

S248520

OCT 25 2019

Jorge Navarrete Clerk

Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF	)	CASE NO. S248520
CALIFORNIA,	)	
	)	B276040
Plaintiff and Respondent,	)	
	)	Los Angeles County
vs.	)	Superior Court
	)	Case No. TA138027
STARLETTA PARTEE,	)	
	)	
Defendant and Petitioner.	)	
	)	

PETITIONER'S SUPPLEMENTAL BRIEF

PAUL KLEVEN (SB# 95338)  
LAW OFFICE OF PAUL KLEVEN  
1604 Solano Avenue  
Berkeley, CA. 94707  
(510) 528-7347 Telephone  
(510) 526-3672 Facsimile  
Pkleven@Klevenlaw.com

By appointment of the Supreme Court

Attorneys for Petitioner  
Starletta Partee

## TABLE OF AUTHORITIES

### CASES:

<i>People v. Partee</i> (2018) 21 Cal.App.5th 630.....	5
<i>State v. Carpenter</i> (2019) 365 Ore 488, 446 P.3d 1273.....	3-5
<i>State v. Clifford</i> (1972) 263 Ore. 436, 502 P.2d 1371.....	4
<i>State v. Turley</i> (2005) 202 Ore. App. 40, 120 P.3d 1229.....	3, 5

### STATUTES:

California Rules of Court, rule 8.524 .....	3
Model Penal Code § 242.3.....	4

Pursuant to California Rules of Court, rule 8.524(d), Petitioner Starletta Partee files this Supplemental Brief to advise the Court of the decision of the Oregon Supreme Court in *State v. Carpenter* (2019) 365 Ore 488, 446 P.3d 1273. *Carpenter* was handed down on August 8, 2019, after the close of briefing in this case.

As Petitioner explained in her Opening Brief on the Merits (“OBM”), an Oregon intermediate court decision, *State v. Turley* (2005) 202 Ore. App. 40, 120 P.3d 1229, appeared to be the only decision in the country that could be considered consistent with the Second Appellate District’s holding in this case. (OBM 30-31.) *Turley* held that a woman had either “harbored” or “concealed” her husband when she did not respond to officers knocking on the door of her trailer, where he lived and was hiding, in violation of Oregon’s hindering prosecution statute. (*Turley, supra*, 120 P.3d at p. 1234.) As Petitioner noted, a subsequent Oregon decision had relied in part on *Turley* in determining that misleading an officer who was trying to arrest a fugitive violated the statute, and the Oregon Supreme Court had granted review in that case. (OBM 31, fn. 7, citing *State v. Carpenter* (2017) 287 Ore. App.720, 404 P.2d 1135, 1137-1140), review allowed March 1, 2018, S065374.)

*Carpenter* holds that a defendant who falsely denied knowing or recently seeing a fugitive when questioned by the detective trying to arrest

that fugitive did not “conceal[]” the fugitive under ORS 162.325 (1)(a), and therefore could not be convicted of hindering prosecution. (*Carpenter, supra*, 446 P.2d at pp. 1277-1280.) The Court explained that Oregon’s current statute “descended from the common-law crime of accessory after the fact” (*id.* at p. 1277), and cited its prior decision construing an earlier statute for the decision’s “historical account of the common law, of which we presume the legislature would have been aware.” (*Carpenter, supra*, 446 P.2d at p. 1277, fn. 3, citing *State v. Clifford* (1972) 263 Ore. 436, 441, 502 P.2d 1371.) Under the common law, “the conduct criminalized by prohibitions on ‘conceal[ment]’ did not historically include deception.” (*Carpenter, supra*, 446 P.2d at p. 1278.) The statute was also derived from section 242.3 of the Model Penal Code, whose drafters “understood that misleading statements to the police would not be punishable as concealing the other person,” though the Code included a separate subsection criminalizing volunteering false information to a law enforcement officer, which did not become part of the Oregon statute (*Id.* at pp. 12780-1279.)

It was apparent to the Court “that the legislature did not intend the term ‘conceals’ in ORS 162.325(1)(a) to include denying knowledge about a fugitive or the fugitive’s whereabouts,” but intended instead to “require[] conduct by the defendant that hides [a person who has committed a felony] from ordinary observation.” (*Carpenter, supra*, 446 P.2d at p. 1279.) The

State's failure to prove that Carpenter had committed conduct that hid the fugitive from ordinary observation required reversal. (*Id.* at pp. 1279-1280.)

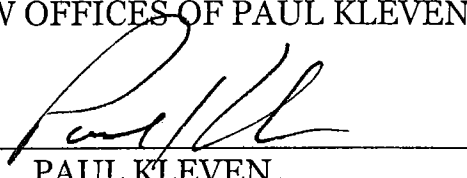
While the Oregon Supreme Court did not specifically overrule *Turley*, *Carpenter* is contrary to *Turley's* determination that silence could constitute concealment under Oregon law. *Carpenter* further demonstrates the unique nature of the Second Appellate District's holding in this case. (See OBM 15-34; Reply Brief on the Merits 13-20; *People v. Partee* (2018) 21 Cal.App.5th 630, 651 (Baker, J., concurring and dissenting.)

### CONCLUSION

For all the reasons stated above and in her prior briefs, Petitioner Starletta Partee asks this Court to reverse her four felony convictions.

LAW OFFICES OF PAUL KLEVEN

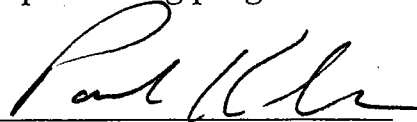
by:



PAUL KLEVEN  
Attorney for Petitioner  
Starletta Partee

## CERTIFICATE OF COUNSEL

I certify that this Petitioner's Supplemental Brief contains 627 words,  
as calculated by my WordPerfect X9 word processing program.

A handwritten signature in black ink, appearing to read "Paul Kleven", written in a cursive style.

---

PAUL KLEVEN

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA:

I am a citizen of the United States. My business address is 1604 Solano Avenue, Berkeley, CA. 94707. I am employed in the County of Alameda, where this mailing occurs. I am over the age of 18 years, and not a party to the within cause. On the date set forth below, I served the foregoing document(s) described as:

**PETITIONER'S SUPPLEMENTAL BRIEF**

on the following person(s) in this action by:

Starletta Partee  
(address known to attorney)

(ELECTRONIC SERVICE BY EMAIL) On October 24, 2019, I transmitted a PDF version of this document by electronic mail using the email addresses indicated above.

AND,

Office of the Attorney General  
300 S. Spring Street  
5<sup>th</sup> Floor, North Tower  
Los Angeles, CA 90013

Clerk of the Court  
Second District Court of Appeal  
300 S. Spring Street  
Floor 2, North Tower  
Los Angeles, CA 90013

California Appellate Project  
Los Angeles Office  
520 S. Grand Avenue, 4th Floor  
Los Angeles, CA 90071

(TRUEFILING SERVICE) A PDF version of this document will be e-Served through TrueFiling electronic service.

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 October 24, 2019 at Berkeley, California.

  
KATHY YAM