

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,

Supreme Court No.
S239713

Plaintiff and Respondent,

v.

JESUS MANUEL RODRIGUEZ, et al.,

Defendants and Appellants.

SUPREME COURT
FILED

NOV 06 2017

Jorge Navarrete Clerk

Deputy

STANISLAUS SUPERIOR COURT, Nos. 1085319 and 1085636
THE HONORABLE NANCY ASHLEY, JUDGE PRESIDING

REVIEW FROM THE 2016 DECISION ON DIRECT APPEAL OF
THE FIFTH APPELLATE DISTRICT, No. F065807

REPLY BRIEF ON THE MERITS

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REPLY BRIEF ON THE MERITS

INTRODUCTION

In their Answer Brief on the Merits, the People concede that Garcia's accomplice testimony was not sufficiently corroborated as required by Penal Code section 1111¹ and the judgment against Barajas should be reversed. (ABOM 16, 20, 21, 39.) Appellant accepts Respondent's concession. However, they take issue with two arguments made in Barajas's Opening Brief on the Merits. (ABOM 21.) As Respondent acknowledges with respect to one issue, this Court need not resolve these issues in light of

¹Unless otherwise indicated, all subsequent statutory references are to the Penal Code.

Respondent's concession. (ABOM 21.) However, in anticipation that this court may decide to resolve one or both of these issues, Barajas is addressing them.

Barajas is not replying to the *Franklin* (*People v. Franklin* (2016) 63 Cal.4th 261) issue argued by Respondent for two reasons. The People do not address Barajas's *Franklin* claim in light of their concession on the accomplice corroboration issue. (ABOM 21-22.) Also, the outcome Barajas was seeking in his *Franklin* claim was the limited remand articulated in *Franklin*. The People state that, if Barajas's convictions were to stand, their *Franklin* argument concerning Rodriguez would apply equally to Barajas. (ABOM 22.) With respect to Rodriguez, they concede that Rodriguez is entitled to a limited remand as articulated in *Franklin* if this Court finds jurisdiction over Rodriguez's appeal. (ABOM 37-38.)

ARGUMENT

I. THE CORROBORATION OF AN ACCOMPLICE, AS REQUIRED BY PENAL CODE SECTION 1111, MUST SHOW PERSONAL GUILT TO SATISFY DUE PROCESS

Respondent disputes Barajas's argument that evidence of the corroboration of an accomplice, as required by section 1111, must show personal guilt to satisfy due process. (ABOM 21.) Without citing any authority for support, they claim that the due process requirement that criminal liability rest on personal guilt was satisfied in this case by accomplice Garcia's testimony that directly implicated Barajas. (ABOM 21.) Barajas disagrees with respondent's

contention that “[w]hereas section 1111 requires evidence of corroboration that tends to connect the defendant to the commission of the crime, the United States Constitution does not.” (ABOM 21.)

As this Court has recognized, accomplice testimony is suspect because, like hearsay, it too may be unreliable. (*People v. Tewksbury* (1976) 15 Cal.3d 953, 967.) “[Experience] has shown that the evidence of an accomplice should be viewed with care, caution and suspicion because it comes from a tainted source and is often given in the hope or expectation of leniency or immunity.” (*Ibid.*, quoting *People v. Wallin* (1948) 32 Cal.2d 803, 808.) For this reason, accomplice testimony has been legislatively determined, in section 1111, never to be sufficiently trustworthy to establish guilt beyond a reasonable doubt unless corroborated. (*Id.* at p. 967.)

Barajas’s argument is that allowing corroboration of an accomplice’s testimony and the resulting criminal liability based solely on gang membership would infringe upon a defendant’s right to due process of law guaranteed by the Fifth Amendment of the United States Constitution because it would not be based on personal guilt. The concept of “personal guilt,” was articulated in *Scales v. United States* (1961) 367 U.S. 203, 224-225, 228. *Scales* recognized that, in our jurisprudence, guilt is personal. (*Id.* at p. 224.) This Court acknowledged the importance of personal guilt in *People v. Castenada* (2000) 23 Cal.4th 743, 749, 752.

Case law interpreting section 1111 has recognized the need for personal guilt in holding that it is insufficient corroboration merely

to connect a defendant with the accomplice or other persons participating in the crime. These cases have held that evidence independent of the testimony of the accomplice *must tend to connect or implicate a defendant with the crime itself, and not simply with its perpetrators.* (*People v. Robinson* (1964) 61 Cal.2d 373, 400; *People v. Falconer* (1988) 201 Cal.App.3d 1540, 1543; *People v. Reingold* (1948) 87 Cal.App.2d 382, 399-400.)

If personal guilt must be shown to satisfy due process (*Scales, supra*, at pp. 224-225, 228) and the testimony of an accomplice is not sufficient to establish guilt beyond a reasonable doubt (*Tewksbury, supra*, at p. 967), then it logically follows that the corroborating evidence must show personal guilt. Otherwise, a conviction could be had without personal guilt being shown beyond a reasonable doubt.

II. EVIDENCE OF A DEFENDANT'S MOTIVE, WITHOUT OTHER INDEPENDENT CORROBORATING EVIDENCE CONNECTING A DEFENDANT TO A CRIME MAY NOT CONSTITUTE SUFFICIENT CORROBORATION

Respondent also "disputes the claim that evidence of motive may not constitute corroboration of accomplice testimony in an appropriate case." (ABOM 21.) Barajas disagrees with this contention. The corroborating evidence must "tend to" implicate the defendant and relate to some act or fact which is an element of the crime. (*People v. Avila* (2006) 38 Cal.4th 491, 563; *People v. Perry* (1972) 7 Cal.3d 756, 769 (*Perry*).)

Barajas does not dispute that if motive is an element of a crime, then corroborating evidence on a personal motive for that offense may be sufficient. However, as discussed in Barajas's Opening Brief on the Merits, motive is not an element of the offenses charged in Barajas's case, and therefore, evidence of motive does not relate to some act or fact that is an element of any of the crimes, and accordingly, it is not sufficient corroborating evidence. (*People v. Avila, supra*, at p. 563; *Perry, supra*, at p. 769.)

Respondent argues that California courts have repeatedly relied upon evidence of motive to corroborate accomplice testimony. (ABOM 21.) Barajas acknowledges that courts have recognized motive as one factor that corroborated the identity of the perpetrator. However, none of the cases respondent cites in support of this claim involved facts where there was only independent evidence of motive. Instead, they involved additional independent evidence implicating the defendants. (ABOM 21.)

In *People v. McDermott* (2002) 28 Cal.4th 946, this Court found sufficient a combination of the independent evidence of motive to kill, the defendant's presence when the killing occurred, the victim being stabbed 44 times compared to the defendant receiving only superficial wounds, an investigating detective concluding that the crime was a murder as opposed to a robbery-murder, the accomplice being the defendant's coworker and friend, and a series of telephone calls between the accomplice and the defendant on the day before, day of, and day after the murder. (*Id.* at p. 986.)

In *People v. Heishman* (1988) 45 Cal.3d 147, there was independent corroborative evidence of both motive and the defendant's efforts to find the victim. (*Id.* at pp. 164-165.)

In *People v. Szeto* (1981) 29 Cal.3d 20, there was independent corroborating evidence of both motive and opportunity to commit the crimes. (*Id.* at pp. 28-29.) Likewise, in *People v. Samaniego* (2009) 172 Cal.App.4th 1148, there was independent corroborating evidence of both motive and opportunity. (*Id.* at p. 1178.)

In *People v. Vu* (2006) 143 Cal.App.4th 1009, the independent corroborating evidence established the defendant's motive and opportunity to commit the crime, and it discredited the defendant's alibi. (*Id.* at p. 1022.)

Respondent also states that *People v. Pedroza* (2014) 231 Cal.App.4th 635 suggests that "independent evidence of motive could have provided sufficient corroboration." (ABOM 21.) Barajas disagrees. In addressing the issue of the evidence of motive, *Pedroza* discusses both *People v. Vu, supra*, and *People v. Szeto, supra*. (*Pedroza, supra*, at pp. 654-656.) As discussed above, both *Vu* and *Szeto* involved independent evidence establishing opportunity as well as motive, and *Vu* also had independent corroborating evidence discrediting the defendant's alibi. Neither case found sufficient independent corroborating evidence based on motive alone.

To the extent *Pedroza* can be interpreted to support respondent's claim, it should be disregarded as both *dicta* and bad precedent. *Pedroza* did not hold that independent corroborating

evidence establishing motive was sufficient. Also, holding such would be bad precedent. This is because, in the case of gang murders, allowing identity to be shown based on evidence of motive alone, could result in an accomplice being able to “set up” any fellow gang member or associate for a murder conviction based on an expert’s testimony that any member or associate of the gang had a motive based on gang rivalry. In such a case, hundreds or even thousands of people could be convicted of murder. (See R.T. 747, 835-836.)

CONCLUSION

For the reasons discussed above, in Barajas’s Opening Brief on the Merits, and the Answer Brief on the Merits, appellant respectfully requests this Court to reverse his convictions. Also, if Barajas’s convictions were to stand, for the reasons discussed in Barajas’s Opening Brief on the Merits, appellant respectfully requests a limited remand as articulated in *People v. Franklin* (2016) 63 Cal.4th 261.

DATED: November 2, 2017

Respectfully submitted,

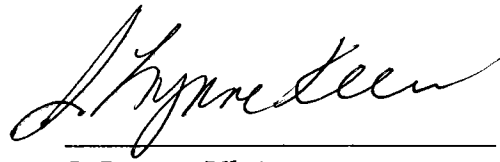


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CERTIFICATE OF WORD COUNT AND FORMAT

I, S. Lynne Klein, certify under penalty of perjury that, according to the Word computer program on which this brief was produced, excluding its tables, the brief contains 1879 words. This document was prepared in Word 2010, font size 13, and this is the word count generated by that program

Executed this 2nd day of November 2017, at Davis, California.

A handwritten signature in cursive script, appearing to read "S. Lynne Klein", written over a horizontal line.

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DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my business address is P.O. Box 367, Davis, CA 95617. On November 3, 2017, I served the attached Reply Brief on the Merits by placing a true copy thereof in an envelope addressed to the persons named below at the addresses shown, and by sealing and depositing the envelope in the United States Mail at Davis, California, with postage thereon fully prepaid.

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