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November 12, 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:

Respondent submits this letter brief in reply to petitioners' letter brief, filed on November 4, 2021.

The key question this Court must answer in determining whether Senate Bill No. 775 (Stats. 2021, ch. 551 ["Senate Bill No. 775"]) has any impact in this case is whether the theory at issue—the substantial concurrent causation theory of murder, known as the *Sanchez*¹ rule—is one in which a jury may impute malice to a defendant based solely on his participation in a crime. Because the *Sanchez* rule requires an inquiry into the subjective mental state of a defendant, the answer must be no.

Petitioners argue that Senate Bill No. 775 applies here because the *Sanchez* rule is an imputed malice theory of liability. (Petitioners' Supplemental Letter Brief 4–6 ["Petr. Supp. Br."].) Specifically, they argue the *Sanchez* rule allowed the jury to impute malice to them by virtue of their participation in "the crime of a gun battle." (Petr. Supp. Br. 5.) They also argue that the *Sanchez* rule "allows jurors to assign murder liability based on an adversary's actions." (*Ibid.*) Neither of these arguments is correct.

Petitioners' arguments fail to acknowledge that the *Sanchez* rule requires the jury to inquire into both a defendant's own actions *and* his own mental state in determining criminal liability for murder (and the appropriate degree). Because of the inquiry into the defendant's subjective mental state, the *Sanchez* rule cannot be a "theory under which malice is imputed to a person based solely on that person's participation in a crime." (Senate Bill No. 775 (Stats. 2021,

¹ *People v. Sanchez* (2001) 26 Cal.4th 834.

ch. 551), § 2 [amending Penal Code² section 1170.95, subd. (a)(1)].) That inquiry precludes imputing malice to a person on any grounds, much less based solely on that person’s participation in a crime. Senate Bill No. 775, therefore, does not apply to the issues in this case.

Petitioners point to *People v. Jennings* (2010) 50 Cal.4th 616, 643–644, in support of an argument that *Sanchez* was a “policy decision” in which this Court ““developed [the substantial concurrent causation rule] primarily for cases in which the application of the but-for rule [of causation] would allow each defendant to escape responsibility.”” (Petr. Supp. Br. at 5–6.) Their argument then seems to suggest that such a policy is no longer valid after Senate Bill No. 775 because the new legislation is “meant to exclude all theories of imputed liability based on participation in a crime.” (Petr. Supp. Br. at 6.) As just discussed, however, the *Sanchez* rule is not an imputed malice theory of liability, so the new legislation has no impact on it.

In any event, the new legislation (whether referring to Senate Bill No. 1437 or Senate Bill No. 775) operates harmoniously with the *Sanchez* rule. As petitioners recognize, the law now requires a finding that a defendant “not only harbor malice but also . . . commit an act that caused or helped to cause the murder.” (Petr. Supp. Br. 6.) As the People argued in the answer brief on the merits and the supplemental letter brief, that is exactly what the *Sanchez* rule does. It authorizes a murder conviction where the defendant’s conduct proximately caused a death and the defendant acted with malice aforethought. (*Sanchez, supra*, 26 Cal.4th at pp. 845–846; ABM 18; People’s Supplemental Letter Brief 2.)

The other cases upon which petitioners rely in arguing the *Sanchez* rule allows imputation of malice fail to support their argument. Despite petitioners’ characterization otherwise (Petr. Supp. Br. 5), *People v. Kemp* (1957) 150 Cal.App.2d 654 did not involve imputation of malice. That case examined the defendant’s conduct and determined that it was a proximate cause of the victim’s death. (*Id.* at pp. 658–660.) There was no discussion of imputing malice to the defendant on the basis of his participation in a street race. (*Ibid.*) Similarly, *People v. Carrillo* (2008) 163 Cal.App.4th 1028 and *People v. Concha* (2009) 47 Cal.4th 653, did not involve imputed malice. (Petr. Supp. Br. 5.) Like *Kemp*, the *Carrillo* decision involved an analysis of proximate causation, not malice. (*Carrillo, supra*, at pp. 1037–1038.) *Concha* likewise did not involve imputation of malice, as this Court specifically determined that the defendants “had the intent to kill a person.” (*Concha, supra*, at p. 661, italics omitted.)

Petitioners cannot establish, therefore, that the *Sanchez* rule falls under the amendments of either Senate Bill No. 1437 or Senate Bill No. 775.

Because Senate Bill No. 775 does not apply to the issues in this case, this Court need not address petitioners’ other arguments, namely, whether Senate Bill No. 775 will have retroactive

² All further statutory references are to the Penal Code unless otherwise indicated.

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application to their cases and whether Senate Bill No. 775 expands the manner in which defendants can seek relief under Senate Bill No. 1437. (Petr. Supp. Br. 1–4.)

Sincerely,

/s/ Kimberley A. Donohue

KIMBERLEY A. DONOHUE

Deputy Attorney General

For ROB BONTA
Attorney General

KAD:drb

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

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

I declare:

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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 12, 2021, at Sacramento, California.

/s/ D. Boggess

Declarant

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. CARNEY**

Case Number: **S260063**

Lower Court Case Number: **C077558**

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Date

/s/Diane Boggess

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Donohue, Kimberley (247027)

Last Name, First Name (PNum)

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