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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAMON CEBREROS, JR.,

Defendant and Appellant.

E052776

(Super.Ct.No. RIF120947)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Michele D. Levine,  
Judge. Affirmed.

Sharon G. Wrubel, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, and Barry Carlton and James H.  
Flaherty III, Deputy Attorneys General, for Plaintiff and Respondent.

## I. INTRODUCTION

Defendant Ramon Cebreros, Jr. and Erick Martinez Enriquez were charged with the first degree murder of Juan Carlos Seoane on December 18, 2004, with the special circumstance that the murder was committed during a residential burglary. (Pen. Code, §§ 187, subd. (a), 189, 190.2, subd. (a)(17)(G).) The prosecution sought the death penalty against defendant but not Enriquez, and defendant and Enriquez were tried separately.

In defendant's trial, the People presented evidence that defendant shot and killed Seoane, a methamphetamine dealer, after he and Enriquez entered Seoane's mobilehome and Enriquez unsuccessfully demanded money or drugs from Seoane. Defendant testified in his own defense and claimed that Enriquez, and not he, shot Seoane. He also challenged the credibility of Lisha Lemons, the only witness to the shooting who claimed that defendant, and not Enriquez, shot Seoane.

The jury found defendant guilty of the first degree felony murder of Seoane, found true the special circumstance allegation that the murder was committed during a residential burglary, and also found that defendant discharged a firearm causing great bodily injury or death in the murder. At the penalty phase, the jury did not recommend the death penalty and fixed defendant's penalty for the murder as life in prison without the possibility of parole. The trial court sentenced defendant to life in prison without the

possibility of parole for the murder, plus a concurrent term of 25 years to life for the discharge enhancement.<sup>1</sup>

Defendant appeals, raising three claims of error. First, he claims the prosecution was erroneously permitted to present testimony that on January 11, 2005, a few weeks after the December 18, 2004, murder of Seoane, defendant used the same handgun he used to shoot Seoane to shoot two other people, Jesus Torres and James Carrillo, in an unrelated incident. Second, defendant claims he was erroneously not allowed to impeach Lemons concerning monetary compensation she allegedly expected to receive in exchange for her testimony. Third, and finally, defendant claims that insufficient evidence supports his felony-murder conviction and the burglary-murder special-circumstance finding, because there was insufficient evidence that he intended to commit theft when he entered the home where Seoane was shot and killed.

We find no merit to any of these claims and affirm the judgment.

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<sup>1</sup> In his trial, Enriquez was also found guilty of the first degree felony murder of Seoane with the special circumstance that the murder occurred during the course of a residential burglary. (*People v. Enriquez* (Oct. 13, 2010, E049129) [nonpub. opn.], p. 2 [Fourth Dist., Div. Two].) Enriquez's jury also found that a principal, Cebberos, was armed with a firearm during the commission of the murder. (*Ibid.*) Enriquez was sentenced to life without the possibility of parole for the murder plus one year for the armed enhancement. (*Ibid.*)

## II. STATEMENT OF FACTS

### A. *The Prosecution's Case*

#### 1. Background

In December 2004, Seoane, or “Johnny” as he was known, lived with Lisha Lemons, her mother Danielle Salrin, and her friends Arington Gill and Theresa Flemings in Salrin’s mobilehome in the Woodcrest area of Riverside. Lemons and Seoane used and sold methamphetamine. Enriquez also used methamphetamine and sold methamphetamine for Seoane. Enriquez owed Seoane \$600 to \$900, and because of the debt Seoane stopped giving or “fronting” methamphetamine to Enriquez. Enriquez disputed the debt and wanted more methamphetamine from Seoane.

On the morning of December 17, 2004, Enriquez gave Seoane \$200, and wanted Seoane to either give him methamphetamine or return the money. Lemons and Seoane were telling Enriquez that they did not have any more methamphetamine to give him. Later on December 17, Enriquez and Seoane began arguing outside the mobilehome in Woodcrest while Enriquez’s girlfriend, 17-year-old A.P., waited in Enriquez’s car. The argument disturbed a neighbor who came out of his home and told Enriquez to leave. Before leaving, Enriquez said he would be back because Seoane had “burned him.”

After leaving the mobilehome park, Enriquez and A.P. went to a house in San Jacinto where a person named Melissa lived. There, Enriquez talked to a person named “Flaco” and left the house with Flaco.<sup>2</sup>

2. Enriquez’s Earlier Telephone Conversation With “Malo”

Around one week before December 17-18, 2004, Enriquez and Sergio Ahumada were driving in Enriquez’s car. Ahumada overheard a telephone conversation that Enriquez was having with a man he heard was named “Malo” over a Nextel device that operated like a walkie-talkie. Enriquez was saying he was going to give Seoane “one more chance” to settle the drug dispute and, if unsuccessful, he would “take care of it.” A detective later testified that a man named Malo Solis was in custody around December 17-18, 2004, and was not a suspect in the murder of Seoane.

3. Lemons’s Account of the December 18, 2004, Shooting of Seoane

Around 1:00 a.m. on December 18, 2004, Enriquez knocked on the back door of the mobilehome where Lemons and Seoane lived. The back door led into a laundry room or porch area. Lemons and Seoane were present in the home, along with Salrin, Gill, and Flemings. Salrin was asleep in the family room. Gill and Flemings were asleep in separate bedrooms. Lemons and Seoane were awake and heard the knock.

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<sup>2</sup> A.P. did not identify defendant in court as “Flaco,” or the person with whom Enriquez spoke and left Melissa’s house with on December 17, 2004. In his trial testimony, however, defendant admitted he was at Melissa’s house and met with Enriquez shortly before Seoane was shot and killed. And in his opening brief, defendant admitted his nickname was Flaco.

Lemons went to the back door, opened it, and saw Enriquez standing there. Enriquez appeared to be alone, and he and Lemons talked for 15 to 20 minutes. Enriquez asked Lemons to let him talk to Seoane and assured her he would not cause any problems. Lemons ultimately agreed. As Lemons turned to walk into the home, she heard scuffling, and turned to see that defendant and Enriquez were both standing in the laundry room. Lemons did not know defendant or his name, and complained that Enriquez had brought someone with him.

At that point, Seoane came into the laundry room. He tried to introduce himself to defendant and extended his hand, but defendant gave him “a hard look” and said nothing. Pointing at defendant, Enriquez said that defendant was the person to whom Seoane owed money, and demanded that Seoane give him either money or methamphetamine. Lemons said that Seoane did not owe defendant anything, and if Enriquez owed defendant anything then that was a matter between Enriquez and defendant. Enriquez kept demanding drugs or money from Seoane.

Seoane leaned toward Lemons and asked, “Who’s ‘he?’” referring to defendant, and defendant suddenly pulled out a gun and shot Seoane. Seoane took a couple of steps inside the home, said “[h]e shot me,” and collapsed. Defendant and Enriquez drove off in Enriquez’s car. Lemons ran after them for a short distance, yelling ““Erick shot Johnny,”” meaning that Enriquez shot Seoane.

#### 4. The Aftermath of the Shooting

Seoane could not be resuscitated. He died from a single bullet that perforated his lung and aorta.

A.P. told police that she and Melissa picked up Enriquez and defendant at the home of someone named Bruce early on the morning of December 18, 2004. The four of them then took Enriquez's car to a remote area and left it there. The car was found burning in a remote area of Mead Valley on December 18, 2004.

Shortly after the shooting, Lemons told the police that Enriquez and another man came to the home and that the other man shot Seoane. During a police station interview later on December 18, 2004, Lemons described the other man as Hispanic, possibly with dark hair, and with a distinctive "letter" tattoo on his neck. During the same interview, Lemons identified defendant from a photographic lineup as the man who shot Seoane. Lemons also identified defendant at trial as the person who shot Seoane. Lemons admitted using methamphetamine during the two-week period she testified at trial, but denied being "high" on methamphetamine while testifying.

When interviewed by police on December 18, 2004, Salrin said she awoke hearing Lemons screaming both that Enriquez shot Seoane and that Enriquez and his friend shot Seoane. At defendant's trial in May 2010, Salrin testified that she awoke hearing Lemons screaming that Enriquez "brought the shooter" who shot Seoane.

Enriquez was arrested on December 20, 2004. Defendant had been absconding from parole since November 2004, and was arrested on February 2, 2005.

#### 5. Defendant's Apprehension and Arrest

On February 2, 2005, defendant was driving his girlfriend Ivonne DeAlba's truck, and DeAlba and defendant's young nephew were passengers, when police spotted the truck and conducted a felony traffic stop. After marked police cars parked in front of and behind the truck, defendant sped away and led the officers on a high-speed chase. Defendant ran stop signs, drove the wrong way on the freeway, and sped through commercial and residential neighborhoods at speeds in excess of 100 miles per hour. He was apprehended after the truck crashed nearly head-on into another vehicle.

A loaded Lorcin semiautomatic .380-caliber handgun was recovered from the center console of the truck. The magazine contained six rounds of .380-caliber ammunition, and 12 additional rounds of the same ammunition were found in defendant's front pants pocket when he was booked into jail. A bullet casing recovered from the scene of the Seoane shooting matched the gun found in the truck.

#### 6. Defendant's Incriminating Statements to DeAlba and Others

DeAlba began dating defendant in late December 2004, and their relationship ended after he was arrested. DeAlba recalled seeing defendant with a gun, and testified it was "always the same" gun. During their relationship, defendant told DeAlba he had "shot at someone," and if she knew what he had done she would not want to be with him.

In a jailhouse telephone conversation with Gabriel Garcia on February 6, 2005, defendant said: "Let me put it to you this way, homey. If my nephew and wife weren't there, it would have been cracking." In another jailhouse telephone conversation with a

person named Maria, defendant said: “I’m gonna get found guilty. . . . [¶] . . . [¶] . . . I chose to live that life. I had a choice, and I chose wrong, you know.”

#### 7. The January 11, 2005, Woodguard Shooting

On January 11, 2005, defendant walked into a break room at a company called Woodguard in San Bernardino, where Jesus Torres and James Carrillo were taking a 15-minute break from work.

Upon entering the break room, defendant asked Carrillo whether he could speak to him in private. Carrillo said he had nothing to say, and did not respond when defendant asked to speak to him a second time. Defendant then pulled a gun from his right pocket and shot directly at Carrillo. Carrillo ran behind Torres while defendant continued firing the gun. Carrillo was hit by two bullets, one in the chest and one in the arm. Another bullet struck Torres in the mouth and came out through his throat.<sup>3</sup>

Torres testified that the gun defendant fired on January 11, 2005, was a black .38-caliber revolver. The prosecutor showed Torres a photograph of the .380-caliber Lorcin semiautomatic handgun found in defendant’s possession on February 2, 2005, and used to shoot and kill Seoane, and asked Torres whether the gun in the photograph resembled the gun defendant fired on January 11, 2005. Torres responded “no,” that the gun in the

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<sup>3</sup> The court sustained defense counsel’s objections to further questions concerning the extent of Torres’s injuries, and a sidebar conference ensued. During the sidebar conference, the court admonished the prosecutor not to ask Torres any further questions about the extent of his injuries.

photograph did not resemble the gun defendant fired on January 11, 2005, but acknowledged that he only saw the barrel of the gun.

Bullet casings recovered from the scene of the January 11, 2005, shooting matched the gun used to shoot and kill Seoane, which was found in defendant's possession on February 2, 2005.

## B. *Defense Case*

### 1. Defendant's Testimony

Defendant was using "[a] lot" of methamphetamine in December 2004, practically "an eightball" or two grams every day, which cost \$120. He began using drugs at a young age, and in December 2004 was using most of his paycheck to purchase drugs. Two or three days before December 18, 2004, Enriquez told defendant that if he could give Enriquez \$600, in a week Enriquez would give defendant an ounce of methamphetamine worth \$1,200. Defendant gave Enriquez \$40, and in return Enriquez agreed to give defendant \$80 worth of methamphetamine in a week.

On December 17, 2004, defendant, his friend Melissa, Enriquez, and A.P. were at Melissa's house in San Jacinto. Enriquez was saying that someone, a drug dealer, owed him money, and asked defendant to go with him to collect money or drugs. Defendant agreed to go but did not know who they were going to see or where they were going. Enriquez drove defendant and himself to the mobilehome where Seoane and Lemons were living. During the drive, defendant did not see that Enriquez had a gun.

Defendant stayed in the passenger seat of Enriquez's car while Enriquez walked up to the door of the home and knocked. Seoane and Lemons come outside and talked to Enriquez for 25 to 30 minutes, while defendant stayed in the car. After the discussion became loud, Seoane, Lemons, and Enriquez went inside for around 10 minutes. Defendant heard "two pops" from inside the home, though he did not know if they were gunshots. A minute or two later, Enriquez came outside. As Enriquez approached his car, Lemons came outside and said, "[y]ou fucking asshole" to Enriquez. Lemons was calm, however, and Enriquez grabbed her and hugged her. Lemons and Enriquez talked for another five minutes, Lemons and defendant looked at each other, and Lemons went back inside the home.

Enriquez then drove to the house of a friend of his in Mead Valley, and defendant waited in the car while Enriquez went inside. When Enriquez came back outside, he gave defendant a .380-caliber handgun, the same gun defendant was "caught" with on February 2, 2005. According to defendant, the gun was worth \$300, could be traded for methamphetamine, and was intended to repay defendant for the \$40 he gave Enriquez several days earlier. Enriquez then called Melissa, and Melissa arrived with A.P.

Enriquez drove his car to a remote area in Mead Valley, while Melissa, A.P., and defendant followed in Melissa's truck. Enriquez drove up a hill, left his car in a place out of sight of Melissa, A.P., and defendant, and left it there. The four of them then drove back to Melissa's house. When they arrived at Melissa's house on the morning of December 18, 2004, it was still dark outside. Defendant admitted that when he was in

custody in August 2005, he asked Dona Chayo to testify that he was with her on the morning of December 18, 2004, even though that was not true.

Regarding the January 11, 2005, shooting of Torres and Carrillo, defendant claimed he was high on methamphetamine and wanted to speak to Carrillo at 3:00 a.m. because Carrillo was spreading untrue rumors about him. He claimed he shot at Torres and Carrillo because they were “approaching in” on him, three or four other guys also stood up, and he “panicked.” He knew Carrillo to carry a concealed weapon and believed he was armed. He shot Carrillo and Torres with the same gun Enriquez gave him on December 18, 2004.

Regarding the high-speed chase and collision on February 2, 2005, defendant claimed he was fleeing because he was on parole, had not reported to his parole officer since November 2004, and did not want to return to prison. On New Year’s Day 2005, defendant told DeAlba that he was “on the run” because he was absconding from parole. The loaded gun found in the center console of DeAlba’s truck and in defendant’s possession on February 2, 2005, was the same gun that Enriquez gave defendant on December 18, 2004. When defendant told his “homey” “[i]t would have been cracking” had DeAlba and his nephew not been with him during the high-speed chase, he meant he would have engaged in a fistfight with the officers, not a gun fight.

## 2. Additional Defense Evidence (Challenging Lemons’s Credibility)

Defendant presented ballistics evidence that he could not have shot Seoane from the distance or in the area Lemons testified.

Wendy Jarman was a friend and neighbor of Lemons in 2004. According to Jarman, Lemons was a dishonest and manipulative person. When Jarman asked Lemons how she knew Enriquez “wasn’t the one” who shot Seoane, Lemons responded, “I don’t know. I don’t know.” According to Jarman, Lemons and Enriquez dated at one point. In April 2006, Jarman came to court with Lemons, and Enriquez and defendant were present in custody. Later that day, Jarman told the district attorney’s investigator that she saw defendant with Enriquez at Lemons’s home two weeks before the shooting, and talked to him for around 45 minutes.

Gill testified that after Seoane was shot and he and Lemons were standing over Seoane, Lemons said Enriquez shot Seoane. Gill also admitted telling a detective that Lemons said “they” shot Seoane.

Flemings met Lemons through Enriquez. At the time, Lemons and Enriquez were dating. According to Flemings, Enriquez introduced Lemons to Seoane, who replaced Enriquez, which upset Enriquez. Flemings testified that, as Seoane lay dying, he said “Erick” three times. Flemings also heard Lemons screaming that Enriquez shot Seoane, but when police arrived Lemons “changed” her story and claimed that a Hispanic male with a neck tattoo shot Seoane.

According to Flemings, she and Gill were confused when Lemons changed her story about who shot Seoane. Then, when Flemings, Gill, Lemons, and Salrin were talking about the incident at the police station after the shooting, Lemons was saying she

could not believe Enriquez “did this” and never mentioned the Hispanic male with the neck tattoo.

### III. DISCUSSION

#### *A. The Evidence of the January 11, 2005, Woodguard Shooting Was Properly Admitted in the Prosecution’s Case-in-chief*

Defendant claims the court abused its discretion and deprived him of a fair trial in admitting the evidence of the Woodguard shooting, specifically, that he shot Carrillo and Torres on January 11, 2005, less than one month after Seoane was shot and killed on December 18, 2004. He claims that the probative value of the evidence on the issue of whether he, and not Enriquez, shot Seoane was substantially outweighed by the probability its admission would result in undue prejudice, given that the evidence showed he shot at two people in an unrelated incident shortly after Seoane was shot and killed. (Evid. Code, § 352.)<sup>4</sup> We conclude that the evidence was not unduly prejudicial and was properly admitted.

#### 1. Relevant Background

Before trial, defendant filed a motion to exclude evidence of the January 11, 2005, Woodguard shooting incident on various grounds, including sections 352 and 1101, and his Fourteenth Amendment due process right to a fair trial. Initially, the court and counsel focused on whether the evidence of the Woodguard incident was admissible to

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<sup>4</sup> All further statutory references are to the Evidence Code unless otherwise indicated.

impeach defendant in the event he testified and for other purposes, but not whether it was admissible in the prosecution's case-in-chief. The prosecution did not initially seek to introduce the evidence in its case-in-chief.

Later during trial, the prosecution moved to present evidence of the January 11, 2005, Woodguard shooting in its case-in-chief. By this time, the defense was claiming, through its cross-examination of Lemons, that Enriquez, not defendant, was the one who shot Seoane. From the outset, the prosecutor intended to present evidence that bullet casings found at the scenes of the December 18, 2004, and January 11, 2005, shootings matched the gun found in defendant's possession on February 2, 2005, and that the gun found in defendant's possession on February 2, 2005, was the gun used to shoot and kill Seoane on December 18, 2004. And, in defense counsel's opening statement, the jury heard that defendant was claiming he took possession of the gun from Enriquez after the December 18, 2004, shooting of Seoane, and that defendant admitted his involvement in the January 11, 2005, shooting.<sup>5</sup>

In view of defendant's claim that Enriquez was the one who shot Seoane, the court reasoned that the evidence that defendant shot at Carrillo and Torres on January 11, 2005, at Woodguard was highly probative of whether defendant *possessed and fired the same*

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<sup>5</sup> The record does not include reporter's transcripts of opening statements, but based on the comments of the court and counsel it appears that the defense admitted defendant's involvement in the Woodguard shooting in its opening statement, as part of a defense that defendant suffered from mental health problems and as a result did not form the intent to kill Seoane. During trial, however, defendant decided not to present the mental health defense and did not call mental health experts to testify in support of the defense.

*gun* on December 18, 2004, to shoot and kill Seoane. Mindful of the danger the jury would improperly use the evidence of the January 11, 2005, Woodguard shooting to infer that defendant had a criminal disposition or propensity to shoot people (§ 1101, subd. (a)), the court instructed the prosecutor to submit a limiting instruction based on CALCRIM No. 375.

Initially, the court did not view the evidence of the January 11, 2005, Woodguard shooting as admissible under section 1101, subdivision (b), that is, to prove some fact *other than* that defendant had a criminal disposition or propensity to shoot people. The court instead viewed the evidence as relevant to whether defendant and not Enriquez shot Seoane (see generally § 210), and concluded that the evidence would not be unduly prejudicial if the jury were instructed to consider it solely for the purpose of determining whether the same gun was used in the January 11, 2005, and December 18, 2004, shootings. (§ 352.)

Before Torres testified, the defense moved to exclude evidence of the extent of the injuries Torres sustained during the January 11, 2005, shooting, on the ground that such evidence was substantially more prejudicial than probative of whether the same gun was used in the December 18, 2004, and January 11, 2005, shootings. (§ 352.) The court ordered the prosecutor not to elicit the details of Torres's injuries, which included four lost teeth, the ability to taste or have hot or cold liquids, posttraumatic stress disorder, psychological counseling, and multiple surgeries. Instead, the prosecutor was only allowed to elicit that Torres was shot in the mouth and received treatment for the injury.

Immediately before Torres testified, the court instructed the jury that the People were about to present evidence that defendant shot Carrillo and Torres on January 11, 2005, at or near the premises of a business in San Bernardino known as Woodguard. Based on CALCRIM No. 375, the court instructed the jury that if it determined by a preponderance of the evidence that defendant “fired the gun on January 11th, 2005, during the Woodguard shooting incident,” then it could, but was not required to, consider that evidence “for the limited purpose of deciding whether or not the gun involved in the Woodguard January 11th, 2005, incident was the same gun involved in the December 18th, 2004, shooting of Johnny Seoane.” The jury was further instructed not to consider the Woodguard evidence for any other purpose, and if it concluded that defendant fired the same gun in the Woodguard incident that was used in the shooting of Seoane, that conclusion was only one factor to consider along with all the other evidence, and was insufficient by itself to prove that defendant was guilty of murdering Seoane.<sup>6</sup>

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<sup>6</sup> The full text of CALCRIM No. 375 stated: “The People are about to present evidence of other behavior by the defendant that was not charged in this case. It is anticipated that this evidence is regarding a shooting by the defendant of James Carrillo and Jesus Torres on January 11th, 2005, at or near the premises of a business in San Bernardino referred to as Woodguard. [¶] You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant, in fact, committed this shooting on January 11th, 2005. [¶] Proof by a preponderance of the evidence is . . . . [¶] If you decide that the defendant fired the gun on January 11th, 2005, during the Woodguard shooting incident, you may, but are not required to, consider that evidence for the limited purpose of deciding whether or not the gun involved in the Woodguard January 11th, 2005, incident was the same gun involved in the December 18th, 2004, shooting of Johnny Seoane. [¶] Do not consider this evidence for any other purpose. Do not conclude from this evidence that the defendant has a bad character or is disposed to commit crime. [¶] If you conclude that the defendant fired the same gun on January 11th, 2005, during the Woodguard shooting incident as was used in the shooting

*[footnote continued on next page]*

Torres then testified that the gun he saw defendant firing in the January 11, 2005, Woodguard incident appeared to be a black .38-caliber revolver and *did not resemble* a photograph of the .380-caliber semiautomatic handgun used to shoot Seoane on December 18, 2004, and found in defendant's possession on February 2, 2005. Torres admitted he only saw the barrel of the gun, however. He also said he was shocked because defendant fired the gun "the minute" he took it out of his pocket.

Before eliciting this testimony, the prosecutor asked Torres whether and where he was hit, and Torres responded that a bullet went in through his mouth and came out his throat. The court sustained defense objections to the prosecutor's additional questions whether Torres lost any teeth and how long he was hospitalized. Outside the presence of the jury, the court admonished the prosecutor of its ruling that the extent of Torres's injuries was not relevant to the guilt phase of the trial, and that the only purpose of Torres's guilt-phase testimony was to show that the same *gun* was used in the Seoane and Woodguard shootings. The prosecutor apologized and told the court he was only trying to establish that Torres sustained more than a flesh wound and was hospitalized, and nothing further.<sup>7</sup>

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*[footnote continued from previous page]*

of Johnny Seoane on December 18, 2004, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of murder and/or that the special circumstance has been proved true. The People must still prove each element of every charge and allegation and special circumstance beyond a reasonable doubt."

<sup>7</sup> The court denied defense counsel's request to strike Torres's injury-related testimony because it did not include "PTSD and the lack of taste and how long he was in  
*[footnote continued on next page]*

Torres later testified that Carrillo was hit by two bullets, one in the chest and one in the arm. After Torres testified, the prosecutor called Jorge Pacheco, another witness to the Woodguard shooting, who testified he saw defendant take out a chrome-colored semiautomatic handgun and fire three shots, which hit two people. The prosecutor then presented evidence that bullet casings recovered from both the Woodguard and Seoane shootings came from the gun found in defendant's possession on February 2, 2005.

As indicated, defendant testified in his defense that he fired the gun in self-defense because he believed Carrillo was armed, and the gun he used was the same gun Enriquez gave him after he and Enriquez left Lemons's mobilehome park on December 18, 2004. The court did not allow the prosecution to use the Woodguard incident to impeach defendant's general credibility, in part because the incident was unadjudicated and defendant had multiple other felony convictions.

At the close of the guilt phase of the trial and before closing arguments, the court determined that the evidence of the Woodguard shooting was, after all, admissible under section 1101, subdivision (b) to show *that the same gun was used* in the Woodguard and Seoane shootings. Following closing arguments, the court again instructed the jury that it could consider the evidence of the Woodguard shooting only if it concluded by a preponderance of the evidence that defendant "*fired the same gun*" on January 11, 2005,

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the hospital, et cetera," the court gave the limiting instruction, and the court did not wish to highlight the injury-related testimony. Defense counsel did not move for a mistrial based on the injury-related testimony.

during the Woodguard incident, and if it made that determination it could consider the evidence for the limited purpose of determining whether *the gun used in the Woodguard incident was the same gun used in the shooting of Seoane*. The jury was also instructed not to conclude from the evidence that defendant had a bad character or was disposed to commit crimes, and that the evidence was insufficient by itself to prove defendant was guilty of murdering Seoane or that the special circumstance and firearm allegations were true. (See CALCRIM No. 303.)<sup>8</sup>

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<sup>8</sup> The full text of CALCRIM No. 303 stated: “During the trial, certain evidence was admitted for a limited purpose. You may consider that evidence only for that purpose and for no other. [¶] January 11, 2005 – WOODGUARD INCIDENT [¶] The People have presented evidence of a shooting incident that occurred on January 11, 2005, at or near the premises of the Woodguard lumber yard in San Bernardino. At the time this evidence was presented, you were instructed that the Woodguard incident could only be considered by you if the People proved by a preponderance of the evidence that the defendant in fact committed this shooting on January 11, 2005. Proof by a preponderance of the evidence is a different burden of proof than proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true. If the People have not met this burden, you must disregard this evidence entirely. If you decide that the defendant fired the gun on January 11, 2005, during the Woodguard incident, you may, but are not required to consider that evidence for the limited purpose of deciding whether or not the gun involved in the Woodguard, January 11, 2005, incident was the same gun involved in the December 18, 2004 homicide of [Seoane]. [¶] Because of the very limited purpose for which the January 11, 2005 Woodguard incident may be used by you in this case, the examination of [defendant] by both defense and prosecution was limited to the issue of whether the same gun was used in both the December 18, 2004 homicide of [Seoane] and the January 11, 2005 Woodguard incident. [¶] Do not consider this Woodguard incident evidence for any other purpose. Do not conclude from this evidence that the defendant has a bad character or is disposed to commit crime. [¶] If you conclude that the defendant fired the same gun on January 11, 2005, during the Woodguard shooting incident as was used in the homicide of [Seoane] on December 18, 2004, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of murder and/or that the firearm allegation and/or that the special circumstance has been proved true. The People must still prove

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## 2. Analysis

Defendant claims the evidence of the Woodguard shooting was unduly prejudicial and should have been excluded under section 352. We disagree. Section 352 provides: “The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.”

To be sure, uncharged crimes evidence is inherently prejudicial. (*People v. Tran* (2011) 51 Cal.4th 1040, 1047; *People v. Ewoldt* (1994) 7 Cal.4th 380, 404-405; *People v. Thompson* (1980) 27 Cal.3d 303, 318.) The danger is that the jury might be inclined to punish the defendant for the uncharged crimes because they did not result in a conviction, regardless of whether it believes the defendant committed the charged offenses. (*People v. Tran, supra*, at p. 1047.) There is also an increased likelihood of “confusing the issues” (§ 352), because the jury must determine whether the uncharged offenses occurred by a preponderance of the evidence and whether the charged offenses occurred beyond a reasonable doubt. (See *People v. Ewoldt, supra*, at p. 404.)

Nevertheless, uncharged crimes evidence is required to be excluded under section 352 only when it lacks substantial probative value, or when its substantial probative value is “largely” or substantially outweighed by the probability its admission will “create a serious danger of undue prejudice, of confusing the issues, or of misleading the jury.”

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each element of every char[g]e and allegation and special circumstance beyond a reasonable doubt.” (Bolding and underlining omitted.)

(*People v. Thomas* (2011) 52 Cal.4th 336, 354; *People v. Ewoldt, supra*, 7 Cal.4th at p. 404.) “Evidence is substantially more prejudicial than probative [citation] if, broadly stated, it poses an intolerable ‘risk to the fairness of the proceedings or the reliability of the outcome’ [citation].” (*People v. Waidla* (2000) 22 Cal.4th 690, 724.)

We review the admission of uncharged crimes evidence for an abuse of discretion, which is shown if its admission “““falls outside the bounds of reason.””” (*People v. Thomas, supra*, 52 Cal.4th at pp. 354-355.) For the reasons we explain, the court did not abuse its discretion in admitting the evidence of the uncharged Woodguard shooting in the prosecution’s case-in-chief.

First, defendant was claiming that Enriquez, and not he, shot Seoane with the gun that was found in defendant’s possession on February 2, 2005, the prosecution had evidence that *that gun* was also used in the Woodguard shooting on January 11, 2005, and that defendant was the person who fired the gun in the Woodguard shooting. In this context, the evidence that defendant *fired the gun* in the Woodguard shooting was, as the trial court found, *highly probative* of whether he, and not Enriquez, was the person who shot and killed Seoane less than one month earlier on December 18, 2004.

Indeed, defendant does not dispute the relevancy or general admissibility of the evidence of the Woodguard shooting. (*People v. Garceau* (1993) 6 Cal.4th 140, 177; § 210 [relevant evidence is evidence having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action]; *People v. Ewoldt, supra*, 7 Cal.4th at p. 393; § 1101, subd. (b) [other crimes evidence is admissible

to prove “some fact” other than criminal disposition].) Instead, he claims only that the evidence was *unduly prejudicial* and should have been excluded under section 352. (See, e.g., *People v. Ewoldt*, *supra*, at pp. 404-406.)

In the context of this case, the inherently prejudicial effect of the evidence that defendant fired the gun in the Woodguard shooting was substantially lessened because it was no more inflammatory than the evidence that defendant shot and killed Seoane. (*People v. Ewoldt*, *supra*, 7 Cal.4th at p. 405.) Given Lemons’s testimony that defendant abruptly pulled out a gun and shot Seoane, it is unlikely the jury’s passions were inflamed by the testimony of Torres and Pacheco that defendant abruptly pulled out a gun and shot two people in the Woodguard incident. (*Ibid.*; see also *People v. Scott* (2011) 52 Cal.4th 452, 491 [in the context of § 352, “prejudice” refers to evidence that evokes an emotional bias against the defendant *and* that has very little effect on the issues].) The inherently prejudicial effect of the Woodguard shooting evidence was further lessened because, in his opening statement, the defense admitted defendant’s participation in the Woodguard shooting as part of his later abandoned defense that, because he had mental health problems he did not form an intent to kill Seoane.

Nor is there any reasonable likelihood that the jury found defendant guilty of shooting and killing Seoane based solely on the evidence that he shot two people in the Woodguard incident. The jury was twice instructed (1) to consider the evidence of the Woodguard shooting only if it found by a preponderance of the evidence that defendant committed the shooting; (2) not to use the evidence to infer that defendant had a bad

character or criminal disposition; (3) to use the evidence for the sole purpose of deciding whether the same gun was used in both the Woodguard and Seoane shootings; and (4) the evidence of the Woodguard incident was insufficient by itself to prove that defendant was guilty of the murder of Seoane. In sum, the court properly balanced the probative value of the Woodguard shooting evidence against its inherently prejudicial effect, and reasonably determined that the evidence was not unduly prejudicial in the overall context of the case.

Defendant also argues that the evidence of the Woodguard shooting should have been excluded because it was cumulative. (*People v. Ewoldt, supra*, 7 Cal.4th at pp. 405-406 [prejudicial effect of uncharged crimes evidence may outweigh its probative value if it is “merely cumulative” regarding an undisputed issue]; accord, *People v. Tran, supra*, 51 Cal.4th at p. 1049.) He specifically argues that there was no need to present any additional evidence that he *possessed the gun* at the time of the January 11, 2005, Woodguard shooting, given that he did not dispute his continuous possession of the gun from the time Enriquez gave it to him on December 18, 2004, through February 2, 2005. We disagree

The critical disputed issue was not whether defendant possessed the gun used to kill Seoane at the time of the Woodguard shooting, but whether he, and not Enriquez, was the person who shot and killed Seoane. The evidence that defendant not only possessed the gun on January 11, 2005, but fired it at two people on that date had a strong tendency in reason to show that he possessed, controlled, and fired the same gun in the December

18, 2004, shooting of Seoane. In other words, the evidence that defendant fired the gun at two people during the January 11, 2005, Woodguard shooting was substantially probative of whether he used the same gun to shoot Seoane on December 18, 2004—in addition to and apart from whether he merely possessed the gun at the time of the Woodguard shooting. Thus, the evidence that defendant was seen firing the gun at two people in the Woodguard shooting was not merely cumulative or duplicative of the evidence that he possessed the gun at the time of the Woodguard shooting.

Defendant's reliance on *People v. Gay* (1972) 28 Cal.App.3d 661 is misplaced. There, the defendant was convicted of murdering two hitchhikers and robbing and assaulting a third with the intent to murder him. (*Id.* at pp. 665-667.) The evidence showed that the defendant killed at least one of the hitchhikers with a gun. (*Id.* at pp. 666-667.) In his defense, the defendant claimed he suffered from diminished capacity due to a history of mental health problems, and testified that, on the date of the murders, he was in possession of a .38-caliber snub-nose revolver. (*Id.* at pp. 665-667.) In rebuttal, the prosecution presented evidence that, nine days before the charged crimes, the defendant picked up another hitchhiker and robbed him at gunpoint, using a .38-caliber snub-nose revolver. (*Id.* at p. 668.) Other circumstances of the uncharged and charged crimes were also similar, indicating that the defendant had a similar motive and intent in committing the charged and uncharged crimes. (*Id.* at pp. 668-671.)

The *Gay* court concluded that the jury was erroneously instructed to consider the uncharged crimes evidence to determine *whether the defendant had the means to commit*

*the charged crimes*, as opposed to whether he possessed a similar intent and motive in committing the uncharged and charged crimes. (*People v. Gay, supra*, 28 Cal.App.3d at p. 671 & fn. 2.) In effect, the court reasoned that evidence of the prior robbery was inadmissible to show that the defendant had the means to commit the charged crimes nine days later, because he did not deny that he had the means to commit the charged crimes, given that he did not deny he possessed the .38-caliber revolver when the charged crimes were committed. (*Id.* at p. 671.)

Similarly here, defendant argues that because he *did not deny* he possessed the gun on January 11, 2005, the evidence of his involvement in the Woodguard shooting was erroneously admitted to show he possessed the gun on January 11, 2005. But the evidence of defendant's involvement in the Woodguard shooting was admissible not only to show that he possessed the gun on January 11, 2005, but also to show that he *fired the gun* on January 11, 2005. This supported a reasonable inference that defendant possessed and fired the same gun on December 18, 2004, killing Seoane.

In addition, the prosecution is not required to forgo the use of relevant, persuasive evidence to prove an element of a charged crime—here, that defendant was the person who shot and killed Seoane—simply because the element might also have been established through other evidence. (*People v. Salcido* (2008) 44 Cal.4th 93, 147 [the prosecution is not “obligated to present its case in the sanitized fashion suggested by the defense.”].) To the contrary, when, as here, uncharged crimes evidence has substantial probative value that is not largely outweighed by its potential for prejudice, it is not

*unduly* prejudicial and is admissible under section 352. (*People v. Tran, supra*, 51 Cal.4th at pp. 1048-1049.)

Defendant's reliance on *United States v. Lighty* (4th Cir. 2010) 616 F.3d. 321 is similarly misplaced. There, the defendant was charged with murder, and the court concluded that evidence of his involvement in a shooting several weeks before the charged murder was erroneously admitted to prove his identity for purposes of the charged murder. (*Id.* at p. 354.) Without determining whether the evidence of the prior shooting was relevant to any disputed issue, the court found it was inadmissible because "the government never adequately explained why the [prior] [s]hooting evidence properly added *anything* to its case." (*Id.* at p. 355, fn. omitted.) Here, by contrast, the court reasonably determined that the evidence that defendant fired the gun in the Woodguard shooting was highly probative of whether he shot and killed Seoane, given that defendant was claiming that Enriquez, and not he, was the person who shot Seoane, and additional evidence showed that the same gun was used in both shootings.

*B. The Trial Court Properly Excluded Impeachment Evidence Purportedly Showing That Lemons Expected to be Compensated for Her Testimony Against Defendant*

Defendant next claims the court prejudicially erred in refusing to allow the defense to impeach Lemons with a recording of a jailhouse conversation she had following her testimony against defendant, in which she indicated she believed that the district attorney's office owed her some money, and further erred in failing to admonish the jury, following the prosecutor's closing argument, that Lemons did indeed have reason to

fabricate her testimony identifying defendant as the shooter based on her statements during the jailhouse conversation. We conclude the disputed impeachment evidence was properly excluded.

### 1. Background

Several hours after Seoane was shot and killed on December 18, 2004, a homicide detective interviewed Lemons at the Perris police station. Lemons told the detective that Enriquez, whom she had known for many years, came to her home early that morning with a Hispanic male who had a distinctive “letter” tattoo on his neck. During the same interview, Lemons identified defendant as the shooter from a photographic lineup. At trial, the detective described Lemons’s demeanor during the interview as “shocked” and said she appeared to be “a wreck.”

During the fall of 2005, Lemons was enrolled in the witness protection program at the behest of the district attorney’s office. Before Lemons testified at defendant’s trial, the prosecution moved to preclude the defense from cross-examining her concerning her enrollment in the witness protection program. The prosecutor explained that his office determined to place Lemons in the program during the fall of 2005, in part because defendant was a gang member and also because Enriquez’s father was also “actively looking” for Lemons “to try to intimidate her.” Enriquez’s father had also threatened the deputy district attorney who originally handled the prosecution of Enriquez and defendant.

The trial court granted the motion and precluded the defense from cross-examining Lemons concerning her enrollment in the witness protection program. The court reasoned that because Lemons did not ask to be placed in the program around the time she identified defendant as the shooter, the defense did not have a good faith belief that she identified defendant as the shooter to secure a home or other benefits for herself through the program. In addition, the court pointed out that if the defense were permitted to cross-examine Lemons concerning her enrollment in the witness protection program, the prosecution would be able to show that Lemons was placed in the program in part because defendant was a gang member, and that would have been highly prejudicial to defendant. (§ 352.) Defense counsel told the court he was originally under the (mistaken) impression that Lemons enrolled in the program immediately after the shooting, and agreed it was not worth cross-examining her about her enrollment in the program if it would “open up gangs.”

Lemons was arrested immediately after she testified at defendant’s trial on May 10, 2010, based on several outstanding warrants. At the time of her arrest, she expressed concern that she would lose her personal belongings, which were in her motel room, and the court assured her that the district attorney would secure the safety of her property given that her room had been paid for by the “Victim/Witness Bureau.”

On May 18, 2010, while she was still in custody, Lemons had a recorded jailhouse telephone conversation with a man named Bob and an unknown woman. During the conversation, Lemons asked Bob to tell John Greco, the senior investigator for the district

attorney's office, that "they" "owe[d] [her] money" or were "supposed to pay" her money, and "they kn[e]w why." Lemons wanted the money to retrieve her personal possessions from a storage facility.

The defense later filed a motion to play a recording of Lemons's statements during the jailhouse conversation. In opposing the motion, the prosecutor argued that Lemons's statements falsely implied she had been compensated or promised compensation in exchange for her testimony, and assured the court that Lemons had not been paid or promised anything in exchange for her testimony.

The prosecutor further explained that, in 2004 or 2005, Lemons was eligible for and received "relocation money" from the Victim Service Program and had reapplied for such additional funds, but the prosecutor did not believe she was eligible to receive any additional funds from the program. If the court allowed the defense to play the recording, the prosecutor asked for permission to call witnesses to explain the nature and purpose of the program. The court denied defense counsel's motion to play the recording, after the defense did not offer the court any grounds to conclude that Lemons had, in fact, been promised anything in exchange for her testimony.

Following closing arguments, the defense asked the court to admonish the jury that the prosecutor had incorrectly argued that Lemons had no reason to lie about defendant's identity as the shooter, because the prosecutor knew that Lemons expected to be paid for her testimony or at least knew she thought she was supposed to get money from the district attorney's office. Defense counsel argued that Lemons's statements in

the jailhouse recording were relevant to her statement of mind because they showed *she believed* she was going to be paid for her testimony. The court denied the request, again noting there was no indication that Lemons believed she was going to be compensated *for her testimony*.

## 2. Analysis

“In determining the credibility of a witness, the jury may consider, among other things, ‘[t]he existence or nonexistence of a bias, interest, or other motive’ for giving the testimony. (Evid. Code, § 780, subd. (f).) In a criminal case, therefore, the defense is entitled to explore the nature of any promises the prosecution has made or inducements it has offered to its witnesses. [Citation.]” (*People v. Price* (1991) 1 Cal.4th 324, 422.) Still, only relevant evidence is admissible (§ 350), and the trial court retains wide latitude to impose reasonable limits on defense inquiry into the potential bias of a prosecution witness. (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 679.) The court’s rulings excluding impeachment evidence are reviewed under the deferential abuse of discretion standard. (*People v. Thornton* (2007) 41 Cal.4th 391, 428.)

Defendant maintains that the court abused its discretion in refusing to allow him to impeach Lemons’s trial testimony with the recording of her jailhouse conversation in which she indicated *she believed* the district attorney’s office owed her money, and “they kn[e]w why” they owed her money. He argues that the statements were relevant to show bias because they showed that Lemons at least *believed* the district attorney’s office owed

her money, for whatever reason, and this indicated that Lemons may have testified against defendant in exchange for an expectation of compensation. (§ 780, subd. (f).)

Lemons identified defendant as the shooter very shortly after the shooting, months before she was placed in the witness protection program and at least sometime before she became eligible or knew she would be eligible to receive monies through the Victim Service Program. Lemons also expected the district attorney's office to secure her personal belongings while she was in jail following her trial testimony, and may have expected the district attorney to pay storage fees to her to get her belongings out of storage, as part of its obligation to secure her belongings.

In addition, the court suggested that the defense interview Lemons concerning the meaning of her recorded statements, and offered to conduct a section 402 hearing if the defense believed she would testify that she expected to be compensated in some fashion in exchange for her testimony. The defense never requested the hearing, however.

Thus here, the court reasonably determined there was no reason or basis in fact to believe *that Lemons believed* she was testifying against defendant in exchange for any compensation, and her belief that the district attorney's office owed her money following her trial testimony had nothing to do with her testimony. The court thus reasonably concluded that Lemons's statements during the jailhouse conversation were not relevant to show bias, and were therefore inadmissible. (§ 350 [only relevant evidence is admissible].) In sum, the court did not abuse its discretion in excluding the proffered impeachment evidence.

*C. Substantial Evidence Supports Defendant's First Degree Felony-murder Conviction and the Burglary-murder Special-circumstance Finding*

Lastly, defendant claims that insufficient evidence supports his conviction for first degree felony murder and the burglary-murder special-circumstance finding that the murder was committed during the course of a residential burglary. We conclude that substantial evidence supports the verdict and special-circumstance finding.

In reviewing a claim that insufficient evidence supports a criminal conviction or special-circumstance allegation, we review the record in the light most favorable to the judgment in order to determine whether it contains substantial evidence, that is, evidence that is reasonable, credible and of solid value, such that a jury comprised of reasonable persons could find the defendant guilty beyond a reasonable doubt. (*People v. Chatman* (2006) 38 Cal.4th 344, 389.) We may not set aside the judgment based on insufficiency of the evidence unless it clearly appears “that on no hypothesis whatever is there sufficient substantial evidence to support the verdict . . . .” [Citation.]” (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.)

Defendant argues that insufficient evidence supports his felony-murder conviction and the burglary-murder special-circumstance allegation because there was insufficient evidence he entered the mobilehome where the murder was committed with an intent to steal. Thus, he argues, there was no evidence that the murder was committed during the course of a residential burglary (Pen. Code, § 459 [burglary is the entry of a structure with the intent to commit theft or any felony]), the offense underlying his first degree

felony-murder conviction and the burglary-murder special-circumstance allegation (Pen. Code, §§ 187, 189, 190.2, subd. (a)(17)(G)).

Because intent is rarely susceptible of direct proof, the trier of fact may infer the existence of intent from the facts and circumstances shown by the evidence. (*People v. Sanghera, supra*, 139 Cal.App.4th at p. 1574.) Here, the jury could have reasonably concluded beyond a reasonable doubt that defendant entered the mobilehome with Enriquez on December 18, 2004, with the intent of taking money or methamphetamine from Seoane by force, and not leaving without one or the other, regardless of whether Enriquez had a right to one or the other.

First, ample evidence showed that Enriquez had been demanding either money or methamphetamine from Seoane before December 17, 2004, and twice went to Seoane's mobilehome on December 17, 2004, demanding drugs or money. That night, Enriquez drove to Melissa's house where he saw defendant. Enriquez was saying that someone owed him money, he wanted to go collect money or drugs, and asked defendant to go with him. Defendant agreed to go with Enriquez, and the two of them arrived at Seoane's mobilehome during the early morning of December 18.

Although, as defendant points out, there is no direct evidence that defendant knew Enriquez intended to demand money or drugs from Seoane when he and Enriquez entered the mobilehome, circumstantial evidence indicated that defendant knew this was the case and entered the home intending to help Enriquez take either money or drugs from Seoane by force. After Enriquez and defendant entered the home and Seoane appeared, Enriquez

pointed at defendant and told Seoane, “[t]his is the guy you owe the money to,” and again demanded money or drugs from Seoane. And, when Seoane attempted to introduce himself to defendant, defendant did not respond, looked him “up and down,” and gave him a “hard look.” Additional evidence showed that defendant was armed, and shot and killed Seoane after Seoane refused to comply with Enriquez’s repeated demands to hand over drugs or money.

Based on this evidence, the jury could have reasonably concluded that defendant went to the mobilehome intending to muscle or frighten Seoane into handing over drugs or money, and shot and killed Seoane after Seoane refused to comply with Enriquez’s demands. Defendant’s statements and actions in the aftermath of the shooting bolstered this conclusion.

After the shooting, defendant told his girlfriend DeAlba that he “had shot at someone,” and if she knew what he had done she would not want to be with him. Before his arrest for the murder, defendant led police on a high-speed chase, and in a jailhouse call following his arrest said “it would have been cracking” had his “wife” and young nephew not been in the truck during the high-speed chase. In another jailhouse call following his arrest, defendant said he was going to be found guilty because he had chosen to live “that life” and “chose wrong.”

#### IV. DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING  
J.

We concur:

RAMIREZ  
P. J.

McKINSTER  
J.