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FILED WITH PERMISSION

Attorney for Antonio Chavez Moses, III, Defendant and Appellant
By Appointment of the Supreme Court of California

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ANTONIO CHAVEZ, MOSES, III,

Defendant and Appellant.

Case No. S258143

(Court of Appeal Case
No. G055621)

(Orange County
Superior Court
No. 16NF1413)

**APPELLANT’S REPLY TO RESPONDENT’S OPPOSITION TO
APPELLANT’S MOTION FOR JUDICIAL NOTICE**

Appellant moved for judicial notice of the file in *People v. Peterson*, G053721; Orange County Superior Court No. 15NF1847, solely to establish that the Orange County District Attorney charged an attempted violation of Penal Code section 236.1, subdivision (c), in *Peterson*. The same prosecutorial agency in appellant’s case claimed the language of Penal Code section 236.1, subdivision (c), that includes the word “attempt” would render a charge under Penal Code section 664 contrary to law. (2 CT 406-412)

Respondent opposes appellant’s motion. Appellant offers this reply to discuss how respondent misinterprets appellant’s motion.

Respondent interprets appellant’s motion as an attempt to “attach precedential value to the unpublished *Peterson* decision.” (Respondent’s Opposition 4.) That is not what appellant is asking this Court to do. This Court may take judicial notice of the charge in *Peterson* by relying solely on the superior court file. Evidence Code section 452, subdivision (d), permits judicial notice of the records of any court in this state. Citation to the Court of Appeal’s case number in *Peterson* merely provides this Court with an additional source for the information. Appellant stated clearly in his motion that he is not relying on the analysis contained in the Court of Appeal’s unpublished opinion. (Appellant’s Motion 1.) Because the defendant in *Peterson* was charged under the attempt statute, the issue before this Court in appellant’s case was not an issue in *Peterson*.

Respondent states that appellant acknowledges “he did not move the lower court to take judicial notice of the *Peterson* case file.” (Respondent’s Opposition 4.) Appellant noted “[t]he *Peterson* file was not before the *trial court* in appellant’s case . . .” (Appellant’s Motion 1, italics added) but directing this Court’s attention to that line presents an incomplete summary of the proceedings below. Appellant asked the Court of Appeal to take judicial notice of the *Peterson* case file, although the Court of Appeal did not grant the request. (Order dated May 17, 2018 in Case No. G055621.) Whether or not raised in the trial court, respondent does not dispute the fact that the same prosecutorial agency took inconsistent positions concerning how the statute may be charged.

CONCLUSION

For the foregoing reasons, and the reasons discussed in appellant’s motion, appellant requests this Court to take judicial notice of the file in *People v. Peterson*.

Dated: March 31, 2020

Respectfully submitted,

/S/

MARK ALAN HART, Attorney at Law
State Bar No. 66134
Attorney for Appellant

**DECLARATION OF ELECTRONIC SERVICE AND
SERVICE BY MAIL**

RE: PEOPLE V. MOSES

No. S258143

I, Mark Alan Hart, declare that I am a citizen of the United States over 18 years of age, and not a party to the subject cause; my business address is PMB 520; 9420 Reseda Boulevard, Northridge, California 91324. On March 31, 2020, I electronically served the Appellant's Reply to Respondent's Opposition to Appellant's Motion for Judicial Notice, of which a true and correct copy is affixed, by e-serving from hart66134@gmail.com by 5:00 p.m. to:

Xavier Becerra, Attorney General
(Counsel for Respondent)
Attn. Steve Oetting
e-served at: sdag.docketing@doj.ca.gov

Appellate Defenders, Inc.
e-served at: eservice-court
@adi-sandiego.com

Orange County District Attorney
Attorney, Attn. Daniel Varon e-served at: appellate@da.ocgov.com

and I placed a copy thereof in a separate envelope for each addressee named hereafter, addressed to each addressee respectively as follows:

Orange County Superior Court
Attn. Hon. Julian W. Bailey
700 Civic Center Drive West, 1st Fl
Santa Ana, CA 92701

Orange County Public Defender
Attn: Jennifer Ryan
14 Civic Center Plaza
Santa Ana, CA 92702

Antonio Chavez Moses, III, BE-6994
P.O. Box 4000
Vacaville, CA 95696

Court of Appeal, Fourth
Appellate District, Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States Mail by me at Northridge, California, on March 31, 2020. I declare under penalty of perjury that the foregoing is true and correct. Executed on March 31, 2020, at Northridge, California.

/S/

MARK ALAN HART, DECLARANT

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.**
MOSES

Case Number: **S258143**

Lower Court Case Number: **G055621**

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: **hart66134@gmail.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

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Mark Hart Mark Alan Hart 66134	hart66134@gmail.com	e-Serve	3/31/2020 12:18:14 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

3/31/2020

Date

/s/Mark Hart

Signature

Hart, Mark (66134)

Last Name, First Name (PNum)

Mark Alan Hart

Law Firm