AUTOMATIC APPEAL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **JUAN VILLA RAMIREZ,** **Defendant and Appellant.**	**No. S099844** **(Kern Co. Super. Ct. No. SC076259A)**

AUTOMATIC APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF KERN

The Honorable Kenneth C. Twisselman, Presiding

APPELLANT'S REPLY BRIEF

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APPELLANT'S REPLY BRIEF

INTRODUCTION

Appellant testified on his own behalf at the trial. Among other things, he admitted to kidnaping, carjacking, and attempting to frighten Chad Yarbrough, who he believed was harassing his relatives. He testified that he wanted Yarbrough to apologize, and that when Yarbrough did not apologize, appellant wanted to scare Yarbrough to make him apologize. Appellant testified that he pushed a clip into the gun, an automatic weapon, wanting to make the noise and the gesture, not aiming the gun and without any intention to kill. But the gun went off accidentally. He was surprised when he saw Yarbrough falling over.

Appellant was entitled to have an unbiased jury hear his testimony, along with supporting evidence, and decide on the truth of what happened when Chad Yarbrough was shot. But Kern County was not the place to try the person charged with killing the well-known captain of a local high-school football team. Appellant was tried by a biased jury where 10 of the 12 sitting jurors should have been excused for cause. His jury included:

- a pro-death juror slow to reveal extensive knowledge of the case who had pending child support proceedings in Kern County (a clear conflict of interest) (Juror No. 3);

- three jurors who worked as prison guards, one of whom (Juror No. 6) admitted she could not be fair and impartial if there was any gang evidence presented; another (Juror No. 8) who was strongly pro-death, who repeatedly indicated, that based on his experience, he did not believe that LWOP was really LWOP; and a pro-death juror (Juror No. 12) who had heard at her workplace that the decedent Chad Yarbrough was killed "execution-style";
- three jurors (Jurors Nos. 2, 11, and 12) who were related (sister, mother, ex-wife) to members of the Sheriff's Department, all three of whom personally knew several of the prosecution witnesses;
- a juror who worked for the county and personally knew several of the prosecution witnesses (Juror 10);
- a juror who worked as an administrator for the school district where the deceased attended school and played football, and who participated in the handling of decisions on the extent of memorials for the deceased following his shooting death (Juror No. 4);

- a juror who was able to recount a remarkable amount of detail as to the facts of the case on voir dire and who cried when recalling that the decedent was replaced by his younger brother as Arvin High School's Homecoming King (Juror No. 7);
- a juror who owned property next to two of the crime scenes charged in this case and who expressed fear of retaliation from "these gangsters" if the verdict didn't go their way (Juror No. 1);
- a pro-death juror who was loudly assailed in a crowded restaurant and clearly shaken during the trial when her father demanded to know what was "taking so long when everyone knows he did it" (Juror No. 11).

The evidence presented in support of the motions for change of venue showed that the community's awareness of the crime at the time of trial remained almost as high as it had been at the time of the crime. Hostility to appellant in the courthouse and in the community was palpable. The trial court allowed it to flourish when it failed to properly control the proceedings:

- the chief bailiff was allowed to give heartfelt expressions of concern for members of the Yarbrough family in the presence of the jury;
- the bailiffs checked appellant's family and friends for outstanding warrants before letting them attend the trial;
- the jury complained that family members of appellant were parking near them;
- the jury requested that bailiffs protect them when they delivered the verdict despite a dearth of evidence suggesting they were in any danger;
- prosecutorial misconduct was permitted throughout the trial.

Respondent utterly fails to address key facts underlying these errors, including the substantial evidence in support of the venue motion as well as the sheer number of errors committed during jury selection. A close review of the record in this case will show that appellant is deserving of a new trial with 12 unbiased jurors who can fairly decide this case based on evidence presented in open court.

STATEMENT OF THE CASE AND FACTS

Appellant does not dispute respondent's statement of the case. (Respondent's Brief [hereinafter RB], 1–2.) Respondent's summary of facts contains notable omissions. It includes Dr. Donna Brown's direct testimony that she thought the weapon used to kill the decedent Chad Yarbrough was not fully automatic because the three bullet holes in his head were not closer together. (RB 13.) However, it omits Dr. Brown's initial statement in her autopsy report that the three wounds were instantaneous, and the bullets were likely to have been fired from a fully automatic weapon. (39 RT 9053–9057; 46 RT 10198; Def. Exh. E.)[1] In closing argument, the prosecutor disowned Dr. Brown as a witness in this regard, saying she had no expertise in the area. (53 RT 11841–11842.)

On this topic, appellant omitted in his opening brief the testimony of Ronald A. Helson, a criminalist who worked for 20 years for the city of Bakersfield and Kern County. (48 RT 10798 et seq.) After describing the investigation he performed and the materials he reviewed, he testified that the wounds were consistent with firing from an automatic weapon; if it were in the semi-automatic mode, in a pistol, firing one round after another,

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[1] The Reporter's Transcript is abbreviated as RT; the Clerk's Transcript as CT; the jury questionnaires as JQ. All statutory and section references are to the California Penal Code unless otherwise stated.

it would have been an exceptional display of marksmanship to hit a distant target with shots bunched so closely together. Mr. Helson echoed Mr. Laskowski in testifying that in the fully automatic mode, the gunshot wounds would have all occurred in less than a quarter of a second. There was also a high likelihood of the weapon jamming if it were modified to be automatic. (48 RT 10812–10814.)

ARGUMENT[2]

I. THE TRIAL COURT'S PREJUDICIAL ERROR IN REFUSING TO ORDER A CHANGE OF VENUE DEPRIVED APPELLANT OF THE FAIR TRIAL AND RELIABLE VERDICTS TO WHICH HE WAS CONSTITUTIONALLY ENTITLED.

A. Introduction

Appellant's trial venue was so hostile that he did not receive a fair trial before an unbiased jury. The extensive evidence before the trial judge presented before and during the trial, was sufficient to establish the need for a different venue as a matter of law. The trial court's formulaic dismissal of these motions on the basis that no showing had been made that the jurors could not set aside their knowledge and opinions of the case was a failure to properly exercise discretion.

The most striking feature of respondent's answer to appellant's change of venue argument (RB 35–57) is how it simply ignores key facts. Nowhere, for example, does respondent acknowledge the false rumors of sodomy and dismemberment of Chad Yarbrough's body, even though more than half of those who answered a survey in January of 2000 had heard

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[2] The argument numbering in this brief diverges from that in the opening brief, because appellant does not believe that answers are warranted to all points raised by respondent. References to appellant's opening brief will use specific page numbers; references to arguments or subsections will be internal references to this reply.