

No. S266854

**In the Supreme Court of the State of California**

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THE PEOPLE OF THE STATE OF CALIFORNIA,  
*Plaintiff and Respondent,*  
v.  
CRISTIAN RENTERIA,  
*Defendant and Appellant.*

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Fifth Appellate District Court, Case No. F076973  
Tulare County Superior Court, Case No. VCF304654  
The Honorable Kathryn T. Montejano, Judge

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**ANSWER BRIEF ON THE MERITS**

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## TABLE OF CONTENTS

	<b>Page</b>
Issue Presented.....	7
Introduction.....	7
Legal Principles .....	9
A. The purpose and elements of section 186.22, subdivision (b) .....	9
B. Section 186.22(b) applies to individuals, including those acting alone, who commit gang related crimes .....	10
C. Expert opinion in gang cases.....	11
Statement of the Case .....	13
A. The shooting on August 7th .....	14
B. The shooting on August 8th .....	14
C. The investigation .....	16
D. Additional evidence of Renteria’s gang affiliation .....	17
E. A gang expert testified about the Sureño gang.....	18
F. Renteria is convicted and sentenced.....	21
G. The Court of Appeal affirmed the judgment, holding that sufficient evidence supported the gang enhancement .....	22
Argument.....	23
I. The specific facts of the case, viewed with expert testimony about gang culture, can be sufficient to support a gang enhancement, regardless of whether a defendant acts alone .....	23
A. The role of expert testimony in gang cases .....	23
B. When a gang member commits a felony with the specific intent to promote, further, or assist his gang, even if he acts alone, case specific facts supported by expert opinion suffice to prove a gang enhancement .....	25

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
II. Sufficient evidence supports Renteria’s section 186.22(b) enhancements .....	32
A. Sufficiency of the evidence .....	32
B. Renteria shot at two homes for the benefit of and in association with the Sureño gang.....	33
1. Renteria had a motive to retaliate.....	33
2. The shooting was in contested territory .....	34
3. Renteria’s gang claimed responsibility for the shooting .....	35
4. Renteria’s gang motive to intimidate the community .....	37
C. The shooting was specifically intended to promote, further, or assist criminal conduct by gang members .....	39
D. Case specific facts support the expert testimony, so Renteria’s case is not like <i>Frank S., Ramon, Ochoa, Rios, Perez</i> or <i>Maquiz</i> .....	42
Conclusion .....	48

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>In re Cesar V.</i> (2011) 192 Cal.App.4th 989 .....	40
<i>In re Frank S.</i> (2006) 141 Cal.App.4th 1192 .....	42, 43, 44
<i>Kennemur v. State of California</i> (1982) 133 Cal.App.3d 907 .....	25
<i>Maquiz v. Hedgpeth</i> (9th Cir. 2018) 907 F.3d 1212.....	45, 46
<i>People v. Albillar</i> (2010) 51 Cal.4th 47.....	<i>passim</i>
<i>People v. Bloom</i> (1989) 48 Cal.3d 1194 .....	11
<i>People v. Flores</i> (2020) 9 Cal.5th 371.....	24, 25
<i>People v. Gonzales</i> (2005) 126 Cal.App.4th 1539 .....	26, 29, 30, 31
<i>People v. Gonzales</i> (2015) 232 Cal.App.4th 1449 .....	10
<i>People v. Gonzalez</i> (2006) 38 Cal.4th 932.....	<i>passim</i>
<i>People v. Lindberg</i> (2008) 45 Cal.4th 1.....	33
<i>People v. McDonald</i> (2015) 238 Cal.App.4th 16 .....	10

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
<i>People v. Mincey</i> (1992) 2 Cal.4th 408.....	11
<i>People v. Ochoa</i> (2009) 179 Cal.App.4th 650.....	45, 46
<i>People v. Olguin</i> (1994) 31 Cal.App.4th 1355.....	24, 25
<i>People v. Perez</i> (2017) 18 Cal.App.5th 598.....	45, 46
<i>People v. Pre</i> (2004) 117 Cal.App.4th 413.....	11
<i>People v. Ramon</i> (2009) 175 Cal.App.4th 843.....	43, 44
<i>People v. Rios</i> (2013) 222 Cal.App.4th 542.....	10, 44
<i>People v. Rodriguez</i> (2012) 55 Cal.4th 1125.....	9, 10, 11
<i>People v. Valdez</i> (1997) 58 Cal.App.4th 494.....	24
<i>People v. Vang</i> (2011) 52 Cal.4th 1038.....	<i>passim</i>

**STATUTES**

California Street Terrorism Enforcement and Prevention Act.....	9
Evid. Code § 801, subd. (a) .....	24

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
Pen. Code	
§ 186.21.....	9
§ 186.22, subd. (a)(1).....	11
§ 186.22, subd. (b) .....	<i>passim</i>
§ 186.22, subd. (b)(1).....	7, 10
§ 186.22, subd. (b)(4).....	7
§ 186.22, subd. (b)(4)(A).....	22
§ 246.....	13
§ 246.3, subd. (a) .....	13

**OTHER AUTHORITIES**

3 Witkin, Cal. Evidence (4th ed. 2000) Presentation at Trial, § 194, p. 258.....	25
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## ISSUE PRESENTED

When a member of a criminal street gang acts alone in committing a felony, what evidence will suffice to establish the felony was “committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members?” (Pen. Code,<sup>1</sup> § 186.22, subd. (b)(1); see *People v. Albillar* (2010) 51 Cal.4th 47, 59-60.)

## INTRODUCTION

Defendants who commit gang related felonies are subject to enhanced punishment. Often, as in this case, the primary issue is whether the defendant acted with the intent described in section 186.22, subdivision (b).<sup>2</sup> In deciding whether sufficient evidence supports a verdict on a defendant’s intent, reviewing courts should apply the same sufficiency of the evidence standard as in other contexts, whether or not the defendant acted alone, because a defendant’s choice to act alone is but one circumstance that may be relevant to establish the defendant’s intent.

Typically, proof of a defendant’s intent in gang cases will involve expert testimony that explains the unfamiliar incentives and motivations that often influence the conduct of gang

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> For the purposes of the issue presented, section 186.22, subdivisions (b)(1) and (b)(4), appear indistinguishable. This brief refers to them collectively as section 186.22(b).

members. If the specific facts of the case, viewed together with the expert's opinion, support a reasonable inference about what the defendant intended, then such evidence is sufficient. But whether the trial evidence, including expert opinion, actually does support that inference will necessarily depend on the specific opinion and the specific evidence presented at trial. Thus, what evidence will suffice to establish that a gang member, acting alone, committed a felony with the intent necessary to support a gang enhancement is a question that must be decided on a case-by-case basis.

In this case, defendant Cristian Renteria was "hit up" (i.e. challenged) by members of a rival gang, heard what sounded like a shotgun being racked, and fled. Later the same evening, Anthony A.<sup>3</sup> heard a group of youths, including Renteria, shouting gang slogans near a home in his neighborhood. Shortly thereafter, Anthony saw Renteria fire multiple rounds from a handgun into two of his neighbor's homes. When officers responded to the scene, they found a shotgun just inside the garage of the first home Renteria targeted.

At trial, Detective Jacob Adney, a gang expert, testified that Renteria was a member of the Sureño gang, that respect through violence is the hallmark of the Sureño gang, and that the Sureño gang demands that its members retaliate if disrespected.

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<sup>3</sup> Throughout this brief, some individuals are referred to by first name as in the opinion of the Fifth District Court of Appeal. No disrespect is intended.



Detective Adney also explained that gangs benefit from violent acts, even against non-rivals, because a reputation for violence allows them to intimidate potential witnesses and rivals. Finally, Detective Adney stated that the homes targeted by Renteria were in contested gang territory.

That evidence, combined with Detective Adney's testimony explaining the culture of the Sureño gang, provided a sufficient basis to infer that Renteria's criminal conduct was motivated by a desire to restore the respect his gang lost when he fled from rivals, and to intimidate potential witnesses in contested gang territory. Whether Renteria acted alone does not change this conclusion. Thus, sufficient evidence showed that Renteria committed a felony for the benefit of a criminal street gang with the specific intent to promote, further, or assist criminal conduct by its members.

## **LEGAL PRINCIPLES**

### **A. The purpose and elements of section 186.22, subdivision (b)**

Section 186.22, subdivision (b) ("186.22(b)"), was enacted as part of the California Street Terrorism Enforcement and Prevention Act (the STEP Act), the purpose of which is "the eradication of criminal activity by street gangs" to be achieved by "focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs." (§ 186.21; see *People v. Rodriguez* (2012) 55 Cal.4th 1125, 1129.)

Notwithstanding the Legislature’s intent to eradicate criminal activity by street gangs, “[n]ot every crime committed by gang members is related to a gang.” (*Albillar, supra*, 51 Cal.4th at p. 60.) To prove a crime is “related to a gang,” the People must satisfy two requirements: first, prove the defendant committed the underlying offense “for the benefit of, at the direction of, or in association with any criminal street gang” (the “benefit prong”) and second, prove the defendant acted “with the specific intent to promote, further, or assist in any criminal conduct by gang members” (the “specific intent prong”). (§ 186.22(b); see *Albillar, supra*, 51 Cal.4th at p. 56; *People v. Gonzales* (2015) 232 Cal.App.4th 1449, 1464.)<sup>4</sup>

**B. Section 186.22(b) applies to individuals, including those acting alone, who commit gang related crimes**

The focus of section 186.22(b) is on whether the crime itself is gang related, and it is clear that section 186.22, subdivision (b)(1), applies to those who act alone. (See *Rodriguez, supra*, 55 Cal.4th at p. 1138 [“A lone gang member who commits a felony . . . would not be protected from having that felony enhanced by section 186.22(b)(1). . . .”]; *People v. McDonald* (2015) 238 Cal.App.4th 16, 39-40; *People v. Rios* (2013) 222 Cal.App.4th 542, 546.)

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<sup>4</sup> “Benefit prong” and “specific intent prong” are used in this brief for the purpose of clarity and brevity only.

By contrast, section 186.22, subdivision (a)(1), targets the distinct problem created by gang members acting in concert. With that section, “the Legislature sought to punish gang members who acted in concert with other gang members in committing a felony regardless of whether such felony was gang-related.” (*Rodriguez, supra*, 55 Cal.4th at p. 1138; see *Albillar, supra*, 51 Cal.4th at p. 55 [“there is nothing absurd in targeting the scourge of gang members committing any crimes together and not merely those that are gang related” (italics omitted)].)

### **C. Expert opinion in gang cases**

Because section 186.22(b) applies only to felonies committed with a certain state of mind, circumstantial evidence often plays an important role. (See *People v. Mincey* (1992) 2 Cal.4th 408, 433 [“A defendant’s state of mind must, in the absence of the defendant’s own statements, be established by the circumstances surrounding the commission of the offense”]; *People v. Pre* (2004) 117 Cal.App.4th 413, 420 [“Intent is rarely susceptible of direct proof and usually must be inferred from the facts and circumstances surrounding the offense”].) “Evidence of a defendant’s state of mind is almost inevitably circumstantial, but circumstantial evidence is as sufficient as direct evidence to support a conviction.” (*People v. Bloom* (1989) 48 Cal.3d 1194, 1208.)

Often, the circumstantial evidence used to prove intent in gang cases involves expert opinion. Expert opinion that criminal conduct was intended to benefit a gang, together with other

evidence, “is not only permissible but can be sufficient to support the Penal Code section 186.22(b), gang enhancement.” (*People v. Vang* (2011) 52 Cal.4th 1038, 1048; see *Albillar, supra*, 51 Cal.4th at p. 63.)

Expert opinion that particular criminal conduct benefitted a gang by enhancing its reputation for viciousness can be sufficient to raise the inference that the conduct was “committed for the benefit of . . . [a] criminal street gang.” (*Albillar, supra*, 51 Cal.4th at p. 63.)

The proper relationship between expert testimony and other evidence in establishing a defendant’s state of mind for the purpose of section 186.22(b) is illustrated in *Vang, supra*, 52 Cal.4th 1038. In *Vang*, three gang members assaulted a fourth gang member. (*Ibid.*) The evidence suggested that the victim had been assaulted for either disassociating himself from the gang or hearing something he was not supposed to hear. (*Ibid.*) At trial a gang expert, responding to a hypothetical question tracking those facts, opined that the assault was committed for the benefit of a gang, to maintain discipline among its members. (*Id.* at pp. 1042-1043.)

On appeal the defendant argued that the expert had improperly opined on the ultimate issue of intent. (*Vang, supra*, 52 Cal.4th at p. 1044.) This Court rejected that argument, observing that the expert’s opinion still depended on the facts in the hypothetical being proven. “It is true that [the expert]’s opinion, if found credible, might, together with the rest of the

evidence, cause the jury to find the assault was gang related.” (*Id.* at p. 1048.) “But this circumstance makes the testimony probative, not inadmissible.” (*Id.* at pp. 1049-1049, quoting *People v. Gonzalez* (2006) 38 Cal.4th 932, 947.)

Thus, as it relates to a gang member’s intent, expert testimony may be used to bridge the gap between how and why a defendant acted.

### STATEMENT OF THE CASE

Renteria was charged in connection with two shootings that occurred on August 7 and 8, 2014. In regard to the first shooting on August 7th, Renteria was charged with grossly negligent discharge of a firearm (§ 246.3, subd. (a); count 3). (1 CT 120-124.)<sup>5</sup> As to the August 8th shooting, Renteria was charged with shooting at two separate inhabited dwellings (§ 246; counts 1 & 2). (1 CT 120-124.)

It was alleged as to all three offenses that Renteria had committed them for the benefit of, at the direction of, or in association with a criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members (§ 186.22(b)). (1 CT 120-124.) It was also alleged as to counts 1 and 2 that Renteria personally used and discharged a firearm. (1 CT 121.)

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<sup>5</sup> “CT” refers to the Clerk’s Transcript on Appeal; “RT” refers to the Reporter’s Transcript on Appeal; “OBM” refers to Renteria’s Opening Brief on the Merits.

**A. The shooting on August 7th**

On the evening of August 7, 2014, James V. was repairing a car in his driveway when he heard gunfire coming from a field. (3 RT 255-259.) James called the police. (3 RT 256, 267-268.) James saw a person walking south, away from the area where the gunfire had come from. (3 RT 259-262.) At the time, James was “40%” sure that person was Renteria, but James could not identify Renteria at trial. (3 RT 269; 4 RT 502-503.) Police recovered six shell casings at the scene. (3B<sup>6</sup> RT 320.)

**B. The shooting on August 8th**

On August 8, 2014, at about 10:00 or 10:30 p.m., Anthony went out to his porch because his wife and children told him some “youngsters had messed around.” (3B RT 347-349.) Anthony was “tired of the issues that [were] happening around the neighborhood.” (3B RT 351.) He intended to go out, see who they were, and talk to them. (3B RT 350.) Anthony saw at least five to six youths heading toward a field near his home, hollering words such as “sur” and “trece.” (3B RT 352, 359.) Anthony recognized Renteria in the group because he lived nearby, a few houses away. (3B RT 352, 356-358.) Anthony spoke to Renteria, who told Anthony that a couple of them were just drunk and trying to get home. (3B RT 352.) Anthony told them to get home safely, reminded them he did not want any problems, and went back inside. (3B RT 352-353.)

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<sup>6</sup> The Reporter’s Transcript on Appeal contains volumes 3, 3A, and 3B. “3B RT” refers to volume 3B.

A “little while after,” Anthony heard a “pop” coming from the field, so he went back out to his porch intending to talk to the group again. (3B RT 353, 362.) This time, Anthony saw only Renteria and one other person. (3 RB 354, 360-361.) Anthony lost sight of them, and “at least one or two minutes” later they reemerged. (3B RT 362.)

Renteria stopped in front of Jack D.’s home and then started shooting. (3B RT 362-364, 391-392.) Anthony saw Renteria fire a handgun four to five times at Jack’s home. (3B RT 364.) Then dogs started barking at Harvey D.’s home, which was located between Anthony and Jack’s homes. (3B RT 363-364, 418.) Renteria fired several shots at Harvey’s home, after which he turned back to Jack’s home and “unloaded the clip.” (3B RT 364.) Then Renteria and the other individual ran off together. (3B RT 365.)

Anthony was shocked and feared that, if Renteria noticed him, he might start shooting at Anthony too. (3B RT 367.) Anthony went back inside and called 9-1-1. (3B RT 367.)

Tulare Police Officer Tim Sunderland responded to the scene. (3B RT 413-414.) He banged on the front door of Jack’s home and received no response. (3B RT 415.) Officer Sunderland noticed several bullet holes in the garage door of Jack’s home and in the sheet rock above it. (3B RT 416-417.) Officer Sunderland opened the garage door to look inside for anyone who might be injured, saw no one, and shut it. (3B RT 415-416.) However, while looking inside, Officer Sunderland saw a sawed-off shotgun

leaning against the wall. (3B RT 417-418.) Four .22-caliber shell casings were found in the roadway in front of the home. (3B RT 401, 404, 424.)

### **C. The investigation**

On August 13, 2014, Renteria was arrested, and Detective Jacob Adney interviewed him in the back of a patrol car. (4 RT 506-507; Aug. CT 24-54; Exhibit 27.)<sup>7</sup> Detective Adney asked Renteria if he recalled what he had been doing the previous Friday night, and Renteria eventually admitted that he had been “hit up.” (Aug. CT 27, 44, 46, 49-50; Exhibit 27 [2:41-2:47, 18:21-18:51, 20:28-21:34, 24:54-25:16]; 4 RT 518.) Renteria explained that some people had approached him and said, “where you from,” and he had heard a sound similar to a shotgun being racked. (Aug. CT 46, 50; Exhibit 27 [21:07-21:18, 25:19-25:33].) Renteria assumed they were “northerners,”<sup>8</sup> and he was scared, so he ran. (Aug. CT 46, 50; Exhibit 27 [20:48-20:55, 25:15-25:39].) Renteria agreed with Detective Adney that, when something like that happens, he cannot talk to the police and is “expected” to do something about it. (Aug. CT 48-49; Exhibit 27 23:50-24:35.)

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<sup>7</sup> “Exhibit 27” and “Exhibit 28” refer to compact discs containing recordings of Renteria’s interviews, corresponding with the Augmented Clerk’s Transcript (“Aug. CT”).

<sup>8</sup> “Sureño” is Spanish for “southerner” and “Norteño” is Spanish for “northerner.” (4 RT 547.) The witnesses in this case use them interchangeably.



At the police department, Renteria was interviewed again, and he admitted to being a southern gang member. (Aug. CT 8-10; Exhibit 28 [4:58-7:24; 4 RT 519-520].) Renteria also acknowledged that his gang identifies with the color blue and the number 13, and that northern gang members disliked him. (Aug. CT 9-10, 20; Exhibit 28 [5:25-7:06, 18:00-18:22].)

**D. Additional evidence of Renteria's gang affiliation**

In October of 2008, Officer Sunderland arrested Renteria for possessing a knife at Los Tules Middle School. (3B RT 431.) The principal showed Officer Sunderland a blue knife and a blue bandana, stating Renteria had admitted to the principal that he brought the knife for protection, that he was a southern gang member, and that he had been a gang member for about a year. (3B RT 433-434.)

Officer Jarret Robertson previously arrested Renteria in June of 2011. (4 RT 477-478.) While investigating a trespassing call, Officer Robertson found Renteria and Edwin C. behind a vacant residence. (4 RB 478-480.) Edwin had a can of blue spray paint. (4 RT 480.) There was fresh blue spray paint all throughout the inside and back of the residence. (4 RT 482-483.)

On August 13, 2014, while searching Renteria's home in conjunction with their investigation in this case, officers found a blue plastic container with the word "sur" on it. (4 RT 516-517.) During an interview with Detective Adney, Renteria admitted that he was a "southerner" in the subset "Kings" and explained that he had been jumped in for 13 seconds. (Aug. CT 9-10; Exhibit 28 [7:06-7:15].)

**E. A gang expert testified about the Sureño gang**

Detective Adney offered expert testimony about gang culture in general and about the Sureño gang specifically. Detective Adney explained that the Sureño gang identifies with the color blue and the number 13. (4 RT 544.) The rival of the Sureño gang is the Norteño gang, and there is a history of violence between them. (4 RT 546.) In some areas, like Los Angeles, gangs often claim a block or a street as their “territory,” which remains constant, and what gang a person is in depends on the street or block where the person lives. (4 RT 535.) By contrast, in Tulare County, a gang’s territory is wherever a gang member lives and can change quickly if the member moves or leaves. (4 RT 535.) Consequently, when northerners and southerners live in the same neighborhood, they both claim it as their territory, and there are more “issues” in that neighborhood. (4 RT 548.) In August of 2014, the area where the shootings occurred was contested territory. (4 RT 548-549.)

The Sureño gang has rules such as “not to be a coward” and “not to be an informant to law enforcement.” (4 RT 536, 538.) Failure to follow the rules can be considered treason to the gang and can result in punishment, including death. (4 RT 537.) Consequently, when Sureño gang members are victims of a crime, they cannot simply report it to the police—instead they must retaliate themselves. (4 RT 538.) A Sureño gang member who fails to retaliate loses respect within the gang and is “pretty much useless.” (4 RT 539.)

Detective Adney explained that “respect is everything” in gang culture. (4 RT 533.) Detective Adney also explained that violence and respect are closely related. (4 RT 533.) “Typically, the more violent somebody is, the more respected they are.” (4 RT 533.) A gang’s notion of respect differs from that of an ordinary citizen because it is tied to fear and intimidation and is gained by “putting in work” (i.e., committing crimes) for the gang. (4 RT 534-535.) To advance their gang’s reputation for fear and intimidation, gang members sometimes shout phrases associated with their gang as they commit a crime to advertise who is responsible. (4 RT 542.) Sureño gang members will use phrases like “sur,” which is Spanish for “south,” and “trece,” which is Spanish for “thirteen.” (4 RT 546-547.)

Crimes committed by gang members against non-rivals also benefit the gang by promoting the gang’s reputation. (4 RT 539.) When the community believes gang members are violent, gang members are able to use intimidation to dissuade and prevent potential witnesses from cooperating with law enforcement. (4 RT 539-540.) According to Detective Adney, when police investigate a gang shooting or other violent gang crime, witnesses typically say they do not know what happened; sometimes they refuse to provide statements. (4 RT 540.) Detective Adney attributed that lack of cooperation to intimidation. (4 RT 540.) Speaking about gangs generally, Detective Adney also opined that witness intimidation is a primary gang activity, stating, “in cases I personally worked, I’ve

seen houses being shot. I've seen people being assaulted, vandalism of property at these houses, and threats that never end." (4 RT 541-542.)

The prosecutor presented Detective Adney with hypothetical facts that closely tracked the facts of the case. (5 RT 604-606.) The hypothetical question asked Detective Adney to assume a witness heard several individuals calling out "sur trece" and that several minutes later one of the individuals produced a firearm and shot at two houses. (5 RT 604.) Detective Adney was further asked to assume this shooting unfolded in territory claimed by both the Norteño and Sureño gangs, that the shooter was a member of the Sureño gang, and that earlier that same night the shooter had been "hit up" by individuals the shooter believed were Norteño gang members, and that a shotgun was found inside the garage of one of the homes that was shot. (5 RT 604.) Finally, Detective Adney was asked whether under those circumstances the shooting was committed at the direction of, for the benefit of, or in association with a criminal street gang with the specific intent to promote further or assist criminal conduct by gang members. (5 RT 604-605.)

Responding to questions based on those hypothetical facts, Detective Adney opined that the shooting would benefit the Sureño gang regardless of whether the victim was a rival gang member. (5 RT 606.) Detective Adney reasoned that, when a Sureño gang member commits a shooting, he shows that he is "willing to put in work" for the gang, demonstrates that he is

violent, and, by shouting “sur” and “trece,” lets everyone know his gang is responsible. (5 RT 606.) In Detective Adney’s opinion, the shooting also elevates the status of the gang by instilling fear and intimidation in the community. (5 RT 607.) Detective Adney elaborated that, if the community at large learned a person was that violent, community members would be less likely to cooperate with law enforcement for fear of becoming the next target. (5 RT 607.)

Detective Adney explained that, because gangs have a reputation for violence, people are reluctant to talk or cooperate with police when they investigate gang crimes. (5 RT 607-608.) That lack of community cooperation results in suspects evading arrest and enables gang members to continue their day-to-day gang activity, committing “crime after crime” without consequence. (5 RT 608.)

Finally, Detective Adney opined that it was significant the shooter in the hypothetical had been “hit up” by individuals he believed to be rival gang members earlier that day. (5 RT 609.) Being “hit up” is a challenge or a sign of disrespect, so a gang member who is “hit up” is likely to retaliate to avoid looking weak. (5 RT 610.) The question “where you from” is essentially a gang challenge and could result in a fight “in a matter of seconds.” (5 RT 611.)

#### **F. Renteria is convicted and sentenced**

A jury convicted Renteria of counts 1 and 2, for shooting at Jack and Harvey’s homes on August 8, and found true the gang

and firearm enhancements as to both counts. (1 CT 309-311.) It acquitted him on count 3 regarding the August 7, 2014, shooting. (1 CT 309-311.) The trial court sentenced Renteria to two consecutive indeterminate terms of 23 years to life in state prison pursuant to section 186.22, subdivision (b)(4)(A). (1 CT 309-311, 360.)

**G. The Court of Appeal affirmed the judgment, holding that sufficient evidence supported the gang enhancement**

On appeal, Renteria claimed that the evidence was insufficient to support the gang enhancements. (Opinion at 13.) The Fifth District Court of Appeal rejected Renteria's claim and affirmed the judgment. (Opn. at 13-22, SMITH J., Concurring and Dissenting.)

The court observed that Detective Adney's testimony had explained how crimes against even non-rivals benefit the gang, that the August 8th shooting had occurred in contested territory, and that Renteria had described being "hit up" by rivals likely armed with a shotgun and that a shotgun was seen in the garage of Jack's home. (Opn. at 15.) Viewed as a whole, the court determined that this evidence sufficiently demonstrated Renteria committed felonies for the benefit of his gang. (Opn. at 14-15.)

The Court of Appeal also determined that Renteria had acted with the specific intent to promote, further, or assist criminal conduct by gang members. (Opn. at 16.) The court held that a jury could have reasonably concluded that Renteria's motive was retaliation, and that shooting Jack's home was

intended to recoup respect for both he and his gang after he fled from the earlier challenge. (*Ibid.*) The Court of Appeal also concluded that jurors could have reasonably inferred Renteria's motive for shooting Harvey's home was to intimidate witnesses and silence the dogs, thus facilitating his escape, and to further his gang's reputation for violence and thereby control the contested neighborhood. (*Ibid.*)

## **ARGUMENT**

### **I. THE SPECIFIC FACTS OF THE CASE, VIEWED WITH EXPERT TESTIMONY ABOUT GANG CULTURE, CAN BE SUFFICIENT TO SUPPORT A GANG ENHANCEMENT, REGARDLESS OF WHETHER A DEFENDANT ACTS ALONE**

To prove a gang enhancement under section 186.22(b), the prosecution must prove the defendant committed the felony for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members. Whether a gang member commits a crime alone or in a group is just one of many circumstances for the factfinder to consider. Evidence the defendant acted alone is not necessarily entitled to special weight or significance, nor does it change how expert testimony should be viewed.

#### **A. The role of expert testimony in gang cases**

Expert testimony often plays a central role in gang cases because many aspects of gang culture are not readily understood by ordinary jurors. Experts familiar with gang culture offer insights that help jurors to understand otherwise

counterintuitive actions and reactions by gang members. (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1384 [“It is difficult to imagine a clearer need for expert explication than that presented by a subculture in which this type of mindless retaliation promotes ‘respect’”].)

In general, expert witnesses may offer opinion testimony on subject matter “sufficiently beyond common experience” if the expert’s opinion “would assist the trier of fact.” (Evid. Code, § 801, subd. (a); see *People v. Flores* (2020) 9 Cal.5th 371, 398.) Generally, the subject matter of criminal street gangs meets these criteria. (*Flores, supra*, 9 Cal.5th at p. 398; *Vang, supra*, 52 Cal.4th at p. 1044; *Olguin, supra*, 31 Cal.App.4th at p. 1370 [“The use of expert testimony in the area of gang sociology and psychology is well established”].)

Experts may opine about how gang members generally think and act, though they may not generally opine about what the specific defendant intended. (*Gonzalez, supra*, 38 Cal.4th at p. 947; *Olguin, supra*, 31 Cal.App.4th at p. 1371; but see *Vang, supra*, 52 Cal.4th at p. 1048 & fn. 4 [“It appears that in some circumstances, expert testimony regarding the specific defendants might be proper,” citing *People v. Valdez* (1997) 58 Cal.App.4th 494, 507.] The mere fact an expert’s response to a hypothetical question strongly leads the jury towards a conclusion about the defendant’s intent does not render it improper. (See *Gonzalez, supra*, 38 Cal.4th at p. 947 [expert testimony that gangs intimidate witnesses admissible to



influence which version of contradictory witness testimony is more credible]; *Olguin, supra*, 31 Cal.App.4th at p. 1371 [“Such evidence is admissible even though it encompasses the ultimate issue in the case”].)

A traditional form of expert opinion is an answer to a hypothetical question, the facts of which closely track the evidence of the case. (See *Vang, supra*, 52 Cal.4th at p. 1046, quoting 3 Witkin, Cal. Evidence (4th ed. 2000) Presentation at Trial, § 194, p. 258.) The hypothetical question asks the expert to assume the truth of certain facts, which in turn must be “rooted in the evidence” of the case. (*Flores, supra*, 9 Cal.5th at p. 398; see *Vang, supra*, 52 Cal.4th at p. 1045.) The hypothetical facts need not be identical to the facts of the case but must be close enough that they assist the trier of fact. (See *Vang, supra*, 52 Cal.4th at p. 1046 [“A hypothetical question not based on the evidence is irrelevant and of no help to the jury”]; *Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 923 [“Like a house built on sand, the expert’s opinion is no better than the facts on which it is based”].)

**B. When a gang member commits a felony with the specific intent to promote, further, or assist his gang, even if he acts alone, case specific facts supported by expert opinion suffice to prove a gang enhancement**

Regardless of whether a defendant acts alone or in a group, section 186.22(b) requires proof that (1) the felony was committed “for the benefit of, at the direction of, or in association with any criminal street gang” and (2) the felony was committed “with the

specific intent to promote, further, or assist in any criminal conduct by gang members.” When expert testimony helps jurors interpret the facts in gang cases and draw reasonable inferences from other evidence, it can constitute sufficient evidence to support a gang enhancement even when a defendant acts alone. (*Vang, supra*, 52 Cal.4th at p. 1048; *Albillar, supra*, 51 Cal.4th at p. 63.) Three cases—*Albillar*, *Gonzalez*, and *Gonzales*—are particularly instructive on this point.

In *Albillar, supra*, 51 Cal.4th at page 47, this Court considered a sufficiency of the evidence challenge to a section 186.22(b) gang enhancement. In that case, three gang members, who were also relatives, helped each other rape a 15-year-old girl at their shared apartment. (*Id.* at pp. 52-53.) Responding to a hypothetical question based on the facts of the case, a gang expert opined that such a crime would have been committed for the benefit of, at the direction of, or in association with a criminal street gang. (*Id.* at pp. 53-54.) The expert reasoned that the gang members worked together to accomplish the rape and that the brutality and viciousness of the crime would enhance the gang’s reputation. (*Ibid.*)

*Albillar* held that sufficient evidence supported the inference both that the crime benefitted a gang and that it was committed with the specific intent to promote, further, or assist criminal conduct by gang members. *Albillar* recited portions of the expert’s opinion regarding how a reputation for viciousness benefits a gang and observed that such opinion “can be sufficient

to raise the inference” that the crime was committed for benefit of the gang. (*Albillar, supra*, 51 Cal.4th at p. 63.) *Albillar* further explained that, viewed with the evidence at trial, the expert opinion was sufficient evidence to support the specific intent prong of the gang enhancement because the evidence showed an intent to promote, further, or assist criminal conduct by gang members in the present offense. (*Id.* at p. 65.)

While the facts presented to the jury in *Albillar* satisfied the elements of the target offense, it was the expert’s testimony that gave the jurors a basis to understand how the defendants’ actions related to their membership in a gang. The testimony of the gang expert explaining how gang members generally thought and acted laid vital foundation for inferring what gang members intended while committing the target offense. Because the expert opinion, when viewed with the other evidence, supported the inference that the defendants’ actions benefitted their gang, the jury could infer that they intended that benefit, and sufficient evidence supported the benefit prong of the gang enhancement. Because the expert opinion supported the inference that each defendant helped fellow gang members commit a rape, the jury could infer that each of them specifically intended to promote, further, or assist other gang members in committing that same rape, and sufficient evidence supported the specific intent prong of the gang enhancement.

In *Gonzalez, supra*, 38 Cal.4th at page 932, this Court considered the admissibility of expert testimony used to establish

the intent of a lone defendant acting for the benefit of his gang. The defendant, alone, shot and killed two rival gang associates. (*Id.* at p. 938.) There was no evidence that an identifiable fellow gang member assisted him, but the murder weapon was found at a house affiliated with the defendant's gang. (*Id.* at p. 940.) During the investigation various witnesses identified the defendant as the shooter, but, by the time of trial, all but one had recanted their identification. (*Id.* at pp. 939-941.) Another witness, a fellow gang member, claimed the defendant had admitted his involvement, but, by trial, that witness too had changed his story. (*Id.* at pp. 939-940.) A gang expert explained that gang members are forbidden from cooperating with law enforcement and being a "rat" or a "snitch," regardless whether they were informing against a fellow gang member or a rival. (*Id.* at p. 940.) The expert said that such witnesses would likely be subject to intimidation by the gang. (*Ibid.*) In the expert's opinion, a gang member would not falsely tell police a fellow gang member had confessed to murder. (*Ibid.*)

This Court held the expert's opinion, in the form of a hypothetical question, was permissible as it related to how gang members think. (*Gonzalez, supra*, 38 Cal.4th at p. 947.) This Court observed that expert testimony

if found credible, might, together with other evidence, lead the jury to find the witnesses were being intimidated, which in turn might cause the jury to credit their original statements rather than their later repudiations of those statements.

(*Ibid.*)

*Gonzalez* addressed whether expert testimony was admissible, rather than whether it comprised sufficient evidence, but the two issues are closely related because without the expert opinion nothing showed how the defendant's felony related to his gang. *Gonzalez* analyzed the role of expert testimony in establishing the intent of a gang member acting alone, and, as in *Albillar*, determined that expert testimony supported the inference that the defendant had committed a felony for the benefit of his gang, with the specific intent to promote, further, or assist criminal conduct by gang members. Thus, as in *Albillar*, this Court held that an expert opinion that explained other case evidence could be sufficient to support the inference that a defendant had harbored intent sufficient to satisfy the gang enhancement in section 186.22(b).

In *People v. Gonzales* (2005) 126 Cal.App.4th 1539 (*Gonzales*), the Court of Appeal considered the role of expert testimony in demonstrating a gang motive, albeit in the context of proving intent to kill rather than a section 186.22(b) enhancement. (*Id.* at p. 1542.) There, one jail inmate, acting alone and using a shank, attempted to murder another inmate in a sudden, unprovoked attack. (*Id.* at pp. 1543-1544.) Both the defendant and the victim were gang members, but they were not rivals, no property was taken, and there was no apparent disagreement between them. (*Ibid.*) Yet, investigators found the victim's name in the "personal hard candy" section of several "green light" lists. (*Id.* at p. 1546.)

A gang expert explained that the “green light” list is a list maintained by the Mexican Mafia and distributed throughout the prison system. (*Gonzales, supra*, 126 Cal.App.4th at p. 1544.) The list identifies certain gang members by name, moniker, and gang affiliation. (*Id.* at p. 1545.) Ordinarily, the Mexican Mafia prohibits Hispanic gang members from fighting each other unless the victim’s name appears on the “green light” list. (*Ibid.*) For those whose names do appear on the list, that prohibition is lifted, and it is “open season.” (*Ibid.*) The expert testified that the phrase “hard candy” refers to a shank and that the “personal hard candy” section of the list refers to individuals who were to be personally killed with a shank. (*Ibid.*) Based on that evidence and the defendant’s actions, the gang expert opined that the defendant was a member of the Mexican Mafia prison gang. (*Id.* at p. 1544.)

A jury convicted the defendant of attempted murder. (*Gonzales, supra*, 126 Cal.App.4th at p. 1542.) On appeal, the defendant challenged, among other things, the admissibility of expert opinion to prove his intent to kill. (*Id.* at p. 1549.) The Court of Appeal rejected that argument and affirmed. The court explained that the expert’s testimony was proper because it merely gave the jury the tools needed to make sense of the evidence:

Many in our community can imagine circumstances that might lead to a crime of passion, and many are familiar with the activities of gangs on the streets of Los Angeles County. But few among us know enough about the gang activities organized by the Mexican

Mafia in Men's Central Jail to understand an inmate's cold-blooded attempt to murder a nearly naked, defenseless fellow inmate who did nothing to provoke the attack.

(*Gonzales, supra*, 126 Cal.App.4th. at p. 1551.)

Without expert testimony, the evidence in *Gonzales* demonstrated only an apparently senseless crime. (See *Gonzales, supra*, 126 Cal.App.4th at p. 1549 [at trial, the prosecutor admitted the stabbing appeared senseless absent a gang motive].) The significance of the victim's name appearing on the "personal hard candy" section of a "green light" list was not readily apparent and, without context, would have been insufficient to prove a gang motive or intent to kill. But with the expert testimony to explain that the "personal hard candy" list was a gang document delineating people to be killed with a shank, the evidence was not only sufficient but compelling. (*Id.* at p. 1551 ["This evidence, coupled with the evidence that appellant was a gang member, may have led the jury to the ineluctable conclusion that appellant intended to kill Cruz"].) Although the intent at issue was the specific intent to kill, rather than the specific intent set forth in section 186.22(b), *Gonzales* is another example of how expert testimony can be used to infer that a defendant, acting alone, harbored specific intent.

Each of these cases illustrates how the intent of a gang member may be proven when expert testimony is linked to the specific facts of a case. Whether a defendant acted alone or in concert with others is just one factor that may be relevant to

discern the defendant's intent. It is not necessarily entitled to more or less significance than any other factor. The extent to which a defendant acting alone is relevant, and the weight it should be accorded, will necessarily depend on the other evidence, including expert testimony. Consequently, the question of what evidence is sufficient to show a gang member who acts alone has satisfied both prongs of the gang enhancement is best decided on a case-by-case basis.

## **II. SUFFICIENT EVIDENCE SUPPORTS RENTERIA'S SECTION 186.22(B) ENHANCEMENTS**

Here, Renteria, a Sureño gang member, admitted he believed he had recently been threatened by rivals. Moreover, Renteria was with a group of young men shouting the gang-related phrases "sur" and "trece" minutes before the shooting, and the homes he shot were located in contested gang territory. Expert testimony established that a Sureño gang member who had recently been threatened by rivals would have gang-related reasons to retaliate quickly and violently. Therefore, sufficient evidence supports the true finding on the gang enhancement.

### **A. Sufficiency of the evidence**

When addressing a challenge to the sufficiency of the evidence supporting a gang enhancement, reviewing courts examine the entire record

in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of



solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.

(*Albillar, supra*, 51 Cal.4th at p. 60; see *People v. Lindberg* (2008) 45 Cal.4th 1, 27.) In so doing, the reviewing court must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. (*Albillar, supra*, 51 Cal.4th at p. 60.) “If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.” (*Ibid.*) Finally, “[a] reviewing court neither reweighs evidence nor reevaluates a witness’s credibility.” (*Ibid.*)

**B. Renteria shot at two homes for the benefit of and in association with the Sureño gang**

Witness testimony proved what Renteria did during the time of the shooting, and his own testimony established that he had been “hit up” just before. Detective Adney’s testimony explained the significance of being “hit up” and how Renteria, as a Sureño gang member, would likely react to it. The trial evidence, combined with Detective Adney’s opinion, amply supported the inference that Renteria committed the shootings for the benefit of, and in association with, his gang.

**1. Renteria had a motive to retaliate**

Detective Adney explained that Sureños are expected to retaliate when they are “hit up.” (4 RT 538, 610; Aug. CT 49; Exhibit 27 23:55-24:35.) Renteria admitted he was a Sureño and

that he thought he had been “hit up.” (Aug. CT 27, 44, 46, 49-50; 4 RT 518.) Renteria recalled that someone said, “where you from,” and he heard a “shooshoo” sound, like a shotgun being racked. (Aug. CT 46, 50; Exhibit 27 [21:07-21:18, 25:19-25:33].) He got scared and ran. (Aug. CT 46, 50; Exhibit 27 [20:48-20:55, 25:15-25:39].) The same night of the shooting, a shotgun was found leaning against the wall of Jack’s garage; Jack appeared to be Renteria’s primary target. (3B RT 417-418.)

Detective Adney explained the meaning of being “hit up,” the importance of respect through violence in Sureño gang culture, and the Sureño expectation that gang members will retaliate when challenged. This testimony gave the jury information helpful to understanding the connection between being “hit up” and retaliating. Renteria’s statements provided evidence both that he had been “hit up,” and that he was expected to do something about it. Anthony’s testimony showed how Renteria reacted. Viewed together, this evidence permitted the jury to reasonably infer that Renteria shot up Jack’s home in retaliation for being “hit up” earlier that evening.

## **2. The shooting was in contested territory**

Detective Adney also testified that gang crimes are more common in contested territory and that the homes Renteria shot were in contested territory. (4 RT 548-549.) Detective Adney elaborated that, when two gangs claim the same territory, rarely will one of them simply “bow down” and concede; instead, there is “typically always a fight” over such an area. (4 RT 548.) Other

evidence was consistent with that opinion. For example, Anthony explained that he had confronted the youths shouting “sur” and “trece” because he was tired of issues happening around the neighborhood (3B RT 351), and Jack testified that some of the bullet holes in his home were from a previous incident (3B RT 397-398). From this, the jury could infer that the back-and-forth violence was part of a struggle between two rival gangs. The jury could also infer that Renteria’s participation in that struggle by shooting at the homes was for the benefit of and in association with, the Sureños, one of the two gangs involved.

**3. Renteria’s gang claimed responsibility for the shooting**

Anthony heard a group, of which Renteria was a part, yelling “sur” and “trece” before the shooting. (3B RT 353; 3B RT 362; 5 RT 609.) Detective Adney testified that Sureño gang members identify with the number thirteen and that “sur” and “trece” were Spanish for “south” and “thirteen.” (4 RT 546-547.) A reasonable juror could infer from this evidence that Renteria intended the Sureño gang be credited with the shooting.

Renteria contests the significance of these facts, positing that “[t]he police received [Anthony’s] 911 call at 11:50 p.m. (RT 400-402), meaning that more than an hour could have elapsed between the shouting and the shooting.” (OBM 33.) The portion of the record to which Renteria refers describes when Officer Licon-Solis was dispatched to the scene, not when the 911 call was made. (3B RT 400-402.) Officer Licon-Solis also

specified that she was not the first officer on scene. (3B RT 401.) Thus, Renteria's proposed timeline is not supported by the record.

Exactly how much time elapsed between when Anthony heard the gang slogans and when Renteria shot at Jack and Harvey's homes is not clear. First, Anthony heard "sur" and "trece" being hollered by the larger group, which included Renteria. (3B RT 352, 356-7, 359.) Then Anthony spoke to them for an uncertain amount of time and then went back inside. (3B RT 352-3.) Next, "a little while after," Anthony heard a "sound like a pop." (3B RT 353.) He went outside to wait for the group to return, so he could ask them what was going on, because he thought they were on their way home. (3B RT 353.) Anthony saw two people, one of whom was Renteria, return but lost sight of them. (3B RT 354-357, 360-362.) After "at least one or two minutes," Anthony saw Renteria and another individual appear again near Jack's home. (3B RT 362-363.) Finally, Anthony saw Renteria shoot at the homes. (3B RT 364.)

While it is not clear exactly how much time elapsed between when Anthony heard the group shouting "sur" and "trece" and the actual shooting, the jury could have reasonably inferred it was within minutes based upon the sequence of events. Moreover, even if substantially more time elapsed the jury could have inferred the shouting of gang slogans and shooting were part of one continuous incident that unfolded over a relatively short period of time. Whether it was minutes or more than hour,

reviewing courts must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. (*Albillar, supra*, 51 Cal.4th at p. 60.) Furthermore, “[i]f the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.” (*Ibid.*) The relevant inquiry is what Renteria intended, and the time between the gang slogans and shooting is relevant only to the extent it bears upon that issue. Renteria’s association with a group shouting “sur” and “trece” shortly before the shooting and his motive to retaliate for being assaulted, when viewed with Detective Adeny’s testimony connecting those words to the Sureño gang, support the inference that Renteria intended the shooting to be attributed to the Sureño gang.

#### **4. Renteria’s gang motive to intimidate the community**

Evidence presented in Renteria’s trial supported a finding that the Sureño gang had successfully used intimidation tactics within Renteria’s community. Detective Adney testified that Sureños benefit from extreme violence even against non-rivals because it intimidates witnesses and makes them less cooperative with police. (4 RT 539-542, 607-608.) Anthony testified that, after he saw Renteria shoot at Harvey’s home, he feared he might be next. (3B RT 367.) James’s testimony at trial was inconsistent with what he had told officers nearer to the time of the shooting. (3 RT 269-272; 336; 4RT 502-503.) The prosecutor commented on James’s demeanor during his closing:

[He] was afraid. You saw his demeanor. He actually swiveled in his chair and faced towards the TV for most of his testimony, even when he wasn't being asked about photographs. He was super reluctant to even look at this direction, let alone admit that he had identified the defendant.

(5 RT 666.)

Detective Adney's testimony explained how violence, even against non-gang members, benefits a gang. Renteria's violent act of shooting two homes was attributed to his gang through the shouting of "sur" and "trece" shortly before the shooting. (5 RT 606.) The effect of this violence was enough that, upon seeing it, Anthony feared Renteria might shoot him, despite their otherwise friendly relationship (3B RT 367), and James's lack of memory about the August 7th shooting could reasonably be attributed to intimidation as well.

It is also significant that Renteria committed the crimes in his own neighborhood. The evidence suggested Renteria was known in that neighborhood, as Anthony recognized him immediately. (3B RT 352, 356-357.) Anthony was even able to identify which home Renteria lived in, which was described as "a few houses away." (3B RT 356-358.) The evidence also suggested that at least some community members were familiar with the ongoing gang activity; for example, Anthony was familiar enough with the phrases "sur" and "trece" to know they were "slang gang words." (3B RT 359.) There was evidence Renteria had been in the Sureño gang for several years, as he claimed in October of

2008 he had been a southern gang member for a year. (3B RT 433-434.) Detective Adney testified that the neighborhood was in contested gang territory, and testimony from Anthony and Jack were consistent with that opinion in that they referred to ongoing problems in the neighborhood. (3B RT 351 [Anthony was tired of “issues in the neighborhood”], 397-398 [Jack’s home had bullet holes from a “previous incident”].)

From this evidence, and Detective Adney’s opinion, a jury could reasonably infer that Renteria’s gang was active in that neighborhood and that Renteria’s gang affiliation was also known to at least some members of the community. A jury could also infer that Renteria’s neighbors would likely attribute Renteria’s criminal actions to his gang—regardless of whether Renteria wore gang colors and acted alone—because the neighbors knew which gang he was affiliated with. People living in Renteria’s neighborhood, where his gang was active, were more likely to witness his gang’s criminal actions, and thus, as Detective Adney explained, were precisely the people Renteria’s gang would most benefit from intimidating.

**C. The shooting was specifically intended to promote, further, or assist criminal conduct by gang members**

Many of the same facts that show Renteria shot the homes for the benefit of his gang also show that he specifically intended to promote, further, or assist criminal conduct by gang members. For example, the retaliatory nature of the shooting complied with the Sureño gang rules, was attributable to the Sureños, and was

likely to have the effect of intimidating potential witnesses and rivals. In addition to directly benefitting the gang, this conduct was also likely to facilitate future criminal activity by other gang members.

Of particular significance is the fact that Renteria was with a group shouting “sur” and “trece” in the area of the shooting and not long before it. (3B RT 359; 3B RT 362; 5 RT 609.) Detective Adney explained that shouting phrases associated with a gang, such as “sur” and “trece,” are intended to let the community know “who is responsible” for the shooting. (4 RT 542.) Renteria’s close association with a group using the phrases “sur” and “trece” tends to show that Renteria, a Sureño gang member, wanted the Sureño gang to get credit for the shooting, which directly promoted criminal conduct by gang members. (See *In re Cesar V.* (2011) 192 Cal.App.4th 989, 1000 [“There was no reason for [defendants] to make a gang challenge except to promote further criminal activity” by gang members].)

Detective Adney’s testimony also explained why publicly attributing the crime to Sureños would further or assist criminal conduct by gang members: it made it easier for them to get away with crimes, including the current offense, because people would be (and were) hesitant to testify against them. (4 RT 539-542; 5 RT 607-608, 613.) In addition, shouting gang phrases near the time and place of a shooting has the added benefit of putting rivals on notice that Sureño gang members have weapons and will use them. (6 RT 613.)



Renteria's specific intent can also be inferred from where the crimes were committed. Renteria targeted homes in contested gang territory. (4 RT 548-549.) Detective Adney explained that gang crimes are more common in contested territory. (4 RT 548-549.) From that it could be inferred that gangs are more active in contested territory. Committing the shooting in contested territory, where the gang was active, was more likely to assist Sureños with future crimes in the same area.

Finally, Renteria's statements provide evidence of his intent. When Renteria talked about being "hit up," he described walking alone and being unexpectedly confronted by rival gang members. (Aug. CT 27, 44, 46, 49-50; Exhibit 27 [2:41-2:47, 18:21-18:51, 20:28-21:34, 24:54-25:16]; 4 RT 518.) They said, "where you from," and he heard a "shooshoo" sound, like a shotgun. (Aug. CT 46, 50; Exhibit 27 [20:48-20:55, 25:19-25:39].) Rather than meet the challenge, Renteria ran. (Aug. CT 46, 50; Exhibit 27 [20:48-20:55, 25:19-25:39].) When prompted by Detective Adney, Renteria acknowledged he was expected to do something in response. (Aug. CT 48-49; Exhibit 27 23:50-24:35.) Detective Adney explained that in Sureño gang culture respect is everything; it is "kind of the hallmark of the Sureño gang," and respect is closely tied to violence. (4 RT 533.) Sureño gang members are expected not to be cowards. (4 RT 536.) A Sureño gang member who fails to retaliate loses all his respect and is "pretty much useless." (4 RT 539.)

By running in response to a gang challenge, Renteria made a decision that was not gang related—he got scared and ran to save himself. That action damaged his gang’s reputation. To make up for it, he had to retaliate—quickly and violently. (4 RT 539.) Viewed through the lens of Sureño gang culture, one could infer that retaliation under those circumstances served the dual purpose of restoring Renteria’s reputation and also promoting the gang. (5 RT 606-610.)

**D. Case specific facts support the expert testimony, so Renteria’s case is not like *Frank S., Ramon, Ochoa, Rios, Perez or Maquiz***

Renteria observes that courts have repeatedly addressed sufficiency of the evidence in cases where the defendant acted alone and the prosecution relied upon expert testimony to prove a gang enhancement. (OBM 23-30.) But these courts have typically emphasized the disconnect between expert opinion about a defendant’s intent and the other evidence at trial rather than whether the defendant acted alone. Renteria’s reliance on those cases is unavailing because there was no such disconnect between the expert testimony and the particular facts of the present case.

For example, Renteria relies on several cases in which the defendant possessed a weapon that, according to an expert witness, could be used to benefit the gang. First, Renteria cites *In re Frank S.* (2006) 141 Cal.App.4th 1192. (OBM 23-24.) In *Frank S.*, an expert opined that a minor possessed a concealed knife for the benefit of his gang because, if he were assaulted by

rival gang members, he could defend himself. (*Id.* at pp. 1195-1196.) But the reviewing court observed that there was no evidence about gang culture in general and no evidence that “the minor was in gang territory, had gang members with him, or had any reason to expect to use the knife in a gang-related offense, except that he had been jumped two days earlier.” (*Ibid.*)

Next, Renteria points to *People v. Ramon* (2009) 175 Cal.App.4th 843. (OBM 24-25.) In *Ramon*, an expert testified that the defendant’s possession of a stolen vehicle and unregistered firearm benefitted a gang both by facilitating the commission of other offenses and by helping gang members avoiding capture. (*Ramon, supra*, 175 Cal.App.4th at pp. 846-847.) But the court found insufficient other evidence tending to show that those two defendants actually intended to benefit the gang in the ways proposed by the expert. (*Id.* at p. 851.)

Neither *Frank S.* nor *Ramon* is analogous to Renteria’s situation, because in both of those cases the expert opinion about intent was disconnected from the actual facts of the case. But here there was no such disconnect. Renteria did not merely possess a weapon that might be used to benefit his gang, he actually used it to commit a shooting. Renteria admitted that he had been “hit up” by rival gang members, and acknowledged that he was expected to do something about it. Shortly before the shooting Renteria was in the same area, with a group shouting Sureño gang slogans. Detective Adney discussed Sureño gang culture and explained that a Sureño gang member in Renteria’s

situation would be expected to retaliate. Detective Adney further explained that shouting gang slogans before a violent crime advertises the gang's role and increases the gang's reputation for violence. So in this case, unlike *Frank S.* and *Ramon*, the case specific facts combined with expert testimony did support the inference that Renteria's crimes were gang related.

Renteria also attempts to analogize his situation to *Rios*, *supra*, 222 Cal.App.4th at page 542. (OBM 26-27.) There, the defendant stole a car and possessed an unregistered handgun. (*Id.* at p. 542.) A gang expert opined that unregistered firearms and stolen vehicles benefit a gang because they facilitate other crimes, are difficult to trace back to gang members, and, in the case of a car, could be sold for parts to a chop shop. (*Id.* at p. 553.) The *Rios* court held this evidence insufficient, stating that "where the defendant acts alone, the combination of the charged offense and gang membership alone is insufficient to support an inference on the specific intent prong of the gang enhancement." (*Rios*, *supra*, 222 Cal.App.4th at p. 574.) But as the Fifth District Court of Appeal observed in the opinion below, "the evidence went well beyond the mere combination of the charged offense and gang membership." (Opn. at 16.) Here, there was also evidence that the crime occurred in contested gang territory that Renteria had a gang-related retaliation motive, and that gang slogans were shouted shortly before the shooting.

Renteria further points to cases in which, although there was expert testimony about how violence benefits a gang's

reputation, no other evidence showed that the defendant intended his crime to be attributed to a gang. (OBM 25, 27-30.) For example, in *People v. Ochoa* (2009) 179 Cal.App.4th 650 although expert testimony established that violent carjacking could enhance a gang's reputation, no other evidence showed that the carjacking in that case was intended to be attributed to a gang. (*Id.* at p. 653.) In *People v. Perez* (2017) 18 Cal.App.5th 598, the defendant, a gang member, shot four college students at a party. (*Id.* at pp. 602-603.) But he was not with other gang members, the shooting did not occur in gang territory, and the defendant did not use gang signs or slogans during the shooting. (*Ibid.*) Although an expert testified that violence can enhance a gang's reputation, nothing showed that the defendant intended his shooting be attributed to the gang.

In *Maquiz v. Hedgpeth*<sup>9</sup> (9th Cir. 2018) 907 F.3d 1212, the Ninth Circuit considered a scenario similar to that presented in *Ochoa* and *Perez*. The defendant, who was a gang member, committed a robbery but no evidence suggested that his crime would be attributed to any gang. (*Id.* at p. 1215) *Maquiz* observed that “[a]n anonymous perpetrator’s crime has no effect on a gang’s reputation.” (*Ibid.*) Consequently, quoting *Perez, supra*, 18 Cal.App.5th at page 608, *Maquiz* found the expert testimony “purely conclusory and factually unsupported.” (*Maquiz, supra*, 907 F.3d at p. 1221.)

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<sup>9</sup> Renteria cites this case as *McDonald v. Hedgpeth* (9th Cir. 2018) 907 F.3d 1212.

Renteria's reliance on *Ochoa*, *Perez*, and *Maquiz* is misguided because here evidence that gang slogans were shouted shortly before the shootings supported the inference that Renteria intended that his gang would get credit for them. Additionally, Renteria was accompanied by at least one unidentified person when he committed the shootings. Whether or not that person was a gang member, it could be inferred Renteria wanted a witness to his actions.

Finally, this case is different from all of the cases above because Renteria had a concrete and specific gang related reason to act the way he did. Other evidence showed how Renteria acted, and expert testimony provided the background needed to see why Renteria's immediate and violent retaliation was not arbitrary, opportunistic, or spontaneous. It was precisely the response expected and demanded of a Sureño gang member who had been "hit up." (4 RT 537 [failure to follow the rules can result in punishment, up to death], 4 RT 538-539 [retaliation expected].) Renteria's conduct under these circumstances advanced what Detective Adney identified as the core interest of the Sureño gang: respect through violence. (4 RT 533, 538-539.) Thus, in this case, other evidence about the circumstances surrounding the shooting, combined with Detective Adney's expert opinion, supported the inference that Renteria's crime was gang related.

The cases cited by Renteria all suffered from a missing link between the case specific evidence and the gang experts' opinions,

resulting in an unsupported and unreasonable inference regarding the defendants' intent under section 186.22(b). But not in this case. Here, the evidence of Renteria's gang membership, his motive for retaliation, his otherwise senseless shootings of two homes in his own neighborhood, and the shouting of gang slogans shortly before the shooting, combined with Detective Adney's expert testimony about the values, expectations, and habits of Sureño gang members, sufficiently support the inference that Renteria shot Jack's and Harvey's homes for the benefit of, and in association with the Sureño gang, with the specific intent to promote, further, and assist criminal conduct by gang members.

## CONCLUSION

Accordingly, the People respectfully requests that this Court affirm the judgment.

Dated: October 4, 2021.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that the attached **Answer Brief on the Merits** uses a 13 point Century Schoolbook font and contains 9,841 words.

Dated: October 4, 2021.

ROB BONTA  
*Attorney General of California*

*/s/ Cavan M. Cox II*

CAVAN M. COX, II  
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Case Name: *People v. Renteria*

Case No.: **S266854**

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I declare under penalty of perjury, under the laws of the State of California and the United States of America, the foregoing is true and correct and that this declaration was executed on October 4, 2021, at Fresno, California.

Debbie Pereira-Young

Declarant

*/s/ Debbie Pereira-Young*

Signature

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**STATE OF CALIFORNIA**  
Supreme Court of California

***PROOF OF SERVICE***

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **PEOPLE v.  
RENTERIA**

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