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November 4, 2021

Jorge Navarrete, Clerk
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

RE: *People v. Carney, et al.*
Supreme Court of the State of California, Case No. S260063

Dear Mr. Navarrete:

The People respectfully submit this letter brief in response to the Court's October 13, 2021, order directing the parties to submit letter briefs "addressing the significance, if any, of Senate Bill No. 775 (Stats. 2021, ch. 551) to the issues presented in this case." As discussed in more detail below, Senate Bill No. 775 does not impact the issues or the outcome of this case.

This case concerns the validity of first degree murder convictions under the substantial concurrent causation doctrine where it is known that the defendants did not fire the fatal shot. This Court granted review on the following issues:

1. Does the "substantial concurrent causation" theory of liability of *People v. Sanchez* (2001) 26 Cal.4th 834 permit a conviction for first degree murder if the defendants did not fire the fatal shot?
2. What impact, if any, do *People v. Chiu* (2014) 59 Cal.4th 155 and Senate Bill No. 1437 (Stats. 2018, ch. 1015, § 1, subd. (f)) have on the rule of *Sanchez*?

Senate Bill No. 775, which amends Penal Code¹ section 1170.95, was signed by the Governor and chaptered by the Secretary of State on October 5, 2021. (Sen. Bill No. 775 (2020-2021 Reg. Sess.)) Its effective date is January 1, 2022. (Cal. Const., art. IV, § 8; Gov. Code, § 9600, subd. (a); *People v. Camba* (1996) 50 Cal.App.4th 857, 865 ["Under the California Constitution, a statute enacted at a regular session of the Legislature generally becomes effective

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

on January 1 of the year following its enactment except where the statute is passed as an urgency measure and becomes effective sooner”], internal quotation marks omitted.)

Senate Bill No. 775 expands the universe of defendants whose convictions are subject to recall and resentencing based on the amendments to sections 188 and 189 imposed by Senate Bill No. 1437. As relevant here, section 1170.95, subdivision (a), as amended, will authorize that “[a] person convicted of felony murder or murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person’s participation in a crime . . . may file a petition with the court that sentenced the petitioner to have the petitioner’s murder . . . conviction vacated and to be resentenced on any remaining counts” (Stats. 2021, ch. 551, § 2 [amended § 1170.95, subd. (a)].)

This amendment allows those individuals who may have been convicted based on an imputation of malice to petition for relief, whereas previously the law allowed only individuals who had been convicted under a felony-murder theory or the natural and probable consequences doctrine to do so. Yet, just like amendments made by Senate Bill No. 1437 (see ABM 36–40), Senate Bill No. 775 has no impact on the rule of *Sanchez* or the outcome in this case.

The rule of *Sanchez* requires a jury to inquire into a defendant’s subjective mental state when determining whether a defendant is guilty of murder and, if so, of which degree. It is this inquiry into a defendant’s personal malice (or lack thereof) that removes *Sanchez* murder convictions from the categories of convictions that are eligible for resentencing under either Senate Bill No. 1437 or Senate Bill No. 775. A finding that a defendant personally harbored malice cannot, by definition, be considered imputation of malice. The amendment to subdivision (a) of section 1170.95 by Senate Bill No. 775, therefore, has no impact on the issues in this case. (ABM 36–40.)

For the same reason, the amendment to section 1170.95, subdivision (g) does not impact the issues or outcome of this case. (Stats. 2021, ch. 551, § 2, subd. (g).)² As amended, subdivision (g) will authorize a defendant to challenge his conviction under sections 188 and 189 (as amended by Senate Bill No. 1437) on direct appeal when his conviction is not yet final, rather than utilizing the petition process outlined in section 1170.95. That amendment has no application to cases like this one, where the verdicts establish the jury rejected natural and probable consequences or any other theory of imputed malice. In other words, because each defendant was convicted of first degree murder under the *Sanchez* rule—and because the jury was specifically instructed that “[m]urder under natural and probable consequences is murder of

² Senate Bill No. 775 includes additional amendments to the subdivisions of section 1170.95 governing the procedures for petitioning for relief. None of those amendments affects this Court’s analysis in the present case, and the People, therefore, do not address them here.

the second degree” (18 RT 5036)—the jury necessarily found each defendant subjectively harbored malice, premeditation, and deliberation, precluding relief under Senate Bill No. 775.³

Senate Bill No. 775 has no impact on the issues or outcome in this case, and the People respectfully ask this Court to affirm the convictions.

Sincerely,

/s/ Kimberley A. Donohue

KIMBERLEY A. DONOHUE
Deputy Attorney General

For ROB BONTA
Attorney General

KAD:drb

cc: Robert Beles, Esq.
Paul McCarthy, Esq.

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³ As noted in the answer brief on the merits, for these same reasons, the first degree murder verdicts establish beyond a reasonable doubt that the Mitchells suffered no prejudice from any potential error in the trial court’s instruction on the now-abolished theory that “[m]urder under natural and probable consequences is murder of the second degree.” (18 RT 5036; *People v. Chiu* (2014) 59 Cal.4th 155, 167; see ABM 44–45, fn. 16.)

**DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S.
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Case Name: **People v. Carney, et al.**
No.: **S260063**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On November 4, 2021, I electronically served the attached **RESPONDENT'S LETTER BRIEF** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on November 4, 2021, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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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 November 4, 2021, at Sacramento, California.

/s/ D. Boggess

Declarant

STATE OF CALIFORNIA
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA
Supreme Court of CaliforniaCase Name: **PEOPLE v. CARNEY**Case Number: **S260063**Lower Court Case Number: **C077558**

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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11/4/2021

Date

/s/Diane Boggess

Signature

Donohue, Kimberley (247027)

Last Name, First Name (PNum)

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