 [evidence required to be “reasonable, credible evidence of solid value”; also *Jackson v. Virginia* (1979) 443 U.S. 307, 319 [standard of no rational trier could have found guilt beyond a reasonable doubt] – hereafter “*Johnson* (1980)/*Jackson* threshold [or standard].”)

A. Three overt acts naming Hoskins fail to support his conspiracy conviction.

Respondent argues, “Hoskins committed three overt acts in furtherance of the conspiracy.” (Answer 56-59.) In his opening brief on the merits (BOM) and in prior briefing, appellant discussed those three overt acts, all of which are Facebook posts. He will limit further discussion of those acts to the specific issues raised in the answer brief.

“The purpose of the overt act is . . . to show that the agreement has proceeded beyond the meeting of the minds stage to some direct or physical act, . . . , tending toward the furtherance of the objective of the conspiracy.” (*People v. Saugstad* (1962) 203 Cal.App.2d 536, 549-550.) The overt act requirement ensures “that a defendant is not punished for a guilty mental state alone, by removing any uncertainty as to whether the intended design will be carried out.” (See *People v. Garton* (2018) 4 Cal.5th 485, 524, (conc. & dis. opn. of Chin, J).)

Here, these overt acts do not reach the *Johnson* (1980)/*Jackson* threshold.

1. Overt Act #11.

The relevant portion of overt act #11, a Facebook post by Hoskins “on or about April 9, 2012,” refers to the April 4, 2012, shooting, of rival gang member, Tito Littleton. (Answer 56-57.) Brim members Norman Sanchez and Damonte Lucas both pleaded guilty to unspecified crime(s) related to that shooting. (23RT3402.) No evidence connects Hoskins to that shooting or to a conspiracy to commit that crime.

Respondent cites a statement by Sanchez that “he committed the shooting ‘for the homie,’” which the gang expert opined was “avenging a shooting that’s occurred on your turf or to one of your homies.” (Answer 56.) Respondent argues “[t]his was consistent with the goal of the ongoing conspiracy – to kill rival Crip gang members because they killed Brim gang member [Derek] Peppers.” (Answer 56-57.)

While respondent’s statement that this was “consistent” with the goal of the conspiracy may be true, respondent cites no evidence that Sanchez and Lucas were convicted of conspiracy to kill Crips or that the jury determined the shooting of Tito Littleton was an overt act committed in furtherance of the conspiracy. Regardless, no direct evidence links Hoskins to this shooting or to any communications with Sanchez and/or Lucas, or any other alleged coconspirator, about this incident and no evidence shows Hoskins’s Facebook post, five days after the shooting, was an act that furthered the conspiracy.

Respondent contends Hoskins's Facebook post, "showed his endorsement of the shooting." (Answer 57.) Respondent adds that this post "occurred less than two months after Hoskins was found with a loaded firearm in his waistband." (Answer 57.) Without explaining how the firearm incident relates to Hoskins's Facebook post or the shooting of Tito Littleton, respondent nevertheless contends Hoskins's post "furthered the ongoing conspiracy by glorifying and endorsing the shooting of a rival NC gang member, thereby encouraging future shootings as well." (Answer 57.)

Hoskins's Facebook post, five days after Tito Littleton was shot, referring only to the fact that the shooting occurred, is insufficient to show Hoskins was glorifying and endorsing that shooting. Even if the post shows he was applauding the incident, it is insufficient to prove he joined any conspiracy. (*Johnson* (1980)/*Jackson* threshold.)

2. Overt Act #21.

Respondent next cites overt act #21, a Facebook post on Hoskins's account, from February 14, 2013, showing a photograph of him in WCC territory displaying Crip killer hand signs. (Answer 57.) The title on this post, states, "Spell it, Bick Nick. Tell he really about his CK's." (35RT5009.)

Respondent argues this post "furthered the ongoing conspiracy by Hoskins advertising that he is 'really about' his Crip killings." (Answer 57.) Yet, the prosecution's gang expert acknowledged, not every Brim member who displays "CK," in a social media post or photograph, kills Crips. (36RT5188.) In fact,

the expert admitted some Brim members, who display CK in a post or picture, may “just do it strictly on social media.” (36RT5188.) Moreover, no evidence was presented that Hoskins ever killed a Crips member or even attempted to do so.

Respondent adds that Hoskins “is promoting and endorsing the killing of Crips, and indicating his intent to do so.” (Answer 57.) Yet, Hoskins’s generalized posts about Crip killing contrast sharply with specific posts by other Brims which actually threatened Crips. For example, as discussed in Argument I.B.1.d, Brim member Sherbly Gordon referred, on social media, to the killing of a fellow Brim member, presumably by Crips, which, according to respondent, shows Gordon would seek revenge against Crips for that killing. (Answer 39.) Indeed, in one of Gordon’s posts, he states: “I’m going to kill for him.” (36RT5102.) Hoskins’s posts, in contrast, show no specific intent to kill. The evidence supporting overt act #21, does not meet the *Johnson* (1980)/*Jackson* standard.

3. Overt Act #73.

The third overt act is a March 3, 2014, Facebook post, which respondent contends is a message from Hoskins directed at Carlton Blue, a WCC affiliate. (Answer 57-58.) Respondent opines Hoskins accused 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.” (Answer 58.)

In essence, Respondent implies that Brims did more than tag to avenge – they hunted down rivals and killed them (Answer 58), an implication unsupported by the evidence, specifically as to

Hoskins. The intent of the post may well have been to insult the Crips, by calling them “taggers”; however, any further inference – e.g., as to what vengeance or by whom – is entirely speculative.

Appellant further emphasizes the implications argued by the prosecution at trial and on appeal, based on overt act #73, have varied throughout the course of this litigation. At trial, the prosecutor’s closing argument to the jury implied that Hoskins’s Facebook post was connected to the shooting at Carlton Blue. (41RT6188.) The prosecutor argued specifically, Hoskins’s goal is “to kill Crips.” (41RT6188.) Yet, the prosecution’s expert explained the “dead homie,” mentioned in the March 3d post, referred to the March 1, 2014, **internal** killing of a Crips gang member, Paris Hill, by the WCC gang – *unrelated* to the Brims. (35RT5000-5001; 36RT5192-5193.) In other words, though the post appeared the day after the shooting at Blue, it referred disrespectfully to a intra-Crips shooting a day before that.

No reliable, credible evidence ties Hoskins to the shooting death of Paris Hill or the shooting incident involving Carlton Blue, or a conspiracy to commit those crimes. A Facebook post taunting or mocking Crips is neither a crime nor evidence of his participation in the conspiracy. If it were otherwise, then social media posts after January 6th, taunting and mocking the Administration and/or Congress re decertification or “stolen-election,” which “emboldened” others to act unlawfully, would render the posters subject to conspiracy prosecution, but that is extending the net of conspiracy far beyond the pale and First Amendment protections.

In sum, the *Johnson* (1980)/*Jackson* threshold is not met.

B. Hoskins’s other social media posts are not sufficient evidence of any participation in the conspiracy.

In addition to the overt acts, respondent argues Hoskins’s other social media posts “further confirmed his participation in the conspiracy and his intent to kill rival Crip gang members.” (Answer 59-64.) Respondent begins by misstating the law of conspiracy, contending, “[a]ll that was required was that he [Hoskins] knew of the common unlawful enterprise and agreed to join it.” (Answer 59, emphasis added.) Respondent ignores the additional requirement of specific intent to commit the elements of the offense which is the object of the conspiracy – in this case, premeditated murder. (See *People v. Johnson* (2013) 57 Cal.4th 250, 257.) As this Court explained, “Conspiracy is a “specific intent” crime The specific intent required divides logically into two elements: (a) the intent to agree, or conspire, and (b) the intent to commit the offense which is the object of the conspiracy To sustain a conviction for conspiracy to commit a particular offense, the prosecution must show not only that the conspirators intended to agree *but also that they intended to commit the elements of that offense.*’ [Citation.]” (*People v. Swain* (1996) 12 Cal.4th 593, 600, original emphasis.)

Respondent argues again, “[t]hrough 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.” (Answer 59.)

Evidence a defendant associated with gang members and authored social media posts supportive of gang members may suffice to prove that an individual had agreed to participate in a gang’s *general* affairs, but, at the same time, that individual’s membership in the gang will not suffice to prove participation in a gang’s violent crimes. (Cf. *United States v. Howard* (S.D.N.Y. 2019) 414 F.Supp.3d 580, 597-598.) One may contrast California’s conspiracy to murder, where a conspirator must have the specific intent to kill, with other forms of conspiracy. For example, for culpability for a federal RICO conspiracy, a conspirator need only “kn[o]w the general nature of the conspiracy and that the conspiracy extend[s] beyond [his] individual role.” [Citation.] This [] is satisfied so long as he ‘knew what the other conspirators “were up to,” ’ or if ‘the situation would logically lead [him] to suspect he was part of a larger enterprise.’” (*Ibid.*) But section 182/187 requires considerably more than knowing what other Brims “were up to” or to lead Hoskins to suspect he was part of a larger enterprise. Whereas generic social media posts may prove the latter (*Howard*, p. 598), they do not prove the former. In the present case appellant’s posts, including one referencing the death of a Crips member after-the-fact, demonstrate gang membership and a shared hostility toward Crips, but they do not establish an agreement to commit any future crime.

1. Facebook Posts cited in Respondent's Statement of the Case.

The following shooting incidents, described in respondent's SOC are events not directly related to Hoskins: (1) August 27, 2013, shooting at Byreese Taylor¹; (2) December 2013 shootings by suspected Brim members; (3) March 2, 2014, shooting at Carlton Blue; and (4) April 15, 2014, shooting at Bodeke Traylor.

a. December 2013 shootings (respondent's point #15).

Respondent's SOC describes two separate shooting incidents in December 2013, arguing Hoskins endorsed these shootings. (Answer 31-32.) As respondent explains, in the first incident on December 14, 2013, two rival gang members were shot and injured; Brim members Nino Sanchez and Mykein Price were later implicated. (Answer 31.)

The next day, two unidentified males fired shots toward several people, including a WCC gang member in WCC territory. Brim member, Mykein Price, was later found in possession of the firearm used in that incident. (Answer 31-32.)

No evidence shows Hoskins was involved in these shootings. However, respondent attempts to link Hoskins to the December 2013 shootings through his Facebook post, on December 16, 2013 (*after* the shootings), in which he stated, "I'm tired of grinding, fighting, running, jail, death, stress, betrayal,

¹ Discussion of the August 27, 2013, shooting at Byreese Taylor is reserved until Argument IV.

and everything else this game has to offer. But it's what we signed up for, Right?" (Answer 31-32.)²

Respondent next cites two other Facebook posts by Hoskins, both of which are status updates on January 13, 2014 – approximately a month after the December 2013 shootings. (Answer 32.) The first states, "Violence may be the easy thing to do, but I like it easy. It makes sense. #9's." (35RT5005.) The second status update from the same date states, "Never back down. It's the motherfucking motto." (35RT5005.)

Respondent argues these posts are evidence that Hoskins endorsed the December 2013 shootings. However, the generalized posts, unconnected to any specific act or incident, provide an insufficient nexus between Hoskins and the December 2013 shootings or any conspiratorial murder. His musings merely reflect gang culture and include generalized bravado about "liking violence," failing to meet the *Johnson* (1980)/*Jackson* threshold.

b. Facebook posts and March 2014, shooting at Carlton Blue (respondent's point #17).

In addition to respondent's arguments relative to Hoskins's Facebook post, alleged as overt act #73, discussed previously, respondent's SOC also cites overt act #73, along with other Facebook posts by Hoskins, in an apparent attempt to link

² With the exception of a single citation, 35RT5006, respondent's numerous citations to the record, immediately following the Facebook post, relate to the shooting incidents and other events – not Hoskins's post.

Hoskins to the March 2, 2014, shooting incident involving Carlton Blue. (Answer 33-34.)

Respondent cites more general musing by Hoskins, in a March 1, 2014, Facebook post, which states, “I realize why they want me off the streets. I’m a loose cannon. Unpredictable. Threat to society and myself. LOL. Hashtag fuck it.”³ (Answer 33.)

Respondent states, the next day, shots were fired at Blue who was in WCC territory. (Answer 33.) Brim member Emanuel Peavy was later implicated in the shooting. (27RT3966-3967, 4091-4092.) No other Brim members were identified as suspects in the shooting at Blue and no evidence shows Hoskins planned, agreed, or otherwise conspired with Peavy or any other Brim member.

Respondent cites two other Facebook posts by Hoskins. (Answer 34.) A March 10, 2014, post states, “No one could ever harm me, stop me, none of that. Why? Because IDGAF about nothing. Can’t hurt a [N word] that don’t GAF.” (Answer 34.) Nine days later, Hoskins posted, “My occupation: steal, kill and deal. Everything got a price even your life.” (Answer 34.)

Respondent attempts to link Hoskins’s social media posts to the March shooting of Blue but his generalized musings are nothing more than hyperbole, bravado, and self-promotion, (*Johnson (1980)/Jackson threshold* .)

³ In some words in the actual post, the letter “c” is replaced with a “k.” (35RT5004-5005.)

c. April 15, 2014, shooting involving Bodeke Traylor (respondent's point #20).

Respondent cites several more Facebook posts by Hoskins in an attempt to link him to the April 15, 2014, shooting at Bodeke Traylor, a WCC associate. (Answer 35-38.) In one post, on April 15th, Hoskins states he won't survive much longer in Dago (San Diego), "too much shit going on, and I can't keep my ass out of the mix." (Answer 36.)

Another post is cited in which Hoskins discusses how to obtain OG (original gangster) status. (Answer 36.) However, no evidence shows he was ever identified as an OG, soldier, rider, or any other high-ranking member of the gang.

A third post discusses the gang mentality and how they all think they're tough. (Answer 36-37.) According to the gang expert, they would not turn down a fight or a gunfight because they had "too much pride to . . . walk away" or "take a loss." (35RT5002-5003.)

Respondent cites other evidence that Brim member Sherbly Gordon took the moniker "Little Bick Nick," (Hoskins is "Bick Nick"), which according to the gang expert, is a sign of respect for Hoskins. (Answer 37.) The expert opined this typically indicates the older gang member, i.e. Hoskins, is working toward OG or rider status. (36RT5119.) Yet, no solid evidence shows Hoskins was near attaining such status, had any "kills," shot at anyone, or even fired a gun. A neophyte or apprentice in any organization may choose to emulate an older member for any number of

reasons – how s/he dresses, speaks, what vehicle s/he drives – the list is bounded only by imagination.

Respondent cites another post referring to Bloods killing Crips and Crips killing Bloods. (Answer 37-38.) The gang expert opined, Hoskins is saying it's a choice to either hustle on the streets or actually get a job. (35RT5014-5015.) In another post, Hoskins acknowledges he knew what he signed up for when he joined the gang. (Answer 38.) And, finally, a May 20, 2014, post by Hoskins was interpreted to mean real gangsters don't take pictures with their guns, they use them. (Answer 38.)

The foregoing posts promote gang membership and culture, and in some cases, include bravado, but are insufficient evidence of conspiracy to commit murder. (*Johnson* (1980)/*Jackson* standard.)

d. Evidence alleging Brims, including Hoskins, promoted their gang life through social media (respondent's point #21.)

Respondent argues, “[b]etween 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.” (Answer 38.)

Respondent cites undisputed evidence of photographs of Hoskins and other Brim members “tossing up Brim signs” (Answer 38-39), and other undisputed evidence of social media posts by *other* Brim members (Answer 39-40), **but fails** to distinguish between posts tossing Brim signs, i.e., gang membership, with more specific posts, *by others*, expressing a

specific intent to kill. For example, a post by Brim member, Sherbly Gordon, refers to the death of another Brim member Michael Taylor, presumably by Crips. (Answer 39.) Respondent states “[t]his posting showed that [Gordon] was going to get payback for the Crips killing [Taylor].” (Answer 39.) In contrast to Gordon’s post, the posts cited, which include Hoskins, show only gang membership. No evidence shows Hoskins participated in the post by Gordon or endorsed it.

Another post by Brim member Maurice Chavarry refers to the killing of Brim member Dereck Pepper which “ignited a gang war between Brims and WCC and NC.” (Answer 39.) An Instagram post on Brim member Edward Paris’s account shows a photograph of Brim members (not Hoskins) making hand signs for “Crip Killer.” (Answer 39.) Other social media posts by Paris refer to Crip killing and the war with WCC. (Answer 30-40.) But, no evidence shows Hoskins was involved in Paris’s posts or that he endorsed them.

Respondent next cites a photograph on Hoskins’s Facebook account, showing him with a bandana over his face. In an apparent attempt to implicate Hoskins in the August 27, 2013, shooting at Byreese Taylor, respondent cites the gang expert’s testimony that the shooter in that incident had a red bandana around his face. (Answer 40.) Respondent’s prior briefing, in the Court of Appeal, argued the evidence supported a reasonable inference that Hoskins was the front seat passenger who wore the red bandana and shot at Taylor. (RB at p. 96.) However, the prosecution’s theory, offered to the jury, was that Brim member

Nino Sanchez was identified as the shooter in the August 2013 incident. (Aug. 3RT, 3/21/16, p. 447.) No evidence shows Hoskins was a direct participant or aider and abetter in that shooting.

Another photograph from Hoskins's Facebook account showed him in rival territory and, according to the gang expert, he was challenging his rivals and laying claim to their turf by standing in rival territory. (Answer 40.) A status update on Hoskins's Facebook account discussed the need for Brims, who are in jail with rival WCC members, to represent the set. (Answer 40-41.) But, none of this supports respondent's contention that Hoskins used social media to promote and confirm the ongoing conspiracy. Instead, the social media evidence cited shows gang membership, gang culture (tossing gang signs), and gang rivalry. The specific references to "Crip Killing" show a generalized expression of rivalry and animosity by the Brims, but are not sufficient evidence of Hoskins's intent to agree or conspire *and* the specific intent to commit premeditated murder. (Cf. *Howard, supra*, 414 F.Supp.3d at pp. 597-598.)

2. Facebook posts cited in respondent's point numbers 4 and 11, and, later, in respondent's arguments.

Respondent's SOC further argues, "Hoskins starts posting on Facebook about killing Crips" (Answer 13), referring to a status update on December 12, 2011, stating:

Every day I turn more and more into a demon. There was a point in time when I had a conscience, when I valued

another human's life, had morals and actually gave a fuck. Been hungry so long all I care about is eating. D-N-T matter off who . . . I'm heating. Bick Nick 5/9.^[4]

(35RT5007.)

Respondent argues Hoskins is posting on Facebook about killing Crips, but cites no specific reference, in this post, to Crips or killing them.

Point #11 in respondent's SOC cites two other Facebook posts by Hoskins, unrelated to any shooting or specific incident at issue in this case. The first, on December 21, 2012, states, "Willing to die for gang signs. Yeah that." (Answer 20.) The gang expert testified that this post is "consistent with somebody who is willing to put their life on the line for that gang."

(35RT5012.) However, there is a distinction between Facebook posturing and actions which support the post, and no evidence shows Hoskins ever put his life on the line for the gang.

The next post, under point #11, is by Hoskins on February 14, 2013, with a photograph of himself tossing up the CK hand sign with the caption, "Spell it, Bick Nick. Tell he really about his CK's." (Answer 20.) Later, in argument, respondent again cites this specific post, alleging it supports Hoskins's conviction. (Answer 59.) As noted, Hoskins's generalized posts about Crip killing are distinctly different from more specific posts by other Brims, who declared a specific intent to kill Crips to avenge the killing of a fellow Brim. (36RT5102.)

⁴ See footnote 3.

In addition to the arguments included in respondent's SOC, respondent's Arguments posit the social media evidence supports Hoskins's conspiracy conviction. (Answer 59-64.)

Respondent argues, "[e]very social media post by Hoskins urged and encouraged his co-conspirators to continue shootings and to meet the objective of the ongoing conspiracy – kill rival Crips." (Answer 59, emphasis added.) Respondent generally refers to the social media posts, identified in the SOC and argues, through those posts, "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." (Answer 59.)

While respondent's argument focuses on Hoskins's gang membership and *who* he appears to be, no solid, credible evidence shows *what* he actually *did* or conspired to do to *further* the conspiracy. Respondent relies primarily on Hoskins's social media posts, but provides no further evidence about the actual effect or significance of those posts, relative to the conspiracy.

Respondent argues photographs on Hoskins's Facebook account "showed his coconspirators that there was nothing to be afraid of by going into rival territory." (Answer 59-60.) But, respondent fails to acknowledge evidence that Hoskins and fellow Brim member, Timothy Hurst grew up next door to each other in territory claimed by the Crips, (22RT3258; 35RT4931; 36RT5207-5208), and his taunting or disrespectful posts fail to meet the *Johnson* (1980)/*Jackson* threshold.

Respondent argues photographs of Hoskins in rival territory, “posted months or days before a shooting,” showed he “was setting up the groundwork for these events, i.e., overt acts, to occur.” (Answer 60.) Yet, no evidence shows how Hoskins’s photograph “set up groundwork” for a shooting six months later. Speculation, without evidence, that the photographs accomplished that goal, is insufficient. (*Johnson (1980)/Jackson* threshold.)

Respondent repeats the argument that “[i]n several posts, Hoskins is with other Hit Squad members, tossing up Brim gang signs and Crip killing signs.” (Answer 60.) But, those posts are not sufficient evidence of an intent to agree or conspire as well as the specific intent to commit premeditated murder. As noted, the gang expert acknowledged not every Brim who displays “CK” in a social media post or photograph kills Crips and some may do nothing more than post such messages on social media. (36RT5188.) No evidence shows the actual effect, if any, of Hoskins’s social media posts.

Respondent also addresses the issue of whether Hoskins’s Facebook account was public or private and who had access to his social media messages. Respondent acknowledges “there was no definitive evidence that Hoskins’s Facebook account was public,” but states there was evidence he was Facebook friends with two rivals and one expert believed some of his status updates were public. (Answer 61-62.) Regardless of the status of his account (public versus private), Hoskins’s generalized Facebook posts are

distinctly different from specific posts by other Brims which express an intent to kill.

For example, respondent cites evidence that Brim member Edward Paris had a *public* Facebook account and made several posts threatening Crips. (Answer 62.) Respondent adds that “rival gang members monitored each other’s social media accounts.” (Answer 61.) The gang expert testified that some of Paris’s family members were Crips, during the relevant time period, yet Paris posted on his *public* Facebook account, that, for his homies (fellow Brim members), he would even kill those family members. (35 RT4907.) Hoskins’s posts show no such evidence of a specific intent to kill.

Respondent’s final argument relative to the social media evidence is that the jury rejected Hoskins’s argument that his Facebook posts were “generic musings” (Answer 63, citing to BOM 47-49), but respondent misinterprets appellant’s argument. Appellant merely characterized the posts into two different general categories, basically, *general* gang references and references to *specific* instances. These categories had nothing to do with the factual basis for the jury’s general verdict. (6CT1476.) *What* is at issue, however, is what this Court directed respondent to answer in reply to the petition for review: “Whether a defendant may be convicted of conspiracy to commit murder where it was undisputed that the conviction was based entirely on circumstantial evidence of a conspiracy and [Hoskins’s] only connection to the coconspirators is common gang affiliation and social media posts which fail to prove his involvement in the

conspiracy.” The jury did not reject this question, because it was not before them.

3. Social media posts not relied upon at trial or in prior briefing (respondent’s point #22).

Respondent’s SOC cites additional social media posts, not relied upon at trial or discussed by respondent in prior briefing, and argues these “[a]dditional Facebook messages evidence Hoskins’s participation in the conspiracy to kill rival gang members.” (Answer 41-43.)

Respondent cites an April 20, 2012, private Facebook message from Brim member Jamon Smith to Hoskins and Edward Paris. (Answer 41.) The message states, “Dis Poe. Y’all stay on y’all c187k tipk.” (36RT5039.) The gang expert was asked about the meaning of the message and didn’t know what “tipk” stood for but stated that “c187k” referred to Crip killing. (36RT5039.)

Bick Nick’s only response to the message was, “Yep.” (36RT5039.) The expert opined this response meant, “[h]e [Hoskins] understands. Stay on your game.” (36RT5039.) Respondent *further* interprets the message stating, “stay on your game,” means “killing Crips.” (Answer 41.) No other information is provided about this message. The implication that Hoskins’s response, which merely acknowledged receipt of the message, is evidence he joined a conspiracy to kill Crips does not meet the *Johnson* (1980)/*Jackson* standard.

Respondent also cites another Facebook post by Hoskins which referred to a run-in he had with Crips member, Tiny G. Loc. (Answer 41.) Respondent cites this as example of how gang members monitor each other's social media posts. (Answer 41-42.) A later message, related to this same encounter, referred generally to gang culture and how a gang member is "expected to take it on the chin" and not back down from a fight. (Answer 42.) However, the gang expert acknowledged there was *no* evidence of a fight between Hoskins and Tiny G. Loc. (36RT5209.)

Finally, respondent cites private Facebook messages in 2014, between Hoskins and Adam Limbrick which discuss certain gang business (i.e., imposing discipline on a Brim member), but this evidence is also unrelated to the conspiracy. (Answer 42.)

In summary, the foregoing posts which only promote gang affiliation, without any proof of specific intent, do not pass muster. (*Johnson* (1980)/*Jackson*.)

II. HOSKINS'S GANG AFFILIATION AND RELATIONSHIP WITH ALLEGED CONSPIRATORS IS INSUFFICIENT EVIDENCE HE INTENDED TO AGREE, AND DID AGREE, TO CONSPIRE TO MURDER CRIPS.

A. No evidence explains Hoskin's role in the Hit Squad.

In addition to the social media evidence, respondent relies on Hoskins's membership in the Brim gang, and a subset of that gang, known as the Hit Squad, to support his conspiracy conviction.

Respondent's SOC begins with the argument, "Hoskins conspires with his fellow Brim members to kill rival Crip gang members." (Answer 9.) Under that heading, respondent lists 22 points, citing facts and, in some cases, related arguments. The points and arguments relating primarily to social media evidence are discussed in Argument I, those relating to Hoskins's membership in the Brim gang/Hit Squad, along with his alleged relationship with other Brim members are discussed below.

Respondent first states that Hoskins is an active member of the Brim gang and the Hit Squad. (Answer 9-11.) While the evidence may reasonably support an inference that Hoskins was an *active* member of the Brim gang, his role in the Hit Squad is largely unknown.

The gang expert testified about how one becomes a member of the Brim gang and the structure of that gang (19RT2552-2553), but not how one becomes a member of the Hit Squad or any other subset of the gang or what role one may play. The expert explained that a "soldier" or "rider" in the gang is someone willing to do anything for the gang, referred to as "putting in work," which typically involves "a mission" to commit a burglary, robbery, shooting, beatdown or kidnapping. (19RT2557; 34RT4778-4780.) The expert explained that shooting a rival gang member increases the status of the shooter within the gang, as that member becomes a rider and ultimately an "OG." (36RT5161.) The expert identified two Brims, Damonte Lucas and Brandin Orchard, as "riders" – both of whom were convicted

of crimes related to shootings in this case. (34RT4782-4783.)

Derek Peppers was identified as an OG in the gang. (34RT4790.)

In contrast, Hoskins was never identified as a “shooter,” “soldier,” “rider,” an OG, or someone with any “kills.” Respondent provides no evidence to the contrary.

Respondent nevertheless argues “Hoskins was *actively* involved with the gang’s kill squad and his co-conspirators.” (Answer 12.) In an apparent attempt to support that contention, respondent cites twelve shooting incidents committed by *other* Brim members or suspected Brim members, with no evidentiary link to Hoskins. Those shootings are discussed in Argument II.B.

Absent any evidence connecting Hoskins to the shootings, respondent argues, “Hoskins used social media . . . to also . . . encourage and ensure the continuation of the conspiracy to kill rival gang members.” (Answer 12.) Appellant has addressed the social media evidence in Argument I and has demonstrated why it is insufficient. (*Johnson (1980)/Jackson.*)

Point #8 in respondent’s SOC, states, “Further confirmation that Hoskins is part of the Hit Squad, the subset with more shooters and kills.” (Answer 17-19.) Respondent describes a police interview with Adrianna Person, co-defendant Simpson’s girlfriend. The only information specific to Hoskins, from that interview, is Person’s confirmation of two of Hoskins’s gang monikers; Hoskins was, at one time, part of the subset of the Brim gang known as “Tiny Hit Squad”; and evidence that an Instagram photograph on Person’s phone was also on Hoskins’s phone. (Answer 18.)

Respondent argues that evidence of the same Instagram photograph, appearing on both phones, shows “a connection between the two Hit Squad members” (Hoskins and Simpson). (Answer 18.) If “connection,” refers only to a common gang affiliation, that evidence is undisputed. However, any further implications from this photograph, i.e. that Hoskins conspired with Simpson or their relationship supports Hoskins’s conviction, is pure speculation. (*Johnson (1980)/Jackson.*)

Respondent implies, but does not state, that Hoskins and Simpson are seen together in that photograph, but respondent’s citation to the record does not support that inference.⁵ (See 35RT4881-4882, Exhibit 41-5, consisting of four photographs.) There is also no evidence of a caption or text, associated with this Instagram photograph, which provides an evidentiary link between Hoskins and the conspiracy.

Person testified at trial and identified Hoskins, saying she knew “of him,” but she denied seeing Simpson and Hoskins “hanging around together.” (24RT3474-3475, 3477-3479.) No other evidence explains the nature of Hoskins’s relationship with Simpson, apart from common gang membership, and no evidence shows that Hoskins’s relationship with Simpson (or any other Brim member) supports his conspiracy conviction.

⁵ Appellant does not dispute, however, that other evidence shows Hoskins and Simpson, along with other Brim members, were seen together in at least one photograph. (24RT3477-3478, Exhibit 18-13.)

Person also provided information about Simpson's role and status in the gang and his possible connection to some of the shootings at issue in this case. Person stated in her interview that Simpson was in charge of the Brim subset, "Tiny Hit Squad," she said, "he's like a God" to the gang, and he's the one who gets all the guns. (24RT3485-3486, Supp. CT, Vol. 2, pp. 239, 245-247.) A gun found in Person's purse, belonging to Simpson, was used in three separate shootings – January 5th and 7th, 2012 and the April 4, 2012, shooting of Tito Littleton. (34RT4763; 35RT4876.)

In stark contrast, *no* evidence from the interview, or any other source, shows Hoskins's *role* in the Brim gang or Hit Squad or his connection to any of the shootings. No evidence shows Hoskins was a high-ranking or influential member of the gang or subset or shows he directed any Brim/Hit Squad member to do anything.

Respondent states the Brims have several cliques/subsets (Answer 9), and two of those subsets commingled to form the Hit Squad, but no evidence shows when that occurred. There is also no evidence about the organizational structure, if any, of the Hit Squad, how one became a member, or how one qualified for membership.

Evidence that Hoskins's relationship with other Brims supports his conspiracy conviction is also absent. No evidence shows Hoskins had a close connection, apart from common gang affiliation, with any member of the Hit Squad, with the possible exception of his friendship with Timothy Hurst. As noted, the

two were childhood friends who grew up next door to each other. (22RT3258; 35RT4931; 36RT5207-5208.) Yet, no evidence shows Hoskins was involved with Hurst in anything, apart from their friendship and common gang membership, which is inadequate proof that Hoskins's conspired with Hurst, or anyone, to kill Crips.

The only other evidence cited in point #8 consists of two Facebook posts by Hoskins. (Answer 18-19.) The gang expert explained that in one, on May 9, 2012, Hoskins was saying Brims were out on the streets if people wanted to find them. (35RT5013.) Respondent further interprets this post to be "a challenge." (Answer 19.)

Respondent cites another, the next day, which states, "I'm making a lot of stupid decisions but IDAF. Deal with the consequences when they get there. #YOBO [You only Brim once]." (Answer 19.)

Hoskins's social media post allegedly "challenging" Crips is more than vague. It certainly was not an express intent to kill and was, instead, at best, taunting. His other post, presumably related to the Brims, is another vague message, acknowledging his "stupid decisions," unrelated to the conspiracy or any specific act committed at all. Together, or in combination with any other evidence, these posts do not accumulate to sufficient evidence. (*Johnson (1980)/Jackson.*)

Apart from the negative and inflammatory connotations in the title, "Hit Squad," the significance of Hoskins's membership in that subset is unknown and fails to support his conviction.

B. Shootings by other Brims, with no nexus to Hoskins, is not reasonable, credible, solid evidence, that Hoskins joined any conspiracy.

Respondent describes 12 separate shooting dates/series committed by Brims (or suspected members), with no connection to Hoskins other than a common gang affiliation. Respondent also cites evidence about the arrest of co-defendant Ware, but fails to provide any link between Hoskins and Ware's arrest or explain how this evidence relates to Hoskins's conspiracy conviction. (Answer 32-33.) Evidence of Ware's arrest is not relevant to Hoskins's conviction.

Of the 12 shooting dates/series, three have previously been addressed in Argument I as to how Hoskins's posts were insufficient evidence in his joining any conspiracy. One particular incident (re Byreese Taylor) will be addressed in Argument IV. The remaining eight, with no connections to Hoskins, are discussed as follows.

Respondent describes a June 2011, shooting by Simpson, but provides no evidentiary link, including social media evidence, connecting Hoskins to that incident. (Answer 12-13.) The only fact cited by respondent, specific to Hoskins, is evidence that a gang moniker (Baby Black Mikey⁶) was written on the walls of a garage in Brandon Orchard's apartment. (Answer 13.) While Orchard, was present with Simpson and others (not Hoskins) at the time of the shooting, the fact that a moniker, even if it was

⁶ One of Hoskins's monikers was Baby Mikey but it is not clear that Baby Black Mikey also refers to Hoskins. (35RT4838.)

Hoskins's (which was not firmly established) was found on the garage of another, is too tenuous, particularly where there was no evidence about who inscribed the moniker or when it was inscribed in relation to the shooting. (*Johnson (1980)/Jackson.*)

Evidence was presented that several shootings occurred in January 2012, *back and forth between Brims and Crips*, but no Brims were even identified in those incidents. In an apparent attempt to link Hoskins to these incidents, respondent cites a Facebook post by Hoskins, *over a year after the shootings*, with a photograph of Timothy Hurst standing in WCC territory, about 50 to 75 feet from the location of the shooter in one of the January, 2012, shootings. (Answer 14.) The only significance of this post is the gang expert's opinion that there was an ongoing war and rivalry between Brims and WCC. (Answer 14.) The photograph on Hoskins's Facebook account does not tie him to the January 2012 shootings or to the conspiracy.

Respondent next cites to three shootings in April 2012. (Answer 16.) Marquee Battle, who was mistaken for Crip, was fatally shot, April 1, 2012; Wydell Littleton was fatally shot two days later, and his son, Tito, was shot but not killed the next day. The only evidence cited by respondent, alleging a connection between Hoskins and one of these shootings, is his Facebook post, five days after Tito was shot, stating, "cKrossys got Hit," (over act #11), already discussed in Argument I.

Respondent cites no evidence of Hoskins's involvement in the remaining five shooting incidents: the May, 2012, shooting of Clyde Thompson (Answer 19), the June, 2013, shooting of

Deondre Southall⁷ (Answer 20-21); the October 2013, shootings by unidentified Brim members (Answer 30); the March 2104 shooting at Monte Webb (Answer 34-35); or the April, 2014 shooting involving Gregory Benton (Answer 35.)

Because respondent cites no specific evidence linking Hoskins to any of these shootings, further discussion is unnecessary.

C. No sufficient evidence shows Hoskins’s alleged “role in the Hit Squad” and/or “relationship with coconspirators” supports his conspiracy conviction.

The answer brief’s argument (and the Court of Appeal opinion) concludes Hoskins’s role in the Hit Squad and his relationship to the coconspirators established his participation in the ongoing conspiracy. (Answer 49-53; Opn. 27-28, fn. omitted.) But evidence solely of common gang affiliation without any specificity of Hoskins’s role in the subset is scant, i.e., not meeting the *Johnson* (1980)/*Jackson* threshold.

Respondent argues that “Hit Squad members were known to be the ‘hitters’ or killers in the gang, and they were responsible for or involved in the killings.” (Answer 49.) Yet, the only reference to Hoskins in the citations to the record, on this point, is an apparent reference to his moniker, Baby Mikey, which appeared in graffiti on the wall in Brandin Orchard’s garage.

⁷ On June 18, 2013, Brim member Brandin Orchard shot Southall, who was not fatally injured. (22RT3104-3105.) Southall was not a member of any gang, and the shooting was not in gang territory. (35RT4893.)

(35RT4838.) The evidence cited is largely undisputed and identifies various Hit Squad members, their monikers, and the fact that some, not all, were involved in shootings at issue in this case, but no evidence connects Hoskins to any of those shootings. (See Answer 49.)

Respondent suggests Hoskins “actively advocated” for the war on Crips, he “participated in it,” and “was therefore a member of the ongoing conspiracy.” (Answer 49.) Respondent further suggests “the evidence showed that he was a very dedicated and high-level member of the gang who consistently advocated for and promoted Crip killing.” (Answer 50.) Apart from respondent’s conclusory and unsupported suggestions, based on the social media evidence, previously discussed, the record presents no evidence Hoskins “participated” in the war on Crips, or that he was a “high-level member of the gang,” whose words or actions influenced any member of the Brims to commit an act which furthered the conspiracy. (*Johnson (1980)/Jackson.*)

Respondent argues “Hoskins was consistently found in the company of his fellow co-conspirators, who were also Hit Squad members.” (Answer 50.) Respondent’s citations for this point begin with evidence of Hoskins’s arrest on February 19, 2012, discussed in Argument III, which is unrelated to any shooting or the conspiracy.

Other evidence is cited that, on August 6, 2013, Hoskins was among a “large group of people” contacted by San Diego Police officers at the Southcrest Recreation Center. In addition to Hoskins, three other Brims were in the group. Hoskins was

contacted because he walked away from the group, but he had not committed a crime and was not engaged in illegal activity at the time. (28RT4212-4217.) Evidence is also cited of photographs of Hoskins and other Brims, tossing up the 5/9 hand sign. (20RT2723, 2726-4730.) But tossing a “hand sign,” a show of affiliation, is no more an agreement to join a conspiracy than wearing Trump paraphernalia at the morning gathering of presidential decertification supporters at the Ellipse is evidence of their joining a conspiracy to invade the Capitol.

Respondent’s argument once again refers to the interview with Adrianna Persons, discussed previously, and alleges Hoskins’s “relationships with his fellow Hit Squad members demonstrated his involvement in the conspiracy.” (Answer 51.) Respondent’s additional argument, on this point, offers nothing new but instead merely drapes the same argument in different garb, i.e., conclusory statements with no evidence that Hoskins’s relationship extended beyond affiliation. (*Johnson* (1980)/*Jackson*.)

Respondent argues that Hoskins’s “actions, such as taking and posting a photograph with alleged co-conspirator Hurst in WCC territory shortly before a shooting showed WCC boundaries were weak and they were not protecting their territory, leaving the rival gang susceptible to attack, . . . thus endorsing and promoting the shooting of rival Crips.” (Answer 51.)

Two photographs were uploaded on Hoskin’s Facebook account on February 21, 2013, showing Hurst in Crips territory, but neither of those photographs were taken and posted shortly

before a shooting. Interestingly, no shootings at issue in this case, occurred for over a year, after the May 11, 2012, shooting of Thompson until the June 18, 2013, shooting of Southall, which likely was not gang related (see footnote 7).

One of the February 2013, Facebook photographs shows Hurst at a recreation center, a known WCC hangout, tossing up “5/9 Brim and Crip killer” hand signs. (35RT4929-4930; Exhibit 41-101, Hoskins’s Facebook records.) While that post did not occur shortly before a shooting, the prosecution, at trial, argued to the jury that this post showed Hoskins was setting up the legwork for a shooting *six months later*, on August 27, 2013. (41RT 6189, 6215.)

Another photograph, also of Hurst in WCC territory, cited by respondent for Hoskins’s “role” in the Hit Squad, has been previously described and rebutted by appellant. (P. 26, *ante*.) Its only significance, as opined by the gang expert’s testimony, was that there was an ongoing war and rivalry between WCC and the Brims (35RT4934), which proves nothing as to Hoskins’s role.

Appellant’s gang affiliation, his undetermined role in the Hit Squad, and his relationship with Brims/Hit Squad, fail to provide sufficient evidence to support his conviction for conspiracy to commit murder.

III. EVIDENCE “TYING HOSKINS TO FIREARMS” IS MISLEADING AND FAILS TO “VERIFY HIS INTENT TO KILL.”

Respondent contends, “[e]vidence tying Hoskins to firearms verified his intent to kill.” (Answer 53-54.) This argument is based on two incidents, unrelated to any of the shootings or any other acts allegedly committed in furtherance of the conspiracy. Neither incident provides sufficient evidence of Hoskins’s “intent to kill.”

The facts concerning one “incident” in which Hoskins was allegedly connected to a firearm have been misinterpreted. (Answer 54.) The record establishes that Hoskins and an unidentified male were contacted by police, in front of a residence, for an alleged curfew violation. (28RT4228-4232.) The *unidentified male* walked to the backyard of the residence while Hoskins was detained by the police and a loaded .357 revolver was later found in the backyard of that residence. (28RT4230-4231.) The record unequivocally establishes Hoskins *never* went to the *back* of the residence where the gun was discovered. (28RT 4232.) No evidence shows Hoskins ever possessed that gun or even knew about it or that he was arrested or charged with any offense relative to this incident.

The other instance occurred in February 2012, when Hoskins was arrested during a traffic stop and was found in possession of a loaded firearm. (Answer 14-16, 53-54.) No evidence shows this firearm was connected to any shooting at issue in this case and no evidence shows Hoskins ever fired this

gun, or any other gun, at a Crip or anyone else. This is insufficient evidence of any “intent to kill,” as respondent speculates.

There is one point of agreement between Hoskins and respondent – there was on-going war between Crips and Brims, precipitated by the killing of Peppers, presumably at the hands of the Crips. Thereafter, even as noted by respondent, this war was not one-sided with only Brims assaulting Crips, but the conflict and bloodshed flowed in both directions. (E.g., Answer 37-38, 35RT5015; 39, 36RT5101-5102.) The bottom line is that given the grim reality of the existence of the gang war, a gang member out of a perception of self-preservation, could very well resort to unlawful possession as a means of self-protection – but such choice of unlawful behavior, even if coupled with social media posting, is not evidence of joining an explicit conspiracy to commit murder. (*Johnson (1980)/Jackson.*)

The inferences drawn by respondent, and the Court of Appeal below, that these incidents show Hoskins’s “intent to kill,” is even more unsubstantial. (Answer 53; Opn. 27.) Respondent suggests, “this evidence showed that Hoskins either was, or could easily be armed, if the opportunity to shoot rival Crip gang members arose.” (Answer 54.) Not only is this argument unsupported by sufficient evidence, respondent’s contention is entirely speculative, particularly given the absence of evidence that Hoskins even knew about the gun in the “backyard incident.” And, with regard to the traffic stop, no evidence was presented as to how Hoskins acquired the firearm or that he could be “easily

armed.” Respondent provides no other evidence, apart from Hoskins’s actual possession of a firearm in one incident, unrelated to any shooting, to support the contention that he could be easily armed, was typically armed, or always armed.

Respondent’s final argument on this point cites Hoskins’s Facebook status update, in May 2014, which was interpreted to mean, “[r]eal gangsters don’t take pictures with their guns. They use them.” (Answer 54.) Respondent cites this post to bolster the argument that this evidence and the evidence cited above, “confirmed his [Hoskins’s] intent to use a gun.” (Answer 54.)

The question is whether this post in combination with all other evidence would give a rational jury the basis to find guilt beyond a reasonable doubt; it does not. The categorical fact is that amongst the plethora of pages of testimony and forensic evidence, there is no evidence that Hoskins ever discharged a firearm. The evidence establishes there was a conspiracy among a number of individuals, and one may reasonably infer that Hoskins knew of those individuals’s endeavor. But knowledge sans agreeing and joining, a conspirator does not make. And this post, with no more, would be just another example of taunting rivals rather than a statement, “*I’m* going to be out there,” or “*I’m* going to avenge.” (Contrast other Brims, see *ante*, pp. 6, 13-14, 18.)

IV. HOSKINS'S CONTACTS WITH BYREESE TAYLOR, AFTER THE AUGUST 27, 2013, SHOOTING INCIDENT, FAIL TO SUPPORT HIS CONVICTION.

Respondent's SOC provides a detailed discussion of the August 27, 2013, shooting at Byreese Taylor and events allegedly related to that incident. (Answer 22-30.) Respondent later provides additional argument about this incident. (Answer 54-56.)

Respondent argues Hoskins's actions, after the August 2013 shooting at Byreese Taylor, "including trying to dissuade the victim [Taylor] and primary witnesses from testifying, demonstrate his efforts to further the ongoing conspiracy." (Answer 54-55.) While evidence is cited that Hoskins allegedly tried to dissuade Taylor, no evidence is cited to support the additional claim that he tried to dissuade other "primary witnesses" from testifying and those other witnesses are not even identified. Regardless, respondent's arguments on this point are meritless.

In the August 27, 2013, incident, shots were fired at Byreese Taylor, a Lincoln Park gang member, who was in WCC territory. (34RT4767.) Brim member Hurst was later convicted of an unspecified crime related to that incident. (35RT4928.) No evidence shows Hoskins was a direct participant or an aider and abetter in this shooting or that he conspired with anyone to commit this crime.

Despite the prosecution's theory at trial that Nino Sanchez was the shooter in that incident,⁸ respondent argued in prior briefing below, the evidence supported a reasonable inference that Hoskins was the front seat passenger who shot at Taylor. (RB 96.) Respondent does not make that assertion in the answer brief and has apparently abandoned that contention.

Respondent's SOC attempts to link appellant to this crime thorough a Facebook post on February 21, 2013, *six months before* the August 2013 shooting. (Answer 23.) That post contained a photograph of Hurst in WCC territory, tossing up Brim and Crip killer hand signs. (Answer 23, citing 35RT4929, Exhibit 41-101; see also p. 29, *ante.*) However, insufficient evidence links that post to the August 2013 shooting. (*Johnson (1980)/Jackson.*)

Respondent next cites two Instagram posts, on August 27, 2013, by Brim member Edward Paris, showing photographs of Hoskins and Paris in WCC territory, throwing up gang signs and allegedly "challenging and promoting the killing of Crips." (Answer 23.) The photographs show Paris and Hoskins in rival territory, *about a mile or a mile and a half from the location of the shooting*, throwing up gang signs. (22RT3249-3251.)

Paris, not Hoskins, posted the Instagram photographs. No evidence shows whether the account was public or private, who had access to the account, and whether anyone saw the post or responded to it. (22RT3251-3253, 3264-3265.) Any inference that

⁸ See prosecutor's opening statements to the jury. (Aug. 3RT, 3/21/16, p. 447.)

the posts by Paris are evidence linking Hoskins to the August 2013, shooting does not comport with the *Johnson (1980)/Jackson* standard.

Respondent argues “these photographs were further circumstantial evidence of Hoskins’s involvement in the conspiracy because they were not afraid to go into their rival gang members’ territory and claim it as their own.” (Answer 56.) Respondent adds, “[t]he photographs also showed 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.” (Answer 56.) At best, again, these may be disrespectful taunts, but they do not equate with an intent to kill Crips. (*Johnson (1980)/Jackson.*)

Respondent also cites evidence about communications Hoskins had with Byreese Taylor after the August 2013, shooting, which began when Hurst’s girlfriend, Brittany Brown, contacted Hoskins about Hurst’s case. (Answer 23-29.) The gang expert testified about Facebook communications in which Hoskins allegedly accused Taylor of “snitching” when Taylor provided statements to the police regarding the August, 2013 shooting. (36RT5039-5040, 5042, 5053, 5063-5089.)

Brown provided Hoskins with discovery in Hurst’s case, which included police reports containing the statements Taylor made to law enforcement about the incident. (36RT5045-5047.) Hoskins then contacted Taylor through Facebook and threatened to post the discovery on Facebook, which the gang expert opined would potentially threaten Taylor’s life; however, the discovery

was never posted on Facebook. (36RT5052-5053, 5070, 5211.) The expert admitted the evidence of communications between Hoskins and Taylor was based entirely upon Facebook information and he did not confirm any of the information with Taylor. (36RT5210-5211.)

In one Facebook message from Hoskins to Taylor, in December 2013, Hoskins asked Taylor not to testify against Hurst because Hoskins wanted his “bro to come home.” (Answer 26.) Recall, Hoskins and Hurst grew up next door to each other and the two are close childhood friends. (35RT4931; 36RT5207-5208.) Hoskins’s attempt to help Hurst shows his commitment to his friend and fellow Brim, and his allegiance to the gang. A violation of Penal Code, section 136.1, if it was malicious, is one theory. An act in furtherance of a conspiracy to commit murder is quite another. The Hoskins–Taylor interaction was insufficient evidence that Hoskins intended to agree and had agreed to kill Crips. (*Johnson (1980)/Jackson.*)

Respondent next turns to a February 27, 2014, Facebook message by Hoskins, which the gang expert interpreted to mean if someone, even his buddy Hurst, snitches on him, Hoskins was going to “flip on them” because Hoskins is “truer to the code . . . of no snitching.” (Answer 29-30.)

Respondent argues, “Hoskins’s accusation of Hurst being a snitch was also in furtherance of the conspiracy.” (Answer 55.) But respondent’s contention on this point is meritless. Hoskins’s post merely reflects the gang culture and mentality, as well as Hoskins’s allegiance to the Brims and their code. Again,

membership and association, even coupled with social media postings, are not sufficient evidence of intent to agree plus harbor the specific intent to commit murder.

CONCLUSION

Hoskin's Fourteenth Amendment due process right was violated; the evidence is insufficient to support his conviction for conspiracy to commit murder. Reversal is required.

Respectfully submitted,

/s/ Nancy Olsen

Nancy Olsen

Attorney for Appellant

Nicholas Hoskins

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.360(b)(1), I certify that the length of the foregoing NICHOLAS HOSKINS'S REPLY BRIEF ON THE MERITS, as determined by the word count feature of my word processing program, contains 9,006 words.

/s/ Nancy Olsen
Nancy Olsen
Attorney for Appellant
Nicholas Hoskins

PROOF OF SERVICE

I, the undersigned, declare that I am over 18 years of age, employed in the County of San Diego, and not a party to the instant action. My business address is P.O. Box 231153, Encinitas, CA 92023-1153. My electronic service address is nancyeolsen@gmail.com. I served the attached **NICHOLAS HOSKINS’S REPLY BRIEF ON THE MERTIS** as follows:

ELECTRONIC SERVICE: I electronically served the attached brief to the following parties via TrueFiling on July 26, 2021:

Appellate Defenders, Inc.,	Office of the Attorney General,
Christopher Lawson, Deputy District Attorney	Hon. Leo Valentine, Judge
Manuel L. Ramirez, Esq.	Michael V. Daniele, Esq.
David Polsky [Counsel for Ware]	Lynda Romero [Counsel for Simpson]

Court of Appeal, Fourth Appellate District, Division One (per Supreme Court TrueFiling policy)

USPS: On July 26, 2021, I served the following person at the following address, by placing a copy of the document in a sealed envelope, with the correct postage, and depositing it in the United States Postal Service, at Encinitas, California:

Mr. Nicholas Hoskins, # BD7640
California State Prison – Los Angeles
Facility B, Building 5, Bed 211
P.O. Box 4490
Lancaster, CA 93539

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on July 26, 2021 at Carlsbad, California.

/s/ Nancy Olsen
Nancy Olsen

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. WARE**

Case Number: **S263923**

Lower Court Case Number: **D072515**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

7/26/2021

Date

/s/Nancy Olsen

Signature

Olsen, Nancy (132419)

Last Name, First Name (PNum)

Law Office of Nancy Olsen

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