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IN THE SUPREME COURT

FOR THE STATE OF CALIFORNIA

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PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff and Respondent,

vs.

CRISTIAN RENTERIA,

Defendant and Appellant.

S266854

Court of Appeal No. F076973

Tulare County VCF 304654

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APPEAL FROM THE SUPERIOR COURT OF TULARE COUNTY

THE HONORABLE JUDGE KATHRYN MONTEJANO,  
JUDGE PRESIDING

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**APPELLANT'S REPLY BRIEF  
ON THE MERITS**

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**APPELLANT’S REPLY BRIEF ON  
THE MERITS**

**SUMMARY OF REPLY ARGUMENT**

In deciding whether the prosecution has adduced sufficient evidence to prove the gang allegation in the case of a gang member acting alone, a court must apply a markedly different standard than it does in cases where gang members act together. In the latter situation, jurors may often draw reasonable inferences that gang members acting together do so for gang purposes; to announce their power to terrorize the community and protect each other from criminal prosecution. (People v. Albillar, (2010) 51 Cal.4th 47, 63-65.) But with respect to a scenario involving a lone gang actor, a trier of fact may not conclude that the suspect acts for the benefit of the gang

and to promote criminal conduct by his fellow gang members, without objective, independent evidence showing his crime was gang-related and perpetrated with the intent to promote criminal conduct by other gang members. Without such independent tangible evidence linking the crime to gang activity, a prosecution expert's testimony that the crime appears gang-related remains speculative.

Here, the prosecution failed to produce independent evidence to show Mr. Renteria's criminal conduct gang-related. The evidence that Mr. Renteria was "hit up" at some undetermined time and place; that unidentified young people shouted gang slogans at some unspecified time and place before the shooting; that the police found a generic shotgun in the victim's garage; and that the shooting occurred in a so-called "contested area" did not provide a tangible gang context for the actual shooting. The shooting involved a lone shooter who did not wear gang clothing or shout gang slogans, who shot at a house not associated with any rival gang.

In sum, the prosecution did not provide solid, credible independent evidence showing a concrete gang connection to the shooting. Without such evidence, the gang expert's opinion amounted to mere guesswork and this Court should find the proof of the gang enhancements insufficient and dismiss them.

## ARGUMENT

### **THE PROSECUTION FAILED TO PROVE THE GANG ENHANCEMENT BEYOND A REASONABLE DOUBT BECAUSE IT FAILED CLEARLY TO LINK A LONE GANG MEMBER WITH GANG ACTIVITY AT THE TIME HE COMMITTED THE CRIME**

Respondent acknowledges that in cases finding the evidence for the gang allegation insufficient in “lone gang actor” situations, courts have found a “disconnect” between the opinion of the prosecution gang expert and the “actual facts of the case.” (RB 42.) It acknowledges that the cases cited by the Opening Brief, namely, In re Frank S. (2000) 141 Cal.App.4th 1192; McDonald v. Hedgpath (9<sup>th</sup> Cir. 2018) 907 F.3d 1212; People v. Ochoa (2009) 179 Cal.App.4th 650; People v. Perez (2017) 18 Cal.App.5th 598; People v. Rios (2013) 222 Cal.App.4th 542; and People v. Ramon (2009) 175 Cal.App.4th 843 all found evidence insufficient in the cases of lone gang actors. (RB 42-45.) It argues, however, that no such “disconnect” or “missing link” appears here. (RB 42, 46.) But in fact, as demonstrated infra, that same “disconnect” does exist in Mr. Renteria’s case--no independent facts linked Mr. Renteria’s crime to gang activity, and the prosecution gang expert engaged in mere speculation when he characterized the crime as gang-related.

1. The Prosecution Failed to Show a Gang Motive for the Crime

Respondent claims that Mr. Renteria harbored an intent to retaliate for the “hit up” which occurred before the shooting. (RT 33-34.) But, as shown in the Opening Brief on the Merits (OB 35), the prosecution never demonstrated any link between the “hit up” and the shooting. It did not prove where and when the “hit up” occurred, or whether it had anything to do with the persons living in the houses at which Mr. Renteria shot. Without these facts, the expert’s opinion that the shooting occurred for gang retaliatory purposes amounted to pure speculation. Unlike People v. Gonzales (2005) 126 Cal.App.4th 1539 (cited by Respondent in RB 29), where investigators found the victim’s name on a “hard candy” or “greenlight” gang list, here the prosecution adduced no evidence connecting the Duran house shooting to specific gang activity.

2. The Prosecution Failed to Show Any Relevance to the Shotgun Found by the Police in Mr. Duran’s Garage.

Respondent asserts that the shotgun found inside Mr. Duran’s garage demonstrated that the “hit up” led to an attack against Mr. Duran’s house. (RB 34.) But the prosecution offered no evidence that Mr. Renteria knew that a shotgun lay inside the closed garage. Nor did the prosecution offer any evidence that the generic shotgun found inside Mr. Duran’s garage had anything to do with the “hit up.” In



such circumstances, the expert's opinion that the existence of the shotgun somehow related to the "hit up" story amounted to speculation only.

3. The Prosecution Failed to Prove that the Shooting Occurred at a Home Related to a Rival Gang

Respondent asserts that the shooting occurred as part of a "struggle between two rival gangs." (RB 35.) But the prosecution did not show that in any way that Mr. Duran's house represented the territory, or claimed territory, of a rival gang. It showed no proof that any of the residents of that house belonged to or affiliated with the Nortenos. Indeed, when the prosecutor tried to include a reference in his hypothetical to the Duran house "known to be associated with Norteño gang activity," the trial court struck it as unsupported by the record. (RT 605.) Although the gang expert characterized the place of the shooting as "contested territory," he explained that by that phrase he meant that no gang uniquely held that particular territory. (RT 548.) The prosecution never showed any evidence that the Duran home ever functioned as the particular site of any contest. It never showed the Duran home or its occupants related to any particular gang. To the extent that the gang expert used the Duran home as a basis for his opinion that the shooting was gang related, he failed to tether his opinion it to any facts admitted before the jury, and it amounted to pure speculation. Unlike People v. Gonzalez (2006) 38 Cal.4th 932 (cited by

Respondent's Answer on the Merits, RB 28), where the prosecution showed that Gonzalez killed two rival gang members, here the evidence failed to provide a connection between the crime and any particular rival gang..

4. The Prosecution Failed to Present Compelling Evidence that Renteria's Gang Claimed Responsibility for the Shooting

Respondent argues that the evidence that a group of young men shouted "sur" and "trece" before the shooting shows that "Renteria intended the Sureño group be credited with the shooting." (RB 35.) Yet Respondent acknowledges that it remains unclear how much time passed between the shouting and the shooting. (RB 36.) As set forth in the Opening Brief, because of the disparity in the times reported for the shouting and shooting, no reasonable factfinder could believe beyond a reasonable doubt that the shouting and shooting events had any rational connection to each other. (OB 33.) Mr. Renteria had told his neighbor Anthony that some of the boys doing the shouting in the open field were drunk and that everyone was going home. Anthony returned to his house, and sometime later reemerged, sat on his porch and saw the shooting at houses down the block. The prosecution presented no evidence connecting the shouting and the shooting, and in particular failed to show "a tight temporal connection" between the two events. (Opinion of the Court of Appeal, Judge Smith concurring and dissenting at 8-10.) Although the prosecutor contended,

both in his hypothetical questions to Detective Adney and in his argument to the jury, that the shouting occurred contemporaneously with the shooting, the evidence did not support that interpretation.

5. The Prosecution Failed to Prove that Renteria Intended to Intimidate Neighbors Through Gang Activity

Respondent argues that neighbors “would likely attribute Renteria’s criminal actions to the gang” and therefore that Mr. Renteria intended to intimate them by his actions. (RB 39.) But again, the prosecution failed to present actual evidence of this theory. No witness testified that they saw Mr. Renteria commit violent gang activity, or that they feared him because they feared the gang. Although the prosecution presented evidence that a witness referred to “problems in the neighborhood,” and that a previous shooting incident occurred, the prosecution never linked this evidence with any gang. The opinion testimony of the prosecution’s gang expert, that Renteria wanted to intimidate his neighbors by gang violence, again amounted to rank speculation.

6. The Prosecution Presented No Evidence that the Unidentified Person who Accompanied Mr. Renteria during the Shooting Harbored any Gang Affiliation or Gang Motivation

Respondent urges that Mr. Renteria performed the shooting act with another

person present because he “wanted a witness to his actions” so that “his gang would get credit for them.” (RB 46.) But the prosecution presented no evidence at all as to the identity of that second person, or his motivation for being there. Respondent’s argument that the presence of this second person showed gang motivation remains speculation unaccompanied by any proof.

7. The Court of Appeal Cases Cited in the Opening Brief Should Guide this Case, and They Require Much More Specific Evidence of Gang Conduct in Lone Actor Cases than the Prosecution Provided at the Trial

This case thus falls squarely within those cited in the Opening Brief on the Merits. (OB 22-30.) In each of those cases, the Court of Appeal found insufficient evidence where gang members acted alone, and where the prosecution failed to present any compelling evidence connecting that lone member with gang motivation during the crime. Each of the Court of Appeal cases found that the gang expert could not supply the missing evidence of gang motivation because the prosecution had failed to adduce any predicate evidence upon which the expert could opine.

The “disconnect” in these cases is precisely the same “disconnect” here. In Mr. Renteria’s matter the prosecution has failed to present any solid, tangible evidence linking the crime with gang motivation. The prosecution presented no evidence tying the “hit up” to any particular gang, no evidence linking the houses shot at to any gang

and no evidence linking the gang epithets shouted by the young men in the field to the shooting that likely occurred much later. Just as in those Court of Appeal cases, the gang expert's opinion amounted to speculation because the prosecution failed to provide evidence to provide a solid foundation for that opinion.

Respondent actually seems to seek a different reading of these Court of Appeal cases in order for Mr. Renteria's case to fall within it. It appears to urge this Court that if the prosecution presents a potential gang theory and expert gang opinion on it, it may attach the gang enhancement to a crime committed by a lone gang member. This Court should make explicit the basis for those Court of Appeal holdings; that in the case of the lone gang actor, to sustain a gang enhancement, the prosecution must present, tangible, compelling evidence of gang activity, which may include gang colors, shouting of gang epithets during the crime, or other, non-ambiguous indicia, including tight temporal connections between gang conduct and the crime clearly showing the lone actor acted on behalf of the gang at the time of the crime. A mere expert theory cannot support the Penal Code section 186.22, subdivision (b) enhancement without solid specific articulable facts linking the crime to actual gang activity.

## **CONCLUSION**

This Court should find that when a gang defendant acts alone the prosecution

must provide independent corroborating evidence that the defendant engaged in gang-related conduct for the purpose of promoting the criminal conduct by members of his own gang.<sup>1</sup> As set forth in the Opening Brief on the Merits and in this Reply, the prosecution utterly failed to offer specific gang-related factual connections to the crime, and instead depended on the gang officer to supply opinions without solid foundation.

This Court should reverse the true finding on the enhancements for insufficient evidence and strike the punishment imposed by the trial court on those enhancements.

\_\_\_\_\_/s/\_\_\_\_\_  
James Bisnow  
Attorney for Appellant Cristian Renteria

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<sup>1</sup>The recent factfinding and amendments in AB 333, signed by the governor and effective January 1, 2022 buttress appellant's arguments, since they reflect a legislative intent to narrow the gang enhancement statute. Appellant has concurrently filed a request to file a supplemental brief on this new law and its application to this case.

CERTIFICATE OF WORD COUNT

I hereby certify that this Reply Brief on the Merits contains 2854 words.

November 24, 2021

\_\_\_\_\_/s/\_\_\_\_\_  
James Bisnow  
Attorney for Appellant  
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## **PROOF OF SERVICE BY MAIL**

I am an attorney residing in Los Angeles, California, I am over the age of 18 years, and I am not a party to this action. My business address is 117 East Colorado Blvd., Suite 600, Pasadena, Ca. 91105.

On November 24, 2021 I served the foregoing document described as APPELLANT'S REPLY BRIEF IN THE SUPREME COURT on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed at Pasadena, California, November 24, 2021

\_\_\_\_\_/s/\_\_\_\_\_  
JAMES BISNOW



STATE OF CALIFORNIA  
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA  
Supreme Court of CaliforniaCase Name: **PEOPLE v.  
RENTERIA**Case Number: **S266854**Lower Court Case Number: **F076973**

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