



DAVID L. POLSKY  
ATTORNEY AT LAW  
P.O. BOX 118, ASHFORD, CT 06278

CA BAR NO. 183235  
(860) 429-5556

November 6, 2020

California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

Re: **Errata Letter**  
*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 to correct an error contained in his reply to the People's answer to Mr. Hoskins's petition for review filed on November 4, 2020. On the first page, the first sentence of the second paragraph states,

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.

It should read,

Pursuant to rule 8.200(a) of the California Rules of Court, **Mr. Ware** joins in the replies filed by Mr. Hoskins and Mr. Simpson.

A revised copy of Mr. Ware's reply is attached to this letter.

Respectfully submitted,

*/s/ David L. Polsky*

David L. Polsky  
Attorney for Mr. Ware



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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. Ware 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,  
Appellate Defenders, Inc.

California Court of Appeal,  
Fourth District, Division One

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

## 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 6, 2020, I served a copy of the attached **Errata Letter** 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:

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California Court of Appeal,  
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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, and that this declaration was executed on November 6, 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 CaliforniaCase 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.
2. My email address used to e-serve: **polsky183235@gmail.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
NOTICE OF ERRATA	S263923_ERR_Ware

Service Recipients:

Person Served	Email Address	Type	Date / Time
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Lynda Romero Attorney at Law 90014	romero90014@gmail.com	e-Serve	11/6/2020 8:43:02 AM
Nancy Olsen Court Added 132419	nancyeolsen@gmail.com	e-Serve	11/6/2020 8:43:02 AM
Walter Hernandez Office of the Attorney General	walter.hernandez@doj.ca.gov	e-Serve	11/6/2020 8:43:02 AM
Christine Bergman Office of the Attorney General 225146	Christine.Bergman@doj.ca.gov	e-Serve	11/6/2020 8:43:02 AM
Lynda Romero Court Added 90014	laromero.atty@sbcglobal.net	e-Serve	11/6/2020 8:43:02 AM
Alicia Curiel Department of Justice, Office of the Attorney General-San Diego	alicia.curiel@doj.ca.gov	e-Serve	11/6/2020 8:43:02 AM
Christopher Lawson San Diego District Attorney	christopher.lawson@sdcca.org	e-Serve	11/6/2020 8:43:02 AM
Office of the District Attorney	DA.Appellate@sdcca.org	e-Serve	11/6/2020 8:43:02 AM
Hon. Leo Valentine, Jr., Judge	Appeals.Central@SDCourt.ca.gov	e-Serve	11/6/2020 8:43:02 AM
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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.

11/6/2020

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Date

/s/David Polsky

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Signature

Polsky, David (183235)

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Last Name, First Name (PNum)

Law Office of David L. Polsky

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Law Firm