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November 4, 2020

California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: **Letter Brief – Reply to Answer to Petition for Review**
*People v. Ware et al.*
Supreme Court No. S263923
Court of Appeal No. D072515

To the Honorable Justices of the California Supreme Court:

Appellant **VICTOR WARE**, through his attorney, submits this letter brief in reply to the People's answer to Mr. Hoskins's petition for review. On October 19, 2020, in response to Mr. Hoskins's petition, the court directed the People to address the following issue:

> 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 his only connection to the coconspirators is common gang affiliation and social media posts which fail to prove his involvement in the conspiracy.

The People filed their answer brief on October 29, 2020. Mr. Hoskins filed a reply on November 2, 2020. Mr. Simpson filed his reply on November 4, 2020.

Pursuant to rule 8.200(a) of the California Rules of Court, Mr. Simpson joins in the replies filed by Mr. Hoskins and Mr. Simpson. For the reasons articulated by both parties, he agrees

that a conviction for conspiracy to commit a crime (in this case, murder) cannot be sustained based solely on evidence of gang membership coupled with social media posts. (See Hoskins Reply, at pp. 5-6, 17-19; Simpson Reply, at pp. 5-8.) Mr. Ware's circumstances are slightly different, but the answer to the question posed by the court is still pertinent to the resolution of his appellate challenge.

As noted in his petition for review, Mr. Ware's conviction in count one for conspiracy to murder members of the Crips street gang (Pen. Code, § 182, subd. (a)) was based on his membership in a Crips rival gang and his involvement in a shooting, the target of which the court believed was a Crips member. (Ware Pet., at p. 14.) As argued in the petition, the evidence did not support the inference that the shooting's target was a member of that gang. (Ware Pet., at pp. 15-18.) In the absence of that evidence, the only evidence supporting Mr. Ware's conviction was his gang membership and its trappings, like his moniker. (Ware Pet., at pp. 14-15.) There was not even evidence of social media posts attributable to him. In fact, there was no evidence Mr. Ware had any social media accounts. If proof of gang membership coupled with social media posts is not enough to sustain a conspiracy conviction, as appellants all contend, then the evidence was insufficient to support Mr. Ware's conviction in count one.

Respectfully submitted,

*/s/ David L. Polsky*

David L. Polsky
Attorney for Mr. Ware

**CERTIFICATE OF WORD COUNT**

I certify that the length of the foregoing letter brief, as determined by the word count feature of my word processing program, contains 454 words.

*/s/ David L. Polsky*

David L. Polsky
Attorney for Mr. Ware

## PROOF OF SERVICE

I declare that:

I am employed in Windham County, Connecticut; I am over the age of 18 years and not a party to the within entitled cause; my business address is P.O. Box 118, Ashford, CT 06278. On November 4, 2020, I served a copy of the attached **Letter Brief – Reply to Answer to Petition for Review** in said cause on all parties in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail, at Ashford, Connecticut, addressed as follows:

Victor Ware, BD7648
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960-1050

In addition, I electronically served the attached brief to the following parties via TrueFiling:

Nancy Olsen,
Counsel for Nicholas Hoskins

Christopher Lawson, Deputy D.A.
Office of the District Attorney

Lynda Romero,
Counsel for Dionte Simpson

Hon. Leo Valentine, Jr., Judge,
San Diego County Superior Court

Office of the Attorney General,

California Court of Appeal,
Fourth District, Division One

Appellate Defenders, Inc.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 4, 2020, at Ashford, Connecticut.

*/s/ David L. Polsky*
David L. Polsky

**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**

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

11/4/2020

Date

/s/David Polsky

Signature

Polsky, David (183235)

Last Name, First Name (PNum)

Law Office of David L. Polsky

Law Firm