

1 Tracy Renee Lum, SBN 256703  
2 Law Office of Tracy Renee Lum  
3 1045 Sperry Avenue, Suite F, #254  
4 Patterson, CA 95363  
5 (209) 894-7794 (T)  
6 (209) 894-7239 (F)  
7 trlum@hotmail.com

8 Counsel for Joseph Hunt

9 **SUPERIOR COURT STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 ) Case No.: A090435  
12 In re JOSEPH HUNT, )  
13 ) **PETITIONER'S REPLY TO**  
14 Petitioner, ) **INFORMAL RESPONSE**  
15 )  
16 On Habeas Corpus. ) **Dept. 70**  
17 )  
18 ) **The Honorable Christopher Dybwad**  
19 )  
20 )  
21 )

22 TO THE HONORABLE CHRISTOPHER DYBWAD, JUDGE, DEPARTMENT  
23 70, WEST, AND TO THE STATE OF CALIFORNIA AND THE LOS ANGELES  
24 DISTRICT ATTORNEY:

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Petitioner Joseph Hunt hereby submits this reply to the informal response to the  
Petition for Writ of Habeas Corpus.



1 furnished Hunt. As D.D.A. Wapner remarked, Hunt actually believed he had made the  
2 money, and Levin publicly acknowledged the multimillion-dollar debt to Hunt. In all  
3 this, Hunt was blameless, a victim of fraud and the theft of his professional services in  
4 violation of Penal Code section 484. One struggles to understand how Clayton  
5 Brokerage, a licensed and regulated broker/dealer, could have cooperated in the con, but  
6 their representative at trial, Jack Friedman, admitted that they did. It is literally  
7 inconceivable how they could have ethically justified duping a business man into  
8 believing he had made millions! And not surprisingly, the illusion distorted Hunt's  
9 conduct and led him to make a series of unwise business decisions.

10 It is simple justice to lift the robbery allegation from Hunt's shoulders. Under the  
11 trial prosecutor's view of the facts, Hunt lacked the animus furandi of robbery as he had  
12 no intent to take Levin's property but rather only sought to recover a portion of what  
13 Levin publicly acknowledged was owed him. If a forcible taking took place, Levin, the  
14 brazen and unrepentant con artist, maliciously and wantonly drove what was then merely  
15 an ordinary citizen attempting to ply an honest trade to it. Remember, Levin exulted in  
16 being judgment-proof and laughed at people who sued him civilly. (3 RT 6696-6697.)  
17 He openly declared he was a thief by trade. (3 RT 6510, 6696-6698, 6727-6728; 4 RT  
18 6866, 6879.)

19 Hunt's expectation that he would eventually receive \$4 million as his commission  
20 on the Clayton profits led him to believe he could avoid reporting trading losses to his  
21 other investors, as he would be able to make them whole when he obtained the funds  
22 from Levin.

23 Levin's and Clayton's conspiracy to defraud Hunt thus created the powerful  
24 motives that led to the fall of Hunt and the BBC. It is fair to say that Hunt would not be  
25 in prison today if he had not, first and repeatedly, been victimized by Levin.

26 So again, Petitioner points out that application of the claim of right doctrine, in  
27 light of the trial prosecutor's summation, is condign. It corrects a basic injustice.  
28

1            Hunt didn't want to take Levin's property. He was innocent of that mental state.  
2 DDA Wapner understood his evidence as proof that Hunt desperately wanted to obtain  
3 what was due him so that he could make his other investors whole.

4            The prosecutor convinced the jury that the Clayton travesty ended in Levin's  
5 murder, but under the State's theory at trial, it did not end in robbery as that crime was  
6 defined in 1984.

7            Had Hunt's jury been properly instructed, in light of the prosecutor's summation,  
8 the jury could only have acquitted Hunt of all theft and robbery based allegations,  
9 including the special circumstance of robbery.

10           The State of California has no legitimate interest in keeping Hunt under the  
11 weight of the special circumstance of robbery when it took the position at trial that he  
12 did not have the required mental state. The procedural questions connected to a claim of  
13 innocence are subsumed in the resolution of the underlying factual question. If Hunt is  
14 actually innocent of the animus furandi element of robbery, then for that very reason, the  
15 law of the state waves the related procedural questions. The State suffers no prejudice in  
16 the application of this rule as Hunt does not rely on new evidence nor seeks to reopen  
17 any evidentiary issue. Rather, he points to the trial record itself.

18           Although an intent to steal may ordinarily be inferred when one person takes the  
19 property of another, particularly if he takes it by force, proof of the existence of a state  
20 of mind incompatible with an intent to steal precludes a finding of either theft or  
21 robbery. (*People v. Butler* (1967) 65 Cal.2d 569, 573 (Butler).)<sup>1</sup> In this case, there was  
22 credible, substantial evidence supporting a claim of right defense. Hunt told everyone  
23 that Levin owed him \$3.5 to 4 million dollars from trades Hunt had made on behalf of  
24 Levin. (Exhibits, pp. 199-200, 203-206, 234, 241-242, 253, 268-269, 281-282, 287-288,  
25 300, 355-357, 362-363, 365, 368-369, 379, 390-391, 393-394.) Indeed, in his closing  
26 argument, the prosecutor argued exactly this. (RT 12752-12753.)

27  
28 <sup>1</sup> Although overruled in *People v. Tufunga* (1999) 21 Cal.4th 935, *Butler* is controlling in  
the instant case as the conduct preceded *Tufunga*'s finality. (*People v. Sakarias* (2000) 22  
Cal.4th 596, 622.)

1 Based on the above there is no doubt that there was credible, substantial evidence  
2 that Hunt had a bona fide belief, even though mistakenly held, that he was owed \$3.5  
3 million dollars by Levin for trading profits, however, the court did not give a jury  
4 instruction on a claim of right defense. Therefore, trial court's failure to instruct the jury  
5 of a claim of right defense to robbery "was a miscarriage of justice within the meaning  
6 of Article 13 of the California Constitution and requires reversal." (*Butler*, 65 Cal.2d at  
7 p. 572-574.)

8 **CONCLUSION**

9 Based on the above there is no doubt that the court should have instructed the jury  
10 on a claim of right defense as there was credible, substantial evidence that Hunt had a  
11 bona fide belief that he was owed far more money by Levin for trading profits, and the  
12 prosecutor's closing argument establishes the basis for such an instruction. Had the jury  
13 been properly instructed there is no reasonable possibility that the jury would have  
14 convicted Hunt of robbery or found the robbery special circumstance true. Therefore, it  
15 is undeniable that the trial court's failure to instruct the jury of a claim of right defense  
16 to robbery was a miscarriage of justice requiring reversal.

17 Dated: October 18, 2023.

18 Respectfully submitted.

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21 TRACY RENEE LUM  
22 Counsel for Petitioner Joseph Hunt

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1 **PROOF OF SERVICE BY U.S. MAIL**

2 I, Scott Esty, declare:

3 I am a US citizen and over the age of 18. On the below date I have an  
4 electronic copy of the **PETITIONER'S REPLY TO INFORMAL RESPONSE**, on the  
5 parties as listed below:  
6

7 Los Angeles County District Attorney  
8 Van C. Ha, Deputy District Attorney  
9 [vha@da.lacounty.gov](mailto:vha@da.lacounty.gov)

10 SWORN TO UNDER PENALTY OF PERJURY, this 18th day of October, 2023 at Galt,  
11 California.

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13 \_\_\_\_\_  
14 SCOTT ESTY, declarant  
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