In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

MICHAEL RAPHAEL CANIZALES et al.,

Defendants and Appellants.

Case No. S221958

Fourth Appellate District, Division Two, Case No. E054056
San Bernardino County Superior Court, Case No. FVA1001265
The Honorable Steven A. Mapes, Judge

ANSWER BRIEF ON THE MERITS

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
STEVE OETTING
Deputy Solicitor General
LISE JACOBSON
Deputy Attorney General
PAIGE B. HAZARD
Deputy Attorney General
State Bar No. 234939
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2166
Fax: (619) 645-2044
Email: Paige.Hazard@doj.ca.gov
Attorneys for Plaintiff and Respondent

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INTRODUCTION

Appellants Michael Canizales and KeAndre Windfield—both Ramona Blocc gang members—sought revenge and retaliation when they fired five shots at rival gang members Denzel Pride and Travion Bolden during an outdoor block party attended by 30 neighbors. Pride and Bolden escaped without harm but appellants killed one innocent bystander.

A jury found appellants guilty of one count of murder and two counts of attempted murder. The prosecutor's theories as to the attempted murders were that appellants specifically intended to kill both Pride and Bolden, or, alternatively, specifically intended to kill Pride and concurrently intended to kill Bolden, the only other person in the kill zone. Appellants dispute their conviction for the attempted murder of Bolden. They argue that the trial court erred when it instructed the jury on the kill zone theory of attempted murder with CALCRIM No. 600. Specifically, they argue that insufficient evidence supported an instruction on the kill zone theory. They also contend the instruction permitted the jury to convict appellants for the attempted murder of Bolden without the requisite proof of a specific intent to kill. The Court of Appeal determined sufficient evidence supported instruction on the kill zone theory, and that the instruction did not permit a conviction for attempted murder based on a finding of implied malice, as opposed to a specific intent to kill. The Court of Appeal opinion, grounded in the law as articulated in *People v. Bland* (2002) 28 Cal.4th 313 (*Bland*), and backed by subsequent Supreme Court precedent, should be affirmed.

A kill zone is created when an assailant applies force designed to kill everyone in an area. Substantial evidence supported a finding appellants created a kill zone around Pride to ensure his death, and that Bolden stood within that zone. The evidence showed that Windfield fired five shots at Pride as Bolden stood in close proximity to Pride and within the line of fire. It was reasonable for the jury to infer that Windfield created a kill zone

around Pride and used sufficient means to kill the only two men in the zone. Because substantial evidence supported its application, it was proper for the trial court to instruct on the kill zone theory. The language of CALCRIM No. 600, which is an accurate statement of the law, permits the jury to draw an inference of concurrent intent when the evidence supports it. It is properly given in cases in which the defendant's intent to kill a nontargeted victim is contested. Any conceivable error was harmless because by finding appellants committed the attempted murder of Bolden willfully, deliberately and with premeditation, there is no question the jury found appellants specifically intended to kill Bolden.

STATEMENT OF THE CASE AND FACTS

Bolden and Pride were members of the Hustla Squad Clicc, a Rialto based criminal street gang. (2RT 511; 3RT 672.) Appellants Canizales and Windfield were members of their rival, Ramona Blocc gang. (2RT 323, 368, 523; 3RT 654.) In 2007, a Hustla Squad gang member killed a Ramona Blocc gang member. (2RT 517–518.) According to gang expert Detective Gregory Marquez, it was expected for Ramona Blocc to retaliate with escalated violence for the killing of one of its members. (2RT 519; 3RT 682.) Shootings between the two gangs were common. (2RT 475, 511–512, 518; 3RT 632.)

A. Appellant Canizales Argued with Victims Bolden and Pride on the Day of the Shooting

Around noon on July 18, 2008, Bolden went to Taco Bell in the city of Rialto, a regular hangout for teenagers. (1RT 147, 178; 2CT 479.) Bolden spotted Canizales, a known rival, who was with a girl. The girl and Canizales approached and Canizales shook Bolden's hand, which struck Bolden as suspicious. Canizales did this just as Pride showed up, making Bolden suspect Canizales was stirring up trouble. (2CT 480.) Pride, who came to Taco Bell because the girl had arranged to meet him there, saw

them and began arguing with Canizales over the girl. (2CT 480–481.) Canizales left before the argument escalated into a fight. (2CT 481–482.) Bolden and Pride left together as well. (2CT 481.)

In the late afternoon of that same day, Bolden and several girls were in front of his apartment on the 200 block of Jackson Street. (1RT 70, 72–73, 148, 153, 156; 2CT 479.) One of the girls saw Canizales and called him over. (1RT 73, 153, 160, 162–163.) Canizales approached Bolden's group, but was no longer acting friendly. (1RT 75, 163–164.) This time, Canizales looked at Bolden, aggressively called out, "what's up," and asked Bolden where he was from. (1RT 76–77, 93, 165; 2CT 477–478.) Bolden, believing Canizales was asking him what gang he was from, responded, "what's up." (1RT 77, 165.) Both men started throwing up gang signs, and Bolden took his shirt off, preparing to fight. (1RT 78, 166; 2RT 375; 3RT 727; 2CT 482.)

Canizales left the area before a fight started and walked up Jackson Street to Willow Avenue toward the Superior grocery store. (1RT 79–80, 166; 2CT 482.) Once at the store, Canizales sent an associate to find appellant Windfield, who was the leader of his gang and was known as the "Hustla Squad Killa." (2RT 522; 3RT 688, 741–742.) Canizales waited. (3RT 742.)

Bolden felt disrespected by Canizales's actions and sought out Pride to discuss what had happened. (1RT 168–171, 174; 2CT 483.) Pride was outside his apartment at 330 Jackson Street. (1RT 174; 3RT 550.)

B. Appellants Organized the Attack While the Victims Attended an Outdoor Block Party

Around this time, approximately 30 neighbors gathered in the street for a summer block party at 300 Jackson Street. (1RT 107.) On the west end of the block was a cul-de-sac and park area. (2RT 362; 2CT 518 [Exhibit 26].) Willow Avenue intersected Jackson Street at the east end of

the block. (1RT 79; 2CT 518 [Exhibit 26].) Jackson Street extended approximately 352 feet from Willow to the park. (2CT 518–519 [Exhibit 26].) The neighbors set up tents, played music, talked and danced in the street. (1RT 182–183.) Ramona Jones, her friend Leica Cooksey and their girlfriends were among those enjoying the party. (2RT 398.) They talked and danced to music played from Cooksey's car, which was parked at 329 West Jackson, about half way down the block. (2RT 400–401; 3RT 716 [See Exhibit 58].) None of them was a gang member. That area was not considered turf for any gang. (3RT 692.)

At 8:34 p.m., Canizales was spotted outside the Superior grocery store talking to Windfield. (3RT 741; 2RT 323–324, 413–414.) A vehicle pulled up and Windfield patted the car with his hand as he called out, "Jackson Street." The car drove off in that direction. (2RT 419–420, 422.) Windfield and Canizales began throwing gang signs and yelling "Ramona Blocc!" They then strutted and skipped toward Jackson Street like "boxer[s] getting ready to box." (2RT 424–425, 434–435, 442.)

C. Appellants Found Pride and Bolden at the Block Party, Started Shooting and Killed an Innocent Bystander

Back on Jackson Street, Bolden and Pride were at the block party. (1RT 184, 186.) The two of them stood in the street talking, on the same side of the street where Cooksey and her friends were dancing near Cooksey's car, but farther east toward Willow. (1RT 184–185, 187; see Exhibit 8 [the dot represents where Bolden and Pride stood, about where the black and white gates met].) The other neighbors were spread about the street dancing. (1RT 183.) Bolden observed an unfamiliar car pass by Jackson Street several times before parking on Willow. (1RT 187–188, 204; 2CT 484–485.) As Bolden and Pride talked, Bolden watched five or six men, including Canizales and Windfield, line up across Willow where it intersected with Jackson Street. (1RT 186 [see Exhibit 8], 190, 204, 210–

212, 228; 2RT 323; 3RT 575 [see Exhibit 55].) Windfield stood near a manhole cover on Willow, which was just west of the intersection with Jackson. (1RT 228–229; 2CT 518 [Exhibit 6].) The men were about 150 feet away from Pride and Bolden.[1] (2CT 519; 3RT 570.) Pride and Bolden stood between Windfield and Cooksey, who was still dancing behind her car. (1RT 186 [see Exhibit 8].)

Windfield pulled a gun from his waist area. (1RT 208; 3RT 522.) He started to hand the gun to Canizales but took it back. (2CT 507; 1RT 209, 213, 246.) Windfield called out, "That's the little nigga. Bust!"[2] (1RT 206, 249; 2RT 486.) Bolden heard gunshots and saw sparks as Windfield repeatedly fired the gun. (1RT 190, 192–193, 200, 213.) Bolden believed Pride was the primary target, but would have been hit first because he stood between the gun and Pride. (1RT 200, 208, 212, 216–217, 231–232, 247.) It also appeared he was shooting at Bolden. (3RT 569.) Pride grabbed Bolden and the two started running. (1RT 190, 194–196, 250.) Shots continued firing as they ran. (1RT 201.) Pride ran away from the shooter and behind a bus, which was parked on the same side of the street as Cooksey's car. (3RT 751.)

People were crying and screaming. (1RT 114.) Cooksey had been shot in her left lower abdomen and died as a result of her injuries. (1RT 138; 2RT 405; 3RT 720 [Exhibit 64].) The police found five .9 millimeter bullet casings, fired from the same firearm, approximately 100 feet from

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[1] Estimates of distance varied widely. (See, e.g., 2RT 339 [Bolden and Pride were 25 feet from Windfield]; 3RT 570 [Pride stood 150–200 feet from the shooter], 722 [Cooksey was found 100 feet from the discharged bullet casings].)

[2] Bust meant "Get out of Dodge or you're going to get shot." (1RT 207.)

where Cooksey was shot, near the northwest corner of Jackson and Willow, where Windfield stood during the shooting. (3RT 719–720, 722, 762.)

D. One Year Later, Police Connected Appellants to the Crime

The case stalled after the initial police investigation. (3RT 745.) On June 11, 2009, however, a friend of Windfield's reported to police that Windfield confessed that he and Canizales had gone to "the Jacksons" and killed a girl. (3RT 627–629.) Windfield claimed that they went after a member of the Hustla Squad who killed his cousin. (3RT 630–632.)

Canizales and Windfield were charged with the willful, deliberate and premeditated murder of Cooksey (Pen. Code,[3] § 187, subd. (a); count 1), the willful, deliberate, and premeditated attempted murders of Bolden and Pride (§§ 664, 187, subd. (a); counts 2, 3), and street terrorism (§ 186.22, subd. (a); count 4.) (1CT 139–143.) As to counts 1–3, the information alleged that both defendants committed the crimes for the benefit of a criminal street gang, pursuant to section 186.22, subdivision (b)(1). The prosecution also charged as to count 1 that a principal personally and intentionally discharged a firearm causing death, and as to counts 2 and 3, that a principal personally and intentionally discharged a firearm within the meaning of section 12022.53, subdivisions (c), (d), and (e)(1). (1RT 139–143.)

The case proceeded to a joint trial at which the prosecution presented evidence of the facts as stated above. Additionally, Detective Marquez opined that appellants committed these crimes to retaliate against the violence committed against their gang and to increase their own status within the gang. (3RT 682.)

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

The court instructed without objection on the kill zone theory using CALCRIM No. 600, and included all the bracketed language. (See 3RT 779–782.) Specifically, the court instructed the jury that the prosecution had to prove two elements to prove attempted murder:

> 1. The defendant took a direct but ineffective step toward killing another person; AND
>
> 2. The defendant intended to kill that person.
>
> . . .
>
> A person may intend to kill a specific victim or victims and at the same time intend to kill everyone in a particular zone of harm or "kill zone." In order to convict a defendant of the attempted murder of Trayvon[4] Bolden, the People must prove that the defendant not only intended to kill Denzell Pride but also either intended to kill Trayvon Bolden, or intended to kill everyone within the kill zone. If you have a reasonable doubt whether the defendant intended to kill Trayvon Bolden or intended to kill Denzell Pride by killing everyone in the kill zone, then you must find the defendant not guilty of the attempted murder.
>
> . . .

(1CT 233 [CALCRIM No. 600]; 3RT 823.) Additionally, the court instructed the jury on attempted murder with deliberation and premeditation. (1CT 234 [CALCRIM No. 601].)

During closing argument, the prosecutor argued that appellants were guilty of the attempted murder of Bolden under two theories. First, there was evidence that Windfield was shooting at both Pride and Bolden. (4RT 864.) Second, the prosecutor argued that the evidence showed that in order to kill Pride, the primary target, appellants created a kill zone. Because

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[4] The transcript says "Trayvon" but the correct spelling is Travion. (1RT 73, 144.)

Bolden was within the "zone of fire," appellants were guilty of his attempted murder as well. (4RT 865.)

Neither appellant presented any evidence. In closing argument, appellant Canizales's attorney argued that Canizales believed he was participating in an assault, he did not know there was a gun, and he did not participate in the shootings. (4RT 875–876.) Appellant Windfield's counsel argued that Pride and Bolden were the shooters. (4RT 880.)

E. Appellants Were Convicted of the Murder of Cooksey and the Attempted Murders of Pride and Bolden

After the close of evidence, the trial court dismissed count 4, the section 12022.53, subdivision (c), allegation in count 1, and the section 12022.53, subdivision (b), allegation in counts 2 and 3. (2CT 262; Supp. CT 57; 3RT 782–783.) The jury convicted both appellants of the first-degree murder of Cooksey and the attempted, willful, and premeditated murders of Bolden and Pride. (2CT 278, 289.) It found all other enhancements true, except for the personal discharge of a firearm allegations as to appellant Canizales. (2CT 274–295, 305–306; Supp. CT 66–67.)

Appellants argued on appeal that the trial court erred by instructing the jury on the kill zone doctrine as applied to the attempted murder of Bolden. They asserted insufficient evidence supported such a theory as to the attempted murder of Bolden because appellants did not create a "kill zone." Canizales further argued that the court's instruction to the jury on the doctrine was incorrect and misleading.

In a partially-published decision, the Court of Appeal concluded that the jury was properly instructed on the "kill zone" theory of attempted murder.

This Court granted Canizales's petition for review, but deferred further action pending the finality of a disposition in *People v. Chiu*, S202724. Windfield's petition for review was denied.

After this court issued its opinion in *People v. Chiu* (2014) 59 Cal.4th 155, the matter was transferred to the Court of Appeal for reconsideration. In a partially-published decision issued September 10, 2014, the Court of Appeal reversed Canizales' conviction for first degree premeditated murder in count 1 because the court was unable to conclude beyond a reasonable doubt that the jury based its verdict of first degree murder on the legally valid theory that he aided and abetted premeditated and deliberate murder. The court affirmed both appellants' convictions for counts 2 and 3, again concluding that the jury was properly instructed on the "kill zone" theory of attempted murder.

On November 19, 2014, this Court granted Canizales's petition for review.

ARGUMENT

I. SUBSTANTIAL EVIDENCE SUPPORTED GIVING THE KILL ZONE INSTRUCTION

Appellants contend their convictions for the attempted premeditated murder of Bolden must be reversed because the evidence did not warrant an instruction on the kill zone. (Canizales BOM (CBOM) 12–23; Windfield BOM (WBOM) 10–19.) Substantial evidence supported the instruction, as the evidence established Windfield created a kill zone around Pride and that Bolden was in the zone when Winfield fired five shots.

A. Applicable Law

Attempted murder requires evidence of "the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing." (*People v. Perez* (2010) 50 Cal.4th 222, 229–230

(*Perez*).) Some basic rules have emerged particular to attempted murder, but not to murder. Attempted murder requires express malice or the specific intent to kill; murder, which can be predicated upon a finding of implied malice, does not. (*People v. Stone* (2009) 46 Cal.4th 131, 139–140 (*Stone*); *People v. Smith* (2005) 37 Cal.4th 733, 739 (*Smith*).) Where a person intends to kill one victim, but in the process kills another, the person is still liable for murder under the doctrine of transferred intent. (*People v. Shabazz* (2006) 38 Cal.4th 55, 62.) This doctrine is inapplicable to attempted murder. (*Bland, supra,* 28 Cal.4th at pp. 326–329.) As this Court has put it:

> Someone who in truth does not intend to kill a person is not guilty of that person's attempted murder even if the crime would have been murder—due to transferred intent—if the person were killed. To be guilty of attempted murder, the defendant must intend to kill the alleged victim, not someone else. The defendant's mental state must be examined as to each alleged attempted murder victim. Someone who intends to kill only one person and attempts unsuccessfully to do so, is guilty of the attempted murder of the intended victim, but not of others.

(*Id.* at p. 328.)

Similarly, "[j]ust as acts with implied malice constitute murder of anyone actually killed, but not attempted murder of others, so, too, acts with the intent to kill one person constitute murder of anyone actually killed, but not attempted murder of others." (*Bland, supra,* 28 Cal.4th at p. 329.) However, it does not follow that a defendant who targets one person is relieved of attempted murder liability for surviving victims of a deadly assault: "the person might still be guilty of attempted murder of everyone in the group, although not on a transferred intent theory." (*Ibid.*)

This Court has explained that "if a person targets one particular person, under some facts a jury could find the person *also*, concurrently, intended to kill—and thus was guilty of the attempted murder of—other,

nontargeted persons." (*Stone, supra,* 46 Cal.4th at p. 137, discussing *Bland, supra,* 28 Cal.4th at p. 329.) Those kill zone cases involve not a transfer of the intent to kill from an intended victim to an unintended victim, but a concurrent intent to kill all of the persons within the kill zone. (*Bland,* at p. 329.) A concurrent intent to kill is shown "'when the nature and scope of the attack, while directed at a primary victim, are such that we can conclude the perpetrator intended to ensure harm to the primary victim by harming everyone in that victim's vicinity.'" (*Id.* at pp. 329–330, quoting *Ford v. State* (1993) 330 Md. 682 [625 A.2d 984, 1000–1001].) *Bland* provided examples of situations demonstrating concurrent intent to kill, including "an assailant who places a bomb on a commercial airplane," or "a defendant who intends to kill A and, in order to ensure A's death, drives by a group consisting of A, B, and C, and attacks the group with automatic weapon fire or an explosive device devastating enough to kill everyone in the group." (*Bland,* at pp. 329–330.) In these situations, the "trier of fact may *reasonably infer* from the method employed an intent to kill others concurrent with the intent to kill the primary victim. When the defendant escalated his mode of attack from a single bullet aimed at A's head to a hail of bullets or an explosive device, the factfinder can *infer* that, whether or not the defendant succeeded in killing A, the defendant concurrently intended to kill everyone in A's immediate vicinity to ensure A's death." (*Id.* at p. 330, italics added.)

In *Bland*, the defendant and a companion fired handguns at a fleeing vehicle. (*Bland, supra,* 28 Cal.4th at p. 318.) The driver died and the two passengers, who received gunshot wounds, survived. (*Ibid.*) This Court held that the jury could reasonably have found a concurrent intent to kill all of the car's occupants when the defendant and his companion fired "a flurry of bullets at the fleeing car and thereby created a kill zone." (*Id.* at pp.

330–331.) "Such a finding fully supports attempted murder convictions as to the passengers." (*Id.* at p. 331, fn. omitted.)

Subsequent Supreme Court decisions have expounded on the boundaries of the kill zone theory. (See *Stone, supra,* 46 Cal.4th at pp. 136–138; *Smith, supra,* 37 Cal.4th at pp. 745–746.) In *Stone*, the defendant was charged and convicted of a single count of attempted murder after firing one shot into a crowd of people with the intent to kill any one person, but not a specific identifiable victim. (*Stone,* at p. 139.) This Court explained that lack of a primary target does not foreclose application of kill zone theory. (*Ibid.* ["Although a primary target often exists and can be identified, one is not required."].) But this Court determined the kill zone theory "did not fit the charge or facts" because there was no showing that the defendant used a means to kill that would have led to the death of others in a zone, and the defendant was not charged with attempting to kill nontargeted persons. (*Id.* at p. 138.) Instead, this Court affirmed the conviction by finding a specific intent to kill one person without resort to kill zone theory. (*Id.* at pp. 140–141.)

Smith is in accord. In *Smith*, this Court upheld the defendant's conviction for two counts of attempted murder where he shot one bullet into a car and narrowly missed a mother and her baby who were within the line of fire. (*Smith, supra,* 37 Cal.4th at pp. 745–746.) Based on evidence of the defendant's animosity toward the mother and the baby's father, this Court concluded sufficient evidence supported a finding of his direct intent to kill both the mother and baby. A kill zone theory did not apply because there was no evidence the defendant intended to kill the mother by killing her and the baby with a single bullet. (*Id.* at pp. 746–747.) More recently, in *Perez, supra,* 50 Cal.4th 222, this Court held that the defendant did not create a kill zone by firing a single shot into a group of people with the intent to kill someone, but no particular target. (*Id.* at pp. 231–232.) In

each of these single-bullet cases, the defendants' chosen method of inflicting harm was not deliberately escalated to kill multiple people in a zone.

By contrast, this Court has recognized *People v. Vang* (2001) 87 Cal.App.4th 554 (*Vang*) as a classic a kill zone case. In *Vang,* the defendants were convicted of 11 counts of attempted murder for spraying bullets into two occupied houses with the goal of killing one primary target in each house. (See *Bland, supra,* 28 Cal.4th at p. 330.) The defendants did not know how many people were inside and could not see their victims, but this Court agreed it was reasonable to infer the defendants harbored a specific intent to kill all 11 people inside. (*Vang,* at pp. 558, 563–564.) The *Vang* court explained, and this Court agreed: "The jury drew a reasonable inference, in light of the placement of the shots, the number of shots, and the use of high-powered, wall-piercing weapons, that defendants harbored a specific intent to kill every living being within the residences they shot up."[5] (*Vang,* at pp. 563–564; *Bland,* at p. 330.)

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[5] Although this Court's decisions suggest that the kill zone theory is limited to situations in which the defendant employed sufficient means to kill everyone in the zone, this may be an overstatement. For instance, if an assailant fired 10 shots into a room intending to kill everyone inside, but unbeknownst to him there were 11 people in the room, it would be reasonable to infer his intent was to kill all 11 people. His intent is no different merely because he was one bullet shy of an ability to kill every person inside and it would be reasonable to infer he harbored express intent to kill the eleventh person who was "'present and in harm's way, but fortuitously [was] not killed.'" (*Bland, supra,* 28 Cal.4th at p. 330, quoting *Vang, supra,* 87 Cal.App.4th at pp. 563–564.) The number of possible attempted murder victims in this scenario should be a question for the jury to decide based on the facts of the case and not just the number of bullets. (*Bland,* at p. 331, fn. 6; *Perez, supra,* 50 Cal.4th at 230–231 [evidence of a specific intent to kill multiple people with a single shot or evidence the defendant was thwarted from killing everyone]; *People v. McCloud* (2012) 211 Cal.App.4th 788, 806 (*McCloud*) [no evidence defendants intended to

(continued...)

Both appellants mistakenly rely on the Second District case of *People v. McCloud, supra,* 211 Cal.App.4th 788, as support for their argument that the Court of Appeal erred. In *McCloud,* two people were killed after the defendants fired 10 shots from a handgun into a building where over 400 people were having a party. (*Id.* at pp. 790–791.) The prosecutor argued that the 46 named victims of attempted murder were grouped into three kill zones: one around each murder victim and one in the parking lot near a car struck by two bullets. (*Id.* at p. 801.) The prosecutor argued that "anyone who could have potentially been hit" was a victim of attempted murder. (*Ibid.*) The trial court instructed on kill zone theory using CALJIC No. 8.66.1.[6] (*Id.* at p. 802, fn. 7.) The court reversed all 46 counts of attempted murder, holding that insufficient evidence supported instruction on kill zone theory. (*Id.* at p. 802.) At most, the court held evidence supported eight attempted murder convictions. (*Id.* at p. 807.)

McCloud held it was unreasonable to infer that a kill zone was created because there was no articulable kill zone. (*McCloud, supra,* 211 Cal.App.4th at pp. 801–802, 806.) Although it mistakenly held that kill zone theory requires a primary target (see *Stone, supra,* 46 Cal.4th at p. 140), the court correctly held that without a primary target or other

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(...continued)
kill two or more persons per bullet fired].) However, this Court need not decide this issue in order to resolve the present case, where the appellants fired more than enough shots to kill everyone in the zone.

[6] CALJIC No. 8.66.1 states: "A person who primarily intends to kill one person, may also concurrently intend to kill other persons within a particular zone of risk. [This zone of risk is termed the 'kill zone.'] The intent is concurrent when the nature and scope of the attack, while directed at a primary victim, are such that it is reasonable to infer the perpetrator intended to kill the primary victim by killing everyone in that victim's vicinity. [¶] Whether a perpetrator intended to kill the victim, either as a primary target or as someone within a ['kill zone'] [zone of risk] is an issue to be decided by you."