S221958

THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	E054056
Plaintiff and Respondent,	
v.	FVA1001265
MICHAEL RAPHAEL CANIZALES, et al.,	
Defendants and Appellants.	

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

Hon. Judge Steven Mapes, Presiding

APPELLANT CANIZALES' PETITION FOR REVIEW

Christine Vento
CBN107660
P.O. Box 691071
Los Angeles, CA 90069-9071
323-936-5113
vento107660@gmail.com
Attorney for appellant
By appointment of the Court of Appeal
under the Appellate Defender
Independent Case System

THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. MICHAEL RAPHAEL CANIZALES, et al., Defendants and Appellants.	E054056 FVA1001265

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

Hon. Judge Steven Mapes, Presiding

APPELLANT CANIZALES' PETITION FOR REVIEW

Christine Vento
CBN107660
P.O. Box 691071
Los Angeles, CA 90069-9071
323-936-5113
vento107660@gmail.com
Attorney for appellant
By appointment of the Court of Appeal
under the Appellate Defender
Independent Case System

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

CONSTITUTIONS

THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. MICHAEL RAPHAEL CANIZALES, et. al., Defendants and Appellants.	E054056 FVA1001265

TO THE HONORABLE CHIEF JUSTICE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Appellant/petitioner, MICHAEL RAPHAEL CANIZALES, hereby petitions this Honorable Court for review of the partially published decision rendered by the Court of Appeal of the State of California, Fourth Appellate District Division Two in PEOPLE v. MICHAEL RAPHAEL CANIZALES, et. al., filed SEPTEMBER 10, 2014. This appeal is based on a transfer from this Court to the Court of Appeal after its decision in *People v. Chiu* (2014) 59 Cal.4th 155. Based on *Chiu*, the Court of Appeal reversed the first degree murder conviction, but otherwise affirmed the judgment on the other counts. Review is sought to settle a conflict in the appellate courts on the kill zone theory. A copy of the new opinion of the Court of Appeal is attached to this petition as an appendix.

QUESTIONS PRESENTED

1. Which interpretation of the kill zone theory is correct - the one proposed in the published portion of the opinion in this case or the one from the Second Appellate District Division One in *People v. McCloud* (2012) 211 Cal.App.4th 788, 798, which held that "[t]he kill zone theory ... does not apply if the evidence shows only that the defendant intended to kill a particular targeted individual but attacked that individual in a manner that subjected other nearby individuals to a risk of fatal injury. Nor does the kill zone theory apply if the evidence merely shows, in addition, that the defendant was aware of the lethal risk to the nontargeted individuals and did not care whether they were killed in the course of the attack on the targeted individual. Rather, the kill zone theory applies only if the evidence shows that the defendant tried to kill the targeted individual by killing everyone in the area in which the targeted individual was located. The defendant in a kill zone case chooses to kill everyone in a particular area as a means of killing a targeted individual within that area. In effect, the defendant reasons that he cannot miss his intended target if he kills everyone in the area in which the target is located. The kill zone theory consequently does not operate as an exception to the mental state requirement for attempted murder or as a means of somehow bypassing that requirement. In a kill zone case, the defendant does not merely subject everyone in the kill zone to lethal risk. Rather, the defendant specifically intends that everyone in the kill zone die. If some of those individuals manage to survive the attack, then the defendant—having specifically intended to kill every single one of them and having committed a direct but ineffectual act toward

accomplishing that result—can be convicted of their attempted murder" ?

2. Whether the court erroneously instructed on the zone of kill theory to support the attempted murder conviction of Bolden, whose statements to police established he was not the target and was not in the kill zone?

NECESSITY OF REVIEW

Review is necessary to settle an important question of law, as delineated in the questions presented. The filing of this petition is also necessary in order to preserve potential issues for federal habeas corpus review. (*O'Sullivan v. Boerckel* (1999) 526 U.S. 838.)

Review is further necessary because there is a conflict in the appellate courts. In the published portion of the opinion, the Court of Appeal here, and again in *People v. Windfield* (2014) 228 Cal.App.4th 1406, disagreed with the interpretation of the "kill zone" theory by the Court of Appeal in Division One of the Second Appellate District in *People v. McCloud* (2012) 211 Cal.App.4th 788.

STATEMENT OF THE CASE AND FACTS

For purposes of this petition, appellant adopts the facts in the slip opinion of the Court of Appeal, as that summary is supplemented by the briefing and this petition.

ARGUMENT

I REVIEW IS NEEDED TO DETERMINE WHICH INTERPRETATION OF THE KILL ZONE THEORY IS CORRECT - THE ONE PROPOSED IN THE PUBLISHED PORTION OF THE OPINION IN THIS CASE OR THE ONE FROM THE SECOND APPELLATE DISTRICT DIVISION ONE IN *PEOPLE V. MCCLOUD* (2012) 211 CAL.APP.4TH 788, AND THEN WHETHER THE COURT'S ERRONEOUSLY INSTRUCTING ON THE KILL ZONE CONSTITUTED A FACTUALLY INADEQUATE THEORY WHICH VIOLATED APPELLANT'S CONSTITUTIONAL RIGHTS TO A JURY TRIAL, DUE PROCESS AND TO PRESENT A DEFENSE IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS

Codefendant argued in Arg. I of his AOB that it was error to give a "kill zone" instruction as to the attempted murder of Bolden in count 2, and under either a legally inadequate, or factually inadequate, theory, the count 2 conviction must be reversed. Pursuant to California Rules of Court, Rule 8.200 (a)(5), appellant joined in codefendant's Arg. I and also requested that appellant's count 2 conviction for the premeditated attempted murder of Bolden be reversed. Appellant also filed a supplemental letter brief discussing the case at issue here, *People v. McCloud* (2012) 211 Cal. App.4th 788, whose interpretation of the kill zone was rejected by the Court of Appeal.

A. *McCloud's* kill zone interpretation is correct

The first issue is which interpretation of the kill zone theory is correct - the one proposed in the published portion of the opinion in this case, or the one from the Second Appellate District Division One in *People v. McCloud* (2012) 211 Cal.App.4th 788. *McCloud* held that "[t]he kill zone theory ... does not apply if the evidence shows only that the defendant intended to kill a particular targeted individual but attacked that individual in a manner that subjected other nearby individuals to a risk of fatal injury. Nor does the kill zone theory apply if the evidence merely shows, in addition, that the defendant was aware of the lethal risk to the nontargeted individuals and did not care whether they were killed in the course of the attack on the targeted individual." *(Id.* at p. 798.*)*

"Rather, the kill zone theory applies only if the evidence shows that the defendant tried to kill the targeted individual by killing everyone in the area in which the targeted individual was located. The defendant in a kill zone case chooses to kill everyone in a particular area as a means of killing a targeted individual within that area. In effect, the defendant reasons that he cannot miss his intended target if he kills everyone in the area in which the target is located." (*Ibid.*)

"The kill zone theory consequently does not operate as an exception to the mental state requirement for attempted murder or as a means of somehow bypassing that requirement. In a kill zone case, the defendant does not merely subject everyone in the kill zone to lethal risk. Rather, the defendant specifically intends that everyone in the kill zone die. If some of those individuals manage to survive the attack, then the defendant—having specifically intended to kill every single one

of them and having committed a direct but ineffectual act toward accomplishing that result—can be convicted of their attempted." *(Id.* at p. 798.*)*

The Court of Appeal here held that *McCloud* "goes to far"and "missates the kill zone theory." (Opn. 21-24.) "In our view, *McCloud* goes too far. The language in *Bland*, cited above, posits that the intent to kill the nontargeted person(s) *can be inferred* from the nature and scope of the attack or from the method employed. If, as *McCloud* asserts, the defendant must in fact intend to kill each attempted murder victim, there is no reason to employ the theory—the intent to kill is established without resort to the theory. " (Opn. 23.)

McCloud's kill zone interpretation is correct because it reinforces the law that the defendant must intend to kill each attempted murder victim for an attempted murder conviction by setting definitive parameters on the application of the kill zone theory that had been missing in the case law.

B. Whether of not *McCloud's* explanation of the kill zone theory is accepted, Bolden was not in a kill zone and the instruction on that theory was erroneous and constituted an illegal theory

"An attempted murder is not committed as to all persons in a group simply because a gunshot is fired indiscriminately at them." (*People v. Anzalone* (2006) 141 Cal.App.4th 380, 392.) A defendant may not be found guilty of the attempted murder of someone he does not intend to kill simply because the victim is in some undefined zone of danger. (*Id.* at p. 393.) "In fact, to be found guilty of attempted murder,

the defendant must either have intended to kill a particular individual or individuals or the nature of his attack must be such that it is reasonable to infer that the defendant intended to kill everyone in a particular location as the means to some other end, e.g., killing some particular person." (*Ibid.*)

This Court made clear in *Smith* that "A kill zone or concurrent intent analysis ... focuses on (1) whether the fact finder can rationally infer from the type and extent of force employed in the defendant's attack on the primary target that the defendant intentionally created a zone of fatal harm, and (2) whether the nontargeted alleged attempted murder victim inhabited the zone of harm." (*People v. Smith* (2005) 37 Cal.4th 733, 755-756.)

There was no substantial evidence Bolden inhabited the zone of harm. The group of nontargeted people, which included Bolden, on Jackson Street that night were too dispersed to be victims in a "kill zone" created by a handgun.

First, it is clear that Pride (aka "Denzel") not Bolden was the "primary target." About a year after the shooting, Windfield told Gordon that he and appellant went to Jackson to get revenge on the guy, a Hustla Squad gang member, who had killed Windfield's cousin, Terry Green, a Ramona Blocc gang member. (2 RT 512, 517-518; 3 RT 630-637, 644.) Windfield explained to her that "the guy" he was shooting at ran and a girl, who got in the way, was shot. (3 RT 632-633, 637, 644.) That Hustla Squad gang member Windfield was referring to had to be Pride because, when Bolden commented to Pride, "they tryin' to kill your ass," Pride indicated to Bolden that he had problems with Windfield or his gang. (2 CT 495.)

Throughout the shooting, Pride was a moving target, running "zigzag" down the street. In fact, based on Bolden's comment, Pride "gave it away by running." Bolden said in the interview that Windfield and his associates, "saw Denzel, 'cause he the one ... he was the first one to run!" (2 CT 486.) "Denzel already gave it away when he started runnin'. That's why everybody was lookin' like why he runnin'?" (2 CT 488.) Obviously, everybody would not be wondering why Pride ran if they had heard shots. Bolden said Denzel saw Windfield, "and then he (Denzel Pride) was pshew, turns around and start runnin'." (2 CT 489.) That's when Bolden heard someone say, "that's the little nigga right there." (2 CT 488-489; Supplemental AOB pp. 3-5.)

Contrary to the Court of Appeal's belief, Bolden's statement to police was more detailed and more credible than his trial testimony, and a court in determining whether an instruction is incorrect would have given great weight to his statements to police. (Opn. 30 & fn. 19.) Therefore, the most credible evidence shows that Pride must have started to run to the park at the end of the street before any shots were even fired. When the first shot was fired, there is no substantial evidence where Bolden was located in relation to Pride, as Pride was already in motion. Therefore, the zone of kill instruction given in this case was legally untenable.

"Where one of the theories presented to the jury is legally inadequate,.. the jury cannot be expected to divine it legal inadequacy." (*People v. Perez* (2005) 35 Cal.4th 1219, 1233.) "In such circumstances reversal is required unless 'it is possible to determine from other portions of the verdict that the

jury necessarily found the defendant guilty on a proper theory." " (*Ibid.*)

Nothing in the general verdict or in the evidence presented suggests the jury did not use the illegal zone of kill theory to hold appellant liable on count 2; therefore, appellant's count 2 conviction should be reversed.

C. The jury could have found that there was no substantial evidence appellant intended to kill Bolden, or shared in any intent to kill Windfield may have had and the prosecution stressed only the factually invalid zone of kill theory to prove the attempted murder of Bolden, therefore, the *Guiton* exception applies

Attempted murder is a specific intent crime. (*People v. Felix* (2009) 172 Cal.App.4th 1618, 1624.) "Attempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing." (*People v. Superior Court (Decker)* (2007 41 Cal.4th 1, 7.) "[T]o be guilty of attempted murder as an aider and abettor, a person must give aid or encouragement with knowledge of the direct perpetrator's intent to kill and with the purpose of facilitating the direct perpetrator's accomplishment of the intended killing -- which means that the person guilty of attempted murder as an aider and abettor must intend to kill." (*People v. Lee* (2003) 31 Cal.4th 613, 624, emphasis added.)

There were numerous reasons the jury could have found appellant did not intend to kill Bolden, nor shared in any intent to kill that Windfield may have had. While there is rarely direct evidence of a defendant's intent to kill, there is typically

even less evidence of conduct by a defendant from which one could infer he had no intent to kill. Here we have such conduct.

From appellant's conduct at the shooting and at the encounter with Bolden earlier in the day, one could infer that appellant did not have the intent to kill Bolden, but only to frighten him when appellant arranged the retaliation.

On July 18, 2008 before the shooting, appellant had two encounters with Hustla Squad gang members, Bolden and Pride and appellant's conduct in those encounters raises a reasonable doubt that appellant intended to kill. As stated fully in the AOB Statement of the Facts, around noon, appellant was at Taco Bell with a girl; Bolden and Pride were also there. Appellant shook Bolden's hand. Appellant and Pride, however, argued over the girl, with Pride challenging appellant to a fight but appellant declining, saying he was not fighting over a girl. (2 CT 480-481; 2 RT 307; 3 RT 672.)

Later that same day, Bolden was on Jackson Street talking with a group of girls when appellant walked by. Bolden explained that appellant, without any animosity, said to him, "What's up?" Bolden testified he responded, "I don't bang;" "I'm not from nowhere." Appellant said no more and walked away. (1 RT 76-78, 165-167.) Bolden, however, told police a slightly different story. He told police that after exchanging the "what's up" with appellant, he took off his shirt because he felt appellant was challenging him to a fight. (2 CT 477, 482.) Although Bolden said he did not want to fight appellant, he admitted at trial he was mad. He felt appellant had disrespected him by asking him where he was from because nobody asks him that; everyone knows he doesn't bang. (1 RT 168-169; 2 RT 307.)

Bolden said he and appellant did not even know each other. (1 RT 169.) Pride later told Bolden that appellant was not going to fight him; he was just scaring Bolden. (2 CT 483.)

Appellant's conduct at the shooting further underscores that he did not intend to kill Bolden. Appellant was not the shooter, and appellant openly refused to shoot anyone. When codefendant Windfield handed, or attempted to hand, appellant the gun and told appellant to "Bust" which means shoot, appellant would not do so. Windfield then took the gun back from appellant and fired multiple shots into a street where there was a block party going on. (1 RT 200, 205-206, 208-210, 213, 231-232, 244-246; 2 RT 296; 3 RT 690; 2 CT 487, 490-491, 504-507.)

Based on appellant's conduct hours before the shooting, it is clear that appellant did not want to fight, let alone kill, either Pride or Bolden. That appellant would organize a retaliatory shooting for later that night by summoning Windfield and would join Windfield in the fray does not establish that appellant's conduct evidenced an intent to kill murder, instead of an intent to frighten, especially when he was handed a gun but refused to fire it when ordered to by Windfield.

"If the inadequacy of proof is purely factual, of a kind the jury is fully equipped to detect, reversal is not required whenever a valid ground for the verdict remains, absent an affirmative indication in the record that the verdict actually did rest on the inadequate ground." (*People v. Guiton* (1993) 4 Cal.4th 1116, 1129; see *Griffin v. United States* (1991) 502 U.S. 46, 59.) But this rule has an exception in which reversal may be required when the prosecution stressed only the invalid ground

in jury argument, and the jury asked the court questions during deliberations about the invalid ground. (*Guiton, supra*, 4 Cal. 4th at p. 1129.)

It is necessary to examine the prosecutor's argument to the jury to determine whether an instruction was prejudicial. (*Guiton, supra*, 4 Cal.4th at p. 1130.) The prosecutor's argument invited the jury to misuse the kill zone instruction, as indicated in the following. "There's also this concept of kill zone within attempt. If they're shooting at someone and people are within the kill zone that they can get killed, then you're responsible for attempted murder as to the people who are within the zone of fire. Okay. So there were times when Travion [Bolden] told you that he was with Denzell [Pride], near Denzell, in close proximity to Denzell, they're both within the zone of fire..." (4 RT 864-865.)

This argument misstates the zone of kill theory. The person does not become the victim of attempted murder simply because he is "within the zone of fire." The kill zone theory explains that if a person desires to kill one person but uses force "that inevitably would result in the death of other victims within a zone of danger" (*People v. Stone* (2009) 46 Cal.4th 131, 138) or is "a means of force calculated to kil everyone in the group." (*People v. Perez* (2010) 50 Cal.4th 222, 225), it is reasonable to infer that the defendant intended to kill all of the people within the zone, such that the defendant may be convicted of the attempted murder of all of them. (*People v. Stone, supra*, 46 Cal.4th at p. 138.)

The prosecutor's argument ignored the requirement of a lethal means sufficient to kill everyone within a certain area.

The prosecutor did not attempt to explain what constituted the kill zone. Rather, the prosecutor told the jury that appellant could be convicted of the attempted murder of persons who were not targeted and were not hit, simply because they were "within the zone that they can get killed." In other words, the prosecutor argued that persons could be victims of attempted murder just because they were at risk of being hit by a stray shot even if they were not hit. That is not the law.

The jury was evidently concerned about the factual basis for the intent element in the charged attempted murder in count 2 because they asked for a readback of Bolden's testimony, "They weren't shooting at me." (2 CT 268; Supp CT 64-65.)

"*Griffin* ... holds that reversal is not always necessary, not that it is never appropriate. We may, for example, hypothesize a case in which the district attorney stressed only the invalid ground in the jury argument, and the jury asked the court questions during deliberations directed solely to the invalid ground. In that case, we might well find prejudice. The prejudice would not be assumed, but affirmatively demonstrated." (*People v. Guiton, supra*, 4 Cal.4th at p.1129.)

Here, the evidence that appellant specifically intended to kill Bolden was weak; the prosecutor misstated the law on the kill zone theory that was detrimental to appellant; and the jury asked for a readback of Bolden's testimony about not being a target in the shooting. In appellant's case, the *Guiton* hypothetical exists, and the count 2 conviction should be reversed. (*Ibid.*)

CONCLUSION

Appellant requests that this Court grant review.

Respectfully submitted,

_____

Christine Vento

WORD COUNT CERTIFICATION

I, Christine Vento, am counsel for appellant/petitioner. I hereby certify that, in reliance on the word count of the computer program used to prepare this document, the word count of the body of this document, excluding tables, indices the attached appendices, and this Certification, is 3,320 words. The applicable word-count limit is 8,400 words.

Dated 10/15/14

_____

Christine Vento

PROOF OF SERVICE BY MAIL

I am a citizen of the United States, over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action. My business address is P.O. Box 691071, Los Angeles, CA 90069-9071. I am a member of the bar of this court. On OCTOBER 15, 2014 I served the within PETITION FOR REVIEW in said action, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows, and deposited the same in the U. S. mail at Los Angeles, CA.

Michael Canizales AH6617; D1 CELL 08
CSP/LAC POB 4670
Lancaster, CA 93539

Clerk of the Superior Court; For delivery to Hon. Steven Mapes
17780 Arrow Boulevard
Fontana, CA 92335

Deputy District Attorney attn. Norma Alejo, Esq.
17780 Arrow Boulevard
Fontana, CA 92335

Julian Ducre, Esq.
POB 601
Chino Hills, CA 91709-0021

PROOF OF SERVICE BY ELECTRONIC SERVICE
(Cal. Rules of Court, rules 2.251(i)(1)(A)-(D)& 8.71(f)(1)(A)-(D) .)

Furthermore, I, Christine Vento, declare I electronically served from my electronic service address of vento107660@gmail.com the same referenced above document on 10-15-14 at about (4:30 p.m.) to the following:

APPELLATE DEFENDERS INC, e-service-criminal@adi-sandiego.com

ATTORNEY GENERAL'S OFFICE, ADIEService@doj.ca.gov

COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO http://www.courts.ca.gov/15317.htm

DAVID LAMPKIN dplampkin@aol.com

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15TH day of OCTOBER 2014, at Los Angeles, CA.

_____
Christine Vento

Filed 9/10/14 Opinion following transfer from Supreme Court

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL RAFAEL CANIZALES et al., Defendants and Appellants.	E054056 (Super.Ct.No. FVA1001265) OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed in part; reversed in part with directions

Christine Vento, under appointment by the Court of Appeal, for Defendant and Appellant Michael Canizales.

David P. Lampkin, under appointment by the Court of Appeal, for Defendant and Appellant KeAndre Windfield.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting and Andrew Mestman, Deputy Attorneys General, for Plaintiff and Respondent.

---

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts I, II(1)(a) & (b) and (2)(a) & (b).

A jury convicted defendants, Michael Canizales and KeAndre Windfield of first degree murder (Pen. Code, § 187, subd. (a)),[1] during which a principal discharged a firearm proximately causing death (§ 12022.53, subds. (d) & (e)(1)), and two counts of attempted willful, premeditated and deliberate murder (§§ 664/187), during which a principal discharged a firearm (§ 12022.53, subds. (c) & (e)(1)). The jury found that all the offenses were committed for the benefit of a criminal street gang. (§ 186.22, subd. (b)(1).) Canizales was sentenced to 25 years to life and two terms of 15 years to life and Windfield was sentenced to two terms of 25 years to life and two terms of 15 years to life plus 40 years. They appeal, claiming jury instruction and sentencing error. We reject their contentions. Since we originally decided this case, the California Supreme Court in *People v. Chiu* (2014) 59 Cal.4th 155, 167, held that "a defendant cannot be convicted of first degree premeditated murder under the natural and probable consequences doctrine." Because we cannot conclude beyond a reasonable doubt that the jury based its verdict of first degree murder for Canizales on the legally valid theory that he aided and abetted premeditated and deliberate murder (*ibid*), we must reverse his conviction for that offense and offer the People the opportunity to retry him for first degree murder as an aider and abettor of that offense or to accept a reduction to second degree murder. We also direct the trial court to correct errors in Windfield's abstract of judgment.

I.

FACTS

---

[1] All further statutory references are to the Penal Code unless otherwise indicated.

Attempted murder victim, Travion Bolden, testified that he lived on Jackson Street and his friend, Denzell Pride, the other attempted murder victim, was a member of the gang, Hustla Squad, and he had told police that Windfield was a member of the Ramona Blocc gang. Bolden testified that Pride had had problems with Ramona Blocc. Bolden had told the police before trial that Canizales was a known Ramona Blocc gang member.

Pride testified that Bolden was a member of Hustla Squad, then he equivocated. He testified that Windfield was a member of Ramona Blocc. He had told the police before trial that Canizales and Windfield were members of Ramona Blocc.

The prosecution's gang expert testified that Ramona Blocc Hustlas's main rival is Hustla Squad Clicc. In 2007, a Ramona Blocc member was killed by a Hustla Squad member. The expert opined that it would be expected for Ramona Blocc to retaliate violently for the killing of one of its members. He opined that Canizales and Windfield were Ramona Blocc members and that Windfield was the leader. Windfield had a "HSK" tattoo on his shaved head, which stands for "Hustla Squad Killer" and the initials "WC" on his arm, which are the initials for Canizale's gang moniker. The expert opined that Bolden and Pride were Hustla Squad members. He also opined that the shooting was committed for the benefit of, in association with and in furtherance of the Ramona Blocc gang.

The murder victim's friend testified that the murder victim was not from the area around Jackson Street and was there the night of July 18, 2008 with three girlfriends

laughing and dancing to the music coming from her parked car as she stood next to it on Jackson Street when she was fatally wounded during the shooting. Another friend testified that the murder victim was a college student who had gone to Jackson Street to visit the friend's aunt and the murder victim had no enemies on that street.

A woman named Kennetha testified that she used to date Canizales. She had told the police that she had gotten pregnant by him.[2] According to the police, it appeared as though she was still involved with him at the time she was questioned by them. She testified that Bolden was a Hustla Squad member.

Bolden had told police that in the late morning or early afternoon of July 18, 2008, he was at a fast food restaurant where he saw Canizales and a female, who asked where Pride, Bolden's friend, was.[3] Although Canizales shook Bolden's hand, Bolden thought the female was trying to set up Pride. Pride came into the restaurant and he and Canizales argued over the female, but Bolden did not get involved in the argument and Canizales declined to fight Pride over her. Eventually, Canizales and the girl left, and Bolden left with Pride. Bolden testified that later that day,[4] he was standing on the side of Jackson where his home was, talking with some females, when Kennetha joined their group and

---

2

Bolden had told the police that Kennetha was having sex with both Pride and Canizales and she did not know which of the two had fathered her baby.

3

At trial, he admitted being at the restaurant, but denied seeing Canizales, Kennetha or Pride there or witnessing an argument there.

4

Bolden told the police it was at 3:00 or 4:00 p.m.

called Canizales, who was walking nearby, over. Canizales and Kennetha talked, and Canizales asked Bolden where he was from, meaning with what gang did Bolden associate. Although Bolden testified at trial that Canizales did not ask this question with animosity, and Bolden believed that Kennetha had put Canizales up to asking it, he had told the police before trial that Canizales had asked it in a way that suggested that Canizales wanted to fight Bolden, but the females present told Canizales to knock it off. Bolden testified that he replied that he didn't bang and Canizales walked off towards another fast food restaurant. Bolden had told the police that Canizales had walked off towards the grocery store.

Bolden testified that he felt he had been disrespected during the exchange with Canizales and Kennetha, that Kennetha knew that Canizales and Pride did not get along and he felt Kennetha was trying to "stir the pot" and set him up because she knew Pride and Canizales had problems, so he went to Pride's home and told him what had happened. Bolden had told the police that Canizales had wanted to fight him, but Pride had told Bolden that he knew Canizales was just trying to scare Bolden. Bolden testified that Pride went to where Canizales had been, but Pride's mother and Bolden's mother told him to stop, and Canizales was already gone, anyway. Bolden testified that later, he and Pride were outside Pride's apartment on Jackson Street, where more than 30 people were attending a block party in the street. Bolden testified that the murder victim was standing outside her parked car with the doors open, listening to music and dancing. He