

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

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

**Plaintiff and Respondent,**

**v.**

**JESUS MANUEL RODRIGUEZ et al.,**

**Defendants and  
Appellants.**

Case No. S239713

SUPREME COURT  
**FILED**

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Fifth Appellate District, Case No. F065807  
Stanislaus County Superior Court, Case Nos. 1085319 / 1085636  
The Honorable Nancy Ashley, Judge

**ANSWER BRIEF ON THE MERITS**

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## TABLE OF CONTENTS

	Page
Issues Presented .....	7
Introduction .....	7
Statement of the Facts and Case.....	8
A.    Gang-related drive-by shooting and murder.....	8
1.    Accomplice testimony .....	9
2.    Other evidence .....	10
B.    Convictions and sentencing .....	13
C.    Appeal to the Fifth District Court of Appeal.....	14
D.    Review in the California Supreme Court (Case No. S225231).....	14
E.    The Fifth District Court of Appeal after transfer.....	15
Argument.....	16
I.    The accomplice testimony was not sufficiently corroborated as to Barajas.....	16
II.   This Court may not decide Rodriguez’s claim; in any event, Rodriguez’s constitutional challenge to his 50- years-to-life sentence is moot, but Rodriguez is entitled to a limited remand under <i>Franklin</i> .....	21
A.   This court may not address Rodriguez’s claim because he did not file a petition for review.....	22
B.   Penal Code sections 3051 and 4801 render Rodriguez’s constitutional challenge moot because they provide Rodriguez with a meaningful opportunity for release after no more than 25 years of imprisonment .....	23
C.   The validity of the constitutional claim is not dependent on an offender’s ability to present relevant mitigating evidence at some point prior to the youth offender parole hearing.....	29
D.   Under <i>Franklin</i> , Rodriguez is entitled to a limited remand .....	37
Conclusion.....	39

## TABLE OF AUTHORITIES

Page

### CASES

<i>Bay Development, Ltd. v. Superior Court</i> (1990) 50 Cal.3d 1012 .....	23
<i>Diatchenko v. District Attorney</i> (Mass. 2013) 1 N.E.3d 270.....	35
<i>Graham v. Florida</i> (2010) 560 U.S. 48 .....	<i>passim</i>
<i>Miller v. Alabama</i> (2012) 567 U.S. 460 .....	<i>passim</i>
<i>Miranda v. Arizona</i> (1966) 384 U.S. 436 .....	12
<i>Montgomery v. Louisiana</i> (2016) 136 S.Ct. 718.....	26, 32
<i>People v. Ames</i> (1870) 39 Cal. 403 .....	18, 19
<i>People v. Caballero</i> (2012) 55 Cal.4th 262 .....	<i>passim</i>
<i>People v. Castenada</i> (2000) 23 Cal.4th 743 .....	21
<i>People v. Davis</i> (2005) 36 Cal.4th 510.....	16
<i>People v. Franklin</i> (2016) 63 Cal.4th 261 .....	<i>passim</i>
<i>People v. Heishman</i> (1988) 45 Cal.3d 147 .....	21
<i>People v. McDermott</i> (2002) 28 Cal.4th 946.....	21

## TABLE OF AUTHORITIES

	Page
<i>People v. Pedroza</i> (2014) 231 Cal.App.4th 635 .....	19, 20, 21
<i>People v. Peoples</i> (2016) 62 Cal.4th 718 .....	29
<i>People v. Romero and Self</i> (2015) 62 Cal.4th 1 .....	<i>passim</i>
<i>People v. Samaniego</i> (2009) 172 Cal.App.4th 1148 .....	21
<i>People v. Scott</i> (2016) 3 Cal.App.5th 1265 .....	29
<i>People v. Szeto</i> (1981) 29 Cal.3d 20 .....	19, 20, 21
<i>People v. Vu</i> (2006) 143 Cal.App.4th 1009 .....	21
<i>State v. Delgado</i> (Conn. 2016) 151 A.3d 345 .....	35
<i>State v. Mares</i> (Wyo. 2014) 335 P.3d 487 .....	35
<i>State v. Tran</i> (Haw.Ct.App. 2016) 378 P.3d 1014 .....	35
<i>State v. Vera</i> (Ariz.Ct.App. 2014) 334 P.3d 754 .....	35

## TABLE OF AUTHORITIES

Page

### STATUTES

#### Arizona Revised Statutes

§ 13-716 .....	35
----------------	----

#### California Penal Code

§ 32 .....	9
§ 182 .....	8
§ 186.22, subd. (a) .....	8, 13
§ 187 .....	8, 13
§ 1111 .....	7, 16, 21
§ 3041 .....	31
§ 3046 .....	28
§ 3046, subds. (a)-(c) .....	28
§ 3051 .....	23
§ 3051, subd. (a)(2)(B) .....	27
§ 3051, subd. (b)(3) .....	27
§ 3051, subd. (d) .....	31
§ 3051, subd. (e) .....	27, 31
§ 3051, subd. (f) .....	31
§ 3051, subd. (f)(1) .....	27, 31
§ 3051, subd. (f)(2) .....	31
§ 4801 .....	28
§ 4801, subd. (c) .....	28, 31, 34
§ 12022.53, subd. (d) .....	14
§ 12022.53, subd. (e)(1) .....	14

#### General Statutes of Connecticut

§ 54-125a .....	35
-----------------	----

#### Hawaii Revised Statutes

§ 706-656(1) .....	35
--------------------	----

#### Louisiana Code of Criminal Procedure

Article 878.1 .....	36
---------------------	----

#### Louisiana Revised Statutes

§ 15:574.4(E) .....	36
---------------------	----

## TABLE OF AUTHORITIES

	Page
Wyoming Statutes Annotated	
§ 6-10-301(c) .....	32
§ 7-13-402.....	32
 <b>CONSTITUTIONAL PROVISIONS</b>	
United States Constitution	
Eighth Amendment.....	<i>passim</i>
 <b>COURT RULES</b>	
California Rules of Court	
Rule 8.512(b)(1) .....	22
Rule 8.512(c)(1).....	23
 <b>OTHER AUTHORITIES</b>	
California Code of Regulations, Title 15	
§ 2249 .....	31
Senate Bill No. 260 .....	26, 27, 28, 30

## ISSUES PRESENTED

In granting Barajas's petition for review, the court limited the issues to be briefed to the following:

- (1) Was the accomplice testimony in this case sufficiently corroborated? (See *People v. Romero and Self* (2015) 62 Cal.4th 1, 36.)
- (2) Is the defendant's constitutional challenge to his 50-years-to-life sentence moot when, unlike in *People v. Franklin* (2016) 63 Cal.4th 261, his case was not remanded to the trial court to determine if he was provided an adequate opportunity to make a record of information that will be relevant to the Board of Parole Hearings as it fulfills its statutory obligations under Penal Code sections 3051 and 4801?

## INTRODUCTION

The convictions of appellants Rodriguez and Barajas rested largely on the testimony of an accomplice. A conviction cannot be based on the testimony of an accomplice unless the testimony is corroborated by other evidence that tends to connect the defendant with the commission of the offense. (Pen. Code,<sup>1</sup> § 1111.) Rodriguez's own statements and admissions were admitted at trial and sufficiently corroborated the accomplice testimony as to him.

No such statements or admissions from Barajas were admitted, however. Although evidence was presented that Barajas was a Sureño gang member, that evidence could do no more than raise a suspicion against every Sureño gang member in Stanislaus County. None of the other non-accomplice evidence relating to the circumstances of the crime tended to connect Barajas to the commission of the crime. Therefore, respondent is

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

constrained to agree that the accomplice testimony was not sufficiently corroborated as to Barajas.

This Court does not have jurisdiction over Rodriguez because he failed to file a petition for review and the court did not order review as to him on its own motion. In any event, Rodriguez's constitutional challenge to his 50-years-to-life sentence is moot because sections 3051 and 4801 provide him with a meaningful opportunity for release on parole after no more than 25 years of imprisonment.<sup>2</sup> The remand in *People v. Franklin*, *supra*, 63 Cal.4th 261 ("*Franklin*"), which was granted to ensure a juvenile offender has had or will receive a sufficient opportunity to present information that will be relevant at an eventual youth offender parole hearing, was statutorily driven, not constitutionally driven. In light of the statutory scheme, remand is not necessary to ensure a meaningful opportunity for release under *Graham v. Florida* (2010) 560 U.S. 48 ("*Graham*"), *Miller v. Alabama* (2012) 567 U.S. 460 ("*Miller*"), and *People v. Caballero* (2012) 55 Cal.4th 262 ("*Caballero*"). Moreover, a contrary rule would be difficult to implement fairly and efficiently. But even though the constitutional claim is moot, remand would nevertheless be required under state law as articulated in *Franklin*.

## STATEMENT OF THE FACTS AND CASE

### A. Gang-related Drive-by Shooting and Murder

Appellants were tried jointly in 2011 for first degree murder (§ 187), conspiracy to commit murder (§§ 182/187), and active participation in a criminal street gang (§ 186.22, subd. (a)) with firearm and gang enhancements. The case arises from a May 26, 2004 gang-related drive-by shooting and murder of a teenage girl in Oregon Park, a public park located

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<sup>2</sup> Barajas also raises this claim, but respondent does not address it as to him in light of the concession on the accomplice corroboration issue.



in Modesto. The park was known as a Norteño gang hangout. (1RT 106-108, 157-158; 3RT 541; 4RT 736-739, 823.)

### **1. Accomplice testimony**

Mario Garcia, a 17-year-old Sureño gang member at the time of the shooting and an accomplice to the charged crimes, testified for the prosecution in accordance with an agreement to plead guilty to being an accessory after the fact (§ 32). (3RT 527, 529-530, 589-592.) Garcia (aka “Big Worm”) testified that his Sureño “home boys” were 15-year-old appellant Jesus Rodriguez (aka “Loco”), 16-year-old appellant Edgar Barajas (aka “Shadow”), and 16-year-old Louis Acosta (aka “Danger”). (3RT 537-540, 610-611.) Acosta lived across the street from Oregon Park in a house located at 429 Thrasher, and Garcia and Barajas each lived just a few blocks away. (3RT 540, 545, 564.) Whenever the Norteños would notice Garcia or his “home boys” hanging out in that area, the Norteños would disrespect them by “talking shit,” calling them “scraps,” throwing up gang signs, or throwing rocks at them. (3RT 544-547.) Garcia’s house had also been shot at a number of times. (3RT 606.)

On May 20, 2004, Acosta was assaulted by Norteños in the park. (3RT 543-544; 4RT 772-773.) The Norteños jumped Acosta, broke his arm, threw rocks at him, broke the windows of his van and, before fleeing, fired a small black semi-automatic handgun at Acosta. (3RT 543-544; 4RT 772-773.) Five days later, Norteños chased Rodriguez, Garcia, and Acosta and then used a baseball bat to break out the windows of Rodriguez’s Chevy Blazer while it was parked at Acosta’s house. (3RT 499, 501-502, 547-553.) The Sureño gang members felt disrespected and wanted revenge. (3RT 554-556, 561.)

On May 26, 2004, according to Garcia, Garcia called Barajas to acquire a gun. (3RT 561-562.) Rodriguez, Garcia, and Barajas rode in the Blazer to a Modesto barrio to pick up a firearm. (3RT 562-565.) Barajas

got out of the vehicle and returned with a .22-caliber rifle. (3RT 566.) On the ride back to Garcia's house, the three discussed getting revenge on the Norteños. (3RT 568-570.) After a short stop, fellow gang members Pedro Castillo and Rigoberto Moreno joined them in the car. (3RT 570-572.) They drove away in search of Norteños. (3RT 577.) Rodriguez drove, Castillo sat in the front passenger seat with a blue bandana over his face, Garcia sat by a broken rear window with Moreno next to him, and Barajas sat in the rear cargo area holding the .22-caliber rifle. (3RT 572-576.)

Garcia testified that he, Rodriguez, Barajas, Moreno, and Castillo passed through Oregon Park looking for Norteños. (3RT 577.) Garcia saw someone by the gazebo who he thought was a Norteño because the person was wearing red. (3RT 577-579.) As the Blazer approached the gazebo, Garcia heard Barajas shout "puro Sur." (3RT 580.) Barajas then fired multiple shots. (3RT 580.) After Barajas stopped shooting, they sped off. (3RT 580.) Garcia did not recall any shots being fired from the park at the Blazer. (3RT 581-582.)

Rodriguez made statements to law enforcement that were also admitted into evidence. He admitted that he had been driving the Blazer when the shooting occurred and claimed that he had put the rifle in the back of the Blazer. (3RT 497-500, 502.) Approximately 15 shots were fired as the shooter yelled out "puro sur trece." (3RT 502-503, 511.) He confirmed that the shooting was retaliation for the Norteños breaking the windows of his Blazer. (3RT 499-502, 504.) After the shooting, he drove to a fellow gang member's house. (3RT 507-508.)

## **2. Other evidence**

Several witnesses at the park testified to the circumstances of the crime. At the time of the shooting, approximately 80 children, including some Norteños, were gathered at Oregon Park for an after-school recreational program conducted by Gina Lopez and the Police Activities

League. (1RT 209-212, 217-218, 223-224.) The victim, Ernestina Tizoc (Tina), who was not considered to be a Norteño, was sitting under the gazebo with Nadia O., Charlene S., and some other friends. (1RT 109, 115-116, 118-120, 165-166; 2RT 223, 227.) A white Blazer with smashed-out windows and at least two or three occupants circled the park twice. (1RT 121-125, 163, 167-168; 2RT 230, 234-238.) Nadia saw the occupants throw up “13,” a Sureño hand sign. (1RT 122-124.) Nadia and Charlene noticed one of them wearing a dark bandanna over his face. (1RT 126, 168.) Lopez heard one of the occupants shout “puro Sur” (2RT 231), and Charlene also heard one of the occupants yell “gang-related stuff” (1RT 169).

When the Blazer approached the gazebo, one of the occupants pulled out a gun and fired several shots toward the gazebo. (1RT 131-132, 172-173, 176; 2RT 239.) Tina screamed and yelled, “It hit me, it hit me.” (1RT 135, 173, 176; 2RT 239-240, 243-244.) Within 20 minutes, Tina died. (2RT 431, 437.)

Stanislaus County Sheriff’s Deputy Vincent Hooper responded to 429 Thrasher based on information that someone at the residence was possibly involved in the shooting. (2RT 282-284.) Several individuals were present at the residence and were detained pending further investigation. (2RT 283-284.) Mail addressed to Acosta, gang-related drawings, and some .22-caliber rounds in a nightstand were found in a subsequent search of the residence. (3RT 461-464.)

Bullet fragments were located under the gazebo. (2RT 302, 327.) A white Chevy Blazer with shattered windows was located in an alley off Fortuna Avenue. (2RT 284-287.) A bag of bullets was found under an old tire in the vicinity of the Blazer. (2RT 327-328.) Three .22-caliber casings and one live .22-caliber bullet were found in the backyard of a Fortuna Avenue residence and another .22-caliber casing was found in the backyard

of a second nearby residence. (2RT 301, 328-330; 3RT 467.) Rodriguez also led law enforcement to a dairy where a .22-caliber rifle was located. (2RT 301, 324-326, 3RT 465, 511.) A criminalist testified that the three shell casings from the Fortuna Avenue residence had been fired from the rifle (2RT 372-373) and that the bullet recovered from Tina's body could have been fired from the rifle (2RT 377-378, 392-393).<sup>3</sup>

Froilan Mariscal, an investigator for the district attorney's office, testified as a gang expert. (4RT 717-727.) In 2004, it was estimated that there were between 600 and 1,000 Sureño gang members in Stanislaus County. (4RT 747, 835.) Based on Mariscal's investigation, he believed that Barajas, Rodriguez, Castillo, and Moreno were Sureño gang members on May 26, 2004. (4RT 748-765, 776-777, 812.) Mariscal's opinion as to Barajas was based in part on three discipline reports from Elliott Continuation School. (4RT 748-749.) In one incident, Barajas had been involved in a fight with gang overtones. (4RT 749.) In another incident, Barajas wore blue after being told not to. (4RT 749.) In a third incident, Barajas was again involved in a gang-related fight. (4RT 749.) Mariscal also testified to several gang-related incidents of violence against Acosta's residence. (4RT 766-773.) Mariscal testified that, given the prior assaults, insults, and physical violence the Norteños had demonstrated toward the Sureños, he would expect the Sureños to respond with violence to avoid losing credibility. (4RT 775-776.) Based on a hypothetical fact pattern mirroring the facts of this case, Mariscal believed that a drive-by shooting by Sureño gang members under such facts would have been intended to

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<sup>3</sup> The prosecution also presented evidence about certain admissions, statements, and responses that Barajas made to law enforcement. (2RT 321, 327-329; 3RT 465-467.) But due to a defective *Miranda* admonition (*Miranda v. Arizona* (1966) 384 U.S. 436), the trial court struck the evidence and instructed the jury to disregard it. (4RT 713-715, 859-860; 5RT 1099-1100, 1168; 2CT 425.)

benefit the gang by instilling fear in rival gang members and enhancing the violent reputation of the gang in the community at large. (4RT 778-780.)

## **B. Convictions and Sentencing**

In May 2011, appellants were each found guilty of first degree murder (§ 187), conspiracy to commit murder (§§ 182/187), and active participation in a criminal street gang (§ 186.22, subd. (a)) with firearm and gang enhancements. (2CT 501-512.) Shortly thereafter, the probation department submitted reports and recommendations for appellants. (2CT 528-548 [Rodriguez], 549-569 [Barajas].) Rodriguez's attorney declined to have Rodriguez interviewed for the report, so the information regarding Rodriguez's statement about the crime and his social history, including his youthful background, was extracted from a 2004 fitness hearing report (2SCT 1-21). (2CT 542.)

In 2012, both the United States Supreme Court and this Court issued relevant decisions concerning the sentencing of juvenile offenders. In *Miller*, the United States Supreme Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." (*Miller, supra*, 567 U.S. at p. 479.) Two months later, this Court declared in *Caballero* that "sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment." (*Caballero, supra*, 55 Cal.4th at p. 268.)

After *Miller* and *Caballero* were decided, Rodriguez filed an opposition to the probation report in which he briefly argued that he was "very young at the time of the shooting," that he had "been in custody for several years without incident," and that the court should strike the firearm enhancement based on the facts and circumstances of the case and his good conduct exhibited while in custody. (3CT 771-774.) The trial court

subsequently sentenced both Barajas and Rodriguez to aggregate indeterminate terms of 50 years to life, based on a term of 25 years to life for first degree murder and a consecutive term of 25 years to life for the section 12022.53, subdivisions (d) and (e)(1), enhancements. (SRT 1251; 3CT 781, 783.) The court read and considered the probation report but did not expressly consider any youth-related factors on the record. (SRT 1249-1251.)

**C. Appeal to the Fifth District Court of Appeal**

On appeal, Barajas argued that the accomplice testimony was not sufficiently corroborated. Both Barajas and Rodriguez argued that their sentences of 50 years to life constituted cruel and unusual punishment in violation of the Eighth Amendment. Specifically, they argued that their mandatory indeterminate terms were the functional equivalent of a life-without-the-possibility-of-parole (LWOP) term requiring the trial court to engage in a proportionality review pursuant to *Miller* and *Caballero*.

The Fifth District Court of Appeal affirmed the judgments in case number F065807. The court held that the accomplice testimony was sufficiently corroborated as to Barajas. It also rejected appellants' sentencing claims, holding that their sentences were not the functional equivalent of a life term and thus did not require a proportionality analysis under *Miller*.

**D. Review in the California Supreme Court (Case No. S225231)**

On June 10, 2015, this Court granted petitions for review of both Barajas and Rodriguez and deferred further action pending consideration and disposition of related issues in *In re Alariste*, S214652, *In re Bonilla*, S214960, *People v. Franklin*, S217699, and *People v. Romero and Self*, S055856. (Case no. S225231.) In *People v. Romero and Self*, *supra*, 62 Cal.4th at pages 31 to 37 ("*Romero and Self*"), the court held that the

corroboration of accomplice testimony was sufficient as to certain crimes against two particular victims and insufficient as to a robbery against a third victim. In *Franklin, supra*, 63 Cal.4th at page 268, the court held that sections 3051 and 4801, which provided Franklin with the possibility of release after 25 years of imprisonment and required the Board of Parole Hearings (BPH) to “give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law,” mooted his constitutional claim under *Miller*. The court in *Franklin* also remanded the case to permit the trial court to determine whether Franklin had been afforded sufficient opportunity at sentencing to make a record of mitigating evidence tied to his youth. (*Id.* at p. 269.)

**E. The Fifth District Court of Appeal after Transfer**

This Court transferred the matter back to the Fifth District Court of Appeal with directions to vacate its decision and reconsider the cause in light of *Franklin, supra*, 63 Cal.4th at page 269 as to Rodriguez and in light of *Franklin, supra*, 63 Cal.4th at page 269, and *Romero and Self, supra*, 62 Cal.4th 1 as to Barajas.

Without additional briefing, the Fifth District Court of Appeal again affirmed the judgments. The court again relied on the non-accomplice evidence of Barajas’s gang membership and the circumstances of the crime, including non-accomplice testimony and physical evidence, to find that the accomplice testimony was sufficiently corroborated. The court also held that appellants’ constitutional sentencing claims under *Miller* were moot in light of *Franklin*. The court did not, however, remand the case to permit the trial court to determine whether appellants had been afforded a sufficient opportunity at sentencing to make a record of mitigating evidence that may be relevant at a future youth offender parole hearing.

This Court granted Barajas's petition for review. Rodriguez did not file a petition for review. Counsel was appointed for both Barajas and Rodriguez.

## ARGUMENT

### I. THE ACCOMPLICE TESTIMONY WAS NOT SUFFICIENTLY CORROBORATED AS TO BARAJAS

Accomplice Garcia testified that Barajas was the person who had obtained the rifle that was used in the shooting and that Barajas was the shooter. The only other evidence the jury could have considered that directly related to Barajas was the gang expert's opinion that he was a gang member and the evidence supporting that opinion.<sup>4</sup> Barajas now contends that Garcia's testimony was not sufficiently corroborated under section 1111. (BOBM<sup>5</sup> 25-48.) Respondent is constrained to agree.<sup>6</sup>

Section 1111 governs the evidence that is required to corroborate the testimony of an accomplice:

A conviction can not be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. An accomplice is hereby defined as one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

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<sup>4</sup> A defense witness testified that he knew Barajas because they were held in custody together at the Public Safety Center (4RT 946-948), but that fact is irrelevant to the current issue on appeal.

<sup>5</sup> Respondent will refer to Barajas's Opening Brief on the Merits as "BOBM" and Rodriguez's Opening Brief on the Merits as "ROBM."

<sup>6</sup> Rodriguez properly admits that this issue on review does not apply to him. (ROBM 19-20.) His statements and admissions were admitted at trial (3RT 497-504, 507-511, 513-519, 521-526) and sufficiently corroborated Garcia's testimony. (See *People v. Davis* (2005) 36 Cal.4th 510, 546-547.)



It is undisputed that Garcia was an accomplice as a matter of law. (See 2CT 430-431.)

*Romero and Self* articulates the relevant law concerning accomplice corroboration. For a jury to rely on an accomplice's testimony about the circumstances of an offense, it must find evidence that independently, "without aid from the accomplice's testimony, tend[s] to connect the defendant with the crime." (*Romero and Self, supra*, 62 Cal.4th at pp. 32, 36, quoting *People v. Abilez* (2007) 41 Cal.4th 472, 505, internal quotation marks omitted.) The entire conduct of the parties, including their relationship and their acts, may be considered by the jury in determining the sufficiency of the corroboration. (*Romero and Self*, at p. 32.) The evidence need not independently establish the identity of the victim's assailant nor corroborate every fact to which the accomplice testifies, and may be entitled to little consideration when standing alone, but it must reasonably tend to connect the defendant with the commission of the crime. (*Id.* at pp. 32-33.) An accomplice's testimony is not corroborated by the circumstance that the testimony is consistent with a non-accomplice's description of the crime or physical evidence from the crime scene unless the corroboration connects the defendant to the crime. (*Id.* at p. 36.)

Here, the court of appeal opinion relied on non-accomplice testimony establishing the circumstances of the crime—pieces of physical evidence, and the gang expert's testimony and opinion that Barajas was a gang member—to corroborate Garcia's accomplice testimony. Indeed, numerous eyewitnesses testified to the circumstances of the shooting, even if they could not identify the perpetrators beyond their Sureño gang membership. A great deal of physical evidence, including the murder weapon and shell casings that were fired from that weapon, was also presented. But Barajas was not connected to that evidence in any way apart from Garcia's testimony.

The strongest admissible<sup>7</sup> non-accomplice evidence potentially connecting Barajas to the crime was the gang expert's opinion that Barajas was a Sureño gang member. (4RT 748-749.) It was undisputed that the shooting was committed by Sureño gang members. However, the gang expert's testimony failed to personally connect Barajas to the shooting itself, the physical evidence, the accomplices and victims involved, the vehicle used by the perpetrators, or any particular location related to the crime such as Oregon Park, Acosta's residence, and the areas where physical evidence was found. Apart from Garcia's testimony, there was nothing to suggest that the crime was committed by Barajas rather than any other of the hundreds of Sureño gang members in Stanislaus County. (4RT 747, 835.)

A brief comparison of a few cases is instructive. In *Romero and Self*, a robbery victim testified that the robber had brandished what appeared to be a sawed-off shotgun. (*Romero and Self, supra*, 62 Cal.4th at p. 35.) According to the accomplice, the shotgun had belonged to Self, who had sent Romero with the gun to commit the robbery. (*Ibid.*) Although Self admitted that he had possessed a shotgun for a month prior to the robbery, that circumstance was insufficient to corroborate the accomplice's testimony that Self was present at the robbery. (*Id.* at pp. 35-37.)

*Romero and Self* approvingly discussed the 147-year-old case *People v. Ames* (1870) 39 Cal. 403. (*Romero and Self, supra*, 62 Cal.4th at pp. 36-37.) In *Ames*, two robbery victims testified that one of the robbers was referred to by another robber as "Charley." (*People v. Ames, supra*, 39 Cal. at pp. 403-404.) The accomplice testified that the defendant, Charles G. Ames, was usually known as "Charley." (*Id.* at pp. 404-405.) The court

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<sup>7</sup> Barajas's admissions and statements to law enforcement would have provided sufficient corroboration had they not been stricken.

held that the testimony of the victims did not tend to connect the defendant with the commission of the offense because it did no more than raise a suspicion against every man in Los Angeles County named Charles. (*Ibid.*)

Accomplice testimony was found to be sufficiently corroborated in *People v. Szeto* (1981) 29 Cal.3d 20. In *Szeto*, members of the Joe Boys gang shot and killed several people at a restaurant in an attempt to gain revenge on rival gang members for killing a fellow Joe Boys gang member two months earlier. (*Id.* at pp. 26, 28.) An accomplice explained that the defendant, who was charged with being an accessory to a felony and possessing a sawed-off shotgun, had disposed of the guns used in the shooting. (*Id.* at pp. 25, 27-28.) The court held that the accomplice testimony was corroborated by independent evidence that the defendant had a motive to aid the killers and had the opportunity to commit the charged crimes. (*Id.* at pp. 27-29.) The non-accomplice evidence established that the defendant was a member of the Joe Boys gang, had attended the funeral of his fellow gang member two months earlier, was present in the same house as the killers on the morning of the shooting before the guns had disappeared, and had worked in the area where the guns were ultimately abandoned. (*Id.* at pp. 28-29.)

The relevant facts of this case are remarkably similar to the facts in *People v. Pedroza* (2014) 231 Cal.App.4th 635, which found a lack of sufficient corroboration of accomplice testimony. In *Pedroza*, the only evidence relating to the defendant aside from the accomplice's testimony was (1) the defendant was in the same gang as the victim and the accomplice, (2) the gang, which had over 400 members, was experiencing frequent in-house murders, and (3) a few hours after the crime occurred, the defendant was seen with the accomplice at a fellow gang member's house approximately 30 miles from the scene of the crime. (*Id.* at pp. 639, 651.) *Pedroza* explained that the independent evidence merely established that

the defendant had a general connection to the victim and the other perpetrators via their shared gang membership and did not connect the defendant with the crimes themselves. (*Id.* at p. 651.) Shared gang membership, without more, did not tend to establish that the defendant had a motive to commit the crimes. (*Id.* at p. 654.) Although other aspects of the accomplice's testimony were corroborated by independent evidence, none of that evidence tended to connect the defendant to the crimes. (*Id.* at pp. 652-653.)

The corroborating evidence in this case was even weaker than it was in *Pedroza*. The non-accomplice evidence did not tend to connect Barajas to the accomplice, his codefendant, or the victims. Nor did it tend to connect Barajas to the Chevy Blazer used during the shooting, the murder weapon, or any of the bullets and shell casings that were recovered. There was no evidence tending to connect Barajas to Oregon Park, the 429 Thrasher residence, or any of the locations where relevant evidence was found. There was also no evidence that Barajas had been involved in any of the prior acts of violence committed by the Norteños against the Sureños that preceded the charged crimes. And other than fights at school, the evidence did not show that Barajas had committed acts of violence against Norteños similar to the shooting at the park. Unlike in *Szeto*, there was no evidence establishing a personal motive or opportunity to commit the charged crimes. The corroborating evidence that was presented could do no more than establish the crimes occurred and raise a suspicion against every Sureño gang member in Stanislaus County. Any of the above pieces of evidence, had they been presented to the jury, may have tended to connect Barajas to the commission of the crimes in this case. But without any such evidence, respondent is constrained to agree that the accomplice testimony was not sufficiently corroborated.

Respondent does, however, take issue with two arguments made in Barajas's Opening Brief on the Merits. Barajas argues that evidence of corroboration must show personal guilt to satisfy due process (BOBM 26, 41, 45, citing *Scales v. United States* (1961) 367 U.S. 203), but that is not the case. Whereas section 1111 requires evidence of corroboration that tends to connect the defendant to the commission of the crime, the United States Constitution does not. The due process requirement that criminal liability rest on personal guilt (see *People v. Castenada* (2000) 23 Cal.4th 743, 749) was satisfied in this case by Garcia's testimony that directly implicated Barajas.

Respondent also disputes the claim that evidence of motive may not constitute corroboration of accomplice testimony in an appropriate case. (BOBM 45-46.) Evidence of motive may tend to connect the defendant to the commission of the charged offense. (§ 1111.) And California courts have repeatedly relied upon evidence of motive to corroborate accomplice testimony. (See, e.g., *People v. McDermott* (2002) 28 Cal.4th 946, 986; *People v. Heishman* (1988) 45 Cal.3d 147, 165; *People v. Szeto, supra*, 29 Cal.3d at p. 28; *People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1178; *People v. Vu* (2006) 143 Cal.App.4th 1009, 1022; see also *People v. Pedroza, supra*, 231 Cal.App.4th at pp. 654-656 [suggesting independent evidence of motive could have provided sufficient corroboration].) However, this Court need not resolve the issue in light of respondent's concession that the accomplice testimony was not sufficiently corroborated.

**II. THIS COURT MAY NOT DECIDE RODRIGUEZ'S CLAIM; IN ANY EVENT, RODRIGUEZ'S CONSTITUTIONAL CHALLENGE TO HIS 50-YEARS-TO-LIFE SENTENCE IS MOOT, BUT RODRIGUEZ IS ENTITLED TO A LIMITED REMAND UNDER *FRANKLIN***

Appellants raise identical constitutional challenges to their 50-years-to-life sentences. In light of respondent's concession on the accomplice corroboration issue as to Barajas, respondent does not address this claim as