
SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

vs.

CRISTIAN RENTERIA

Defendant and Appellant.

S266854
F076973
VCF304654

APPEAL FROM THE SUPERIOR COURT OF TULARE COUNTY

THE HONORABLE JUDGE KATHRYN T. MONTEJANO, JUDGE PRESIDING

APPELLANT'S SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF

STATEMENT OF THE CASE

Mr. Renteria has set out the Statement of the Case in his Opening Brief.

STATEMENT OF FACTS

Mr. Renteria has set out the Statement of Facts in his Opening Brief.

ARGUMENT

I

AB 333, AMENDING THE GANG ENHANCEMENT STATUTE PENAL CODE SECTION 186.22(B), SHOULD APPLY RETROACTIVELY TO MR. RENTERIA’S CASE ON APPEAL

A. Background

Assembly Bill 333 (“AB 333”), the “STEP Forward Act” signed by Governor Newsom October 8, 2021, amends Penal Code section 186.22, and adds Penal Code section 1109. The amendment, based on legislative findings that the broad scope of the gang enhancement adversely impacts minority communities, changes the evidentiary requirement for proof that a crime “benefits” the gang by providing that any such benefit “be more than reputational.” It also adds Penal Code section 1109, which permits the defense to demand bifurcation of the trial on the enhancement from the trial on the crime.

Penal Code section 186.22, subdivision (b) provides enhanced punishment for “a person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any a criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.”

AB 333 now adds a new subdivision (g), which provides:

“(g) As used in this chapter, to benefit, promote, further, or assist means to provide a common benefit to members of a gang where the common benefit is more than reputational. Examples of a common benefit that are more than reputational may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant.”

In enacting the legislation, the Legislature made numerous factual findings after study and debate (See online, [California Legislative Information](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB333), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB333.) These findings include that the gang enhancement as previously enacted criminalizes entire minority neighborhoods (Section 2 (a) and 2(d)(9)); leads to adverse consequences within the criminal system (Section 2 (b) and 2(i)); fails to deter crime (Section 2 (c) and 2(g)); creates racial disparities by disproportionately impacting communities of color and increasing the minority rate of incarceration (Section 2 (d)(1)-(d)(5) and (d)(10)); unfairly requires the jury to decide the gang enhancement “lumped into evidence of the underlying charges” (Section 2 (d)(6), (e) and (f)); permits punishment for gang enhancements based on persons whom the defendant has never met (Section 2 (d)(7)); permits findings of gang membership without requiring

the prosecution to document any organization or hierarchy within the gang (Section 2 (d)(8)); and permits findings on gang membership based upon unreliable and false police databases (Section 2 (d) (11) and 2(h)).

B. Discussion

AB 333 does not address retroactivity, but generally a change in the law beneficial to the defendant applies to all judgements not yet final at the effective date of the new statute. (People v. Zamora (2019) 35 Cal.App.5th 200, 206-207.) This follows from the principle first announced by this Court decades ago in In re Estrada (1965) 63 Cal.2d 740, 742, that where a new law lessens or ameliorates punishment, courts presume the legislature intended the law to apply to all cases not yet final unless a contrary intent appears. (People v. Superior Court (Lara) (2018) 4 Cal. 5th 299:)

Even where the law does not explicitly lessen punishment, but instead operates to aid the defendant by “mitigating the punishment or decriminalizing the conduct altogether,” the defendant remains entitled to the benefit from the change in the law during the pendency of his appeal absent any savings clause preserving prosecutions under the old law. (People v. Babylon (1985) 39 Cal.3d 719, 722, 725 [during Babylon’s appeal, the legislature amended the statute regarding the sales of cable television service so that it appeared no longer to proscribe Babylon’s activities].) “In the absence of contrary indications, a legislative body ordinarily intends for

ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not.”” (People v. Gentile (2020) 10 Cal.5th 830, 852.)

Where the legislature adds a new element to the statute narrowing the kinds of conduct subject to the statute, the Estrada rule also applies. (People v. Nasalaga (1996) 12 Cal.4th 784, 792 citing People v. Figueroa (1993) 20 Cal.App.4th 65.) In Figueroa, during the pendency of Figueroa’s appeal of his drug conviction, which included a three-year enhancement for trafficking near a schoolyard, the legislature amended the drug enhancement statute to apply only while the school is in session or while minors use the facility. (Id. at 69.) Figueroa held that Estrada entitled Figueroa to the benefit of the new statute, and to a new trial where the prosecution had to prove the additional elements. (Id. at 71.)

Similarly, during the pendency of the appeal in People v. Ramos (2016) 244 Cal.App.4th 99, 103, the legislature added a new element to Penal Code section 11352 which had criminalized any transportation of heroin. Under the new statute, the prosecution had to prove that the defendant transported those drugs for sale, rather than for his personal use. (Id. at 102-103.) On appeal, the prosecution conceded, and Ramos held, that the Estrada rule applied and entitled Mr. Ramos to the benefit of the new statute. (Id. at 103.) Because Ramos could not determine that the failure to

instruct the jury that it had to find the heroin transportation done for the purpose of sale harmless beyond a reasonable doubt, it remanded the case for a new trial on the heroin transportation allegation pursuant to the new statute. (Id. at 104.)

Here, during the pendency of Mr. Renteria's appeal, the legislature has passed ameliorative amendments and findings relating to the gang enhancement. The broad findings reflect a legislative intent to narrow the reach of the enhancement to those clearly and individually involved in specific gang activity. The addition of Penal Code section 186.22 subdivision (g) shows a legislative intent to restrict the enhancement statute to actual, rather than hypothetical, gang conduct. The addition of section 1109 demonstrates a legislative desire that juries carefully distinguish between criminal conduct and criminal gang conduct and punish the latter only where the prosecution produces additional independent evidence to prove it.

Mr. Renteria's case is not yet final, since this Court has not decided his appeal. (People v. Shabazz (2015) 237 Cal.App.4th 303, 312.) Since during the pendency of his appeal the Legislature has acted to narrow the definition of the enhancement the jury found applicable to him, this Court should find that Estrada and its progeny require the benefits of AB 333 retroactively applicable to Mr. Renteria.

II

THE LEGISLATIVE FINDINGS AND AMENDMENTS SUPPORT APPELLANT’S ARGUMENTS IN THE OPENING BRIEF THAT IN THE CASE OF LONE GANG-MEMBER ACTORS THIS COURT SHOULD INTERPRET THE GANG ENHANCEMENT STATUTE NARROWLY AND FIND THE EVIDENCE ADDUCED ON IT AT TRIAL INSUFFICIENT

Legislative findings are entitled to great weight in a judicial proceeding involving legislation. (People Ex Rel Younger v. County of El Dorado (1971) 5 Cal.3d 480, 493.) Courts should ordinarily uphold such findings unless they appear arbitrary or unreasonable. (County of Los Angeles v. Glendora Rehabilitation Project (2010) 185 Cal.App.4th 817, 831.)

Here, the legislative findings, made after study and debate, clearly indicate legislative dissatisfaction with the current broad interpretation and implementation of the gang enhancement statute because of its destructive impact upon minority communities. The amendments to Penal Code section 186.22, relating to “reputational” evidence, seem directed toward ensuring that defendants receive

punishment for real, and not merely hypothetical, actions which benefit their gang. AB 333 also narrowed the definition of a criminal street gang, by amending section 186.22, subdivision (f) to require members to collectively, not individually, engage in a pattern of criminal gang activity. Finally, the amendments adding Penal Code section 1109, which allow the defense to demand a bifurcated hearing, also appear aimed at ensuring that the jury not conflate evidence of criminal activity with evidence of gang activity. At the bifurcated hearing, Penal Code section 1109, subdivision (a)(2) emphasizes that the prosecution must prove the gang enhancement by “direct or circumstantial evidence.”

In light of these ameliorative legislative findings and amendments, this Court should interpret the gang enhancement statute narrowly in order to ensure that only those truly connected with concerted, documented gang activity fall within it. The Court of Appeal cases, enumerated in the Opening Brief (OB 22-30) have recognized this necessity, and this Court should adopt their reasoning consistent with the legislative findings in AB 333. In cases involving a lone gang actor, this Court should require clear, unambiguous evidence of gang-related conduct and preclude prosecution experts from opining that the crime appears gang-related in the absence of such evidence.

Because, as described by the Opening and Reply briefs, the prosecution failed

clearly to connect Mr. Renteria’s crime with gang-related conduct, this Court should strike the gang enhancements on the ground the prosecution presented insufficient evidence to prove them.

III

ALTERNATIVELY, AB 333'S AMENDMENT TO PENAL CODE SECTION 186.22(B), PROVIDING THAT THE “BENEFIT” TO THE GANG BE MORE THAN “REPUTATIONAL,” SIGNIFICANTLY NARROWS THE STATUTE AND REQUIRES THAT THIS COURT GRANT MR. RENTERIA A NEW TRIAL ON THE ENHANCEMENT

A. Background

Although section 186.22, subdivision (b) did not previously include the words “reputation” or “reputational,” prosecutors often elicited testimony by police gang experts that the defendant’s crime had provided a “benefit” to the gang by enhancing its reputation in the community. (People v. Albillar (2010) 51 Cal.4th 47, 53-54 [prosecution expert testified that rape by gang members in concert enhanced the gang’s reputation in community and thus “benefits” the gang]; People v. Perez (2018) 18 Cal.App.5th 598, 605 [prosecution gang expert testified shooting benefitted the

gang because it instilled fear in witnesses to the shooting and thus enhanced gang's reputation]; People v. Hunt (2011) 196 Cal.App.4th 811,814 [prosecution gang expert testified that armed robberies benefitted the gang because "more violent acts get attention in the public and garner more respect"]; People v. Miranda (2011) 192 Cal.App.4th 398, 412 [prosecution gang expert testified that a violent crime committed by a gang member benefits the gang by enhancing its reputation for violence in the community, and that "when a gang member announces his gang affiliation during commission of a crime, the entire gang is benefitted by an enhanced reputation."]

Similarly in Mr. Renteria's case, prosecution expert Officer Adney opined that a gang member who shoots at houses in an area claimed by both gangs, does so for the benefit of his criminal street gang in order to enhance its reputation for notoriety for violence. (RT 606-612.) He explained:

"...Other gang members are seeing what fellow gang members are doing and committing, what kind of crimes they're committing for the gang, and when they see that, you know, these gang members want the respect that they see other gang members getting, you know, if it's a certain gang member, and he's committing shooting, and he's—his reputation is enhancing, this is something other gang

members want and they see the level of respect they're getting.

“So it's promoting it, basically getting everybody to believe that our gang is violent, you know, it's a violent gang. It's elevating the his status, the status of the gang as a whole, and other members of that gang are gonna want that respect that that person's going to get.” (RT 612-613.)

The prosecutor echoed this testimony in his final argument to the jury:

“In this case, you heard testimony about how the crime that was committed benefits the gang, how it benefits the Sureño gang as a whole and how it elevates the standing in the gang, how it instills fear in rivals, in victims in the community as a whole, how that further leads to the intimidation of witnesses and gives the gang power and control over their territory, allows them to keep on committing the same sorts of crimes over and over because nobody wants to say what they saw.” (RT 672-673.)

B. Discussion

Mr. Renteria's jury did not hear the new definition of “benefit” in his trial. This

Court has held that the omission in jury instructions of an element of a criminal enhancement constitutes federal constitutional error subject to harmless error review; that is, “whether it appears beyond a reasonable doubt that the error did not contribute to the verdict.” (People v. Mil (2012) 53 Cal.4th 400, 418.) To determine whether such error appears harmless, an appellate court must examine the entire record and determine whether the verdict would have been the same absent the error. (Ibid.) The question is not whether sufficient evidence supports the verdict, but whether “any rational factfinder could have come to the opposite conclusion.” (Ibid.) For an appellate court to find a federal constitutional error harmless beyond a reasonable doubt, it must find the verdict “surely unattributable to the error” and “unimportant to everything else the jury considered on the issue in question.” (Yates v. Evatt (1991) 500 U.S. 391, 403.)

Here, the new language of AB 333, that mere “reputational” benefits, by themselves, do not provide sufficient evidence of a benefit to the gang, could have led reasonable jurors to find the gang enhancements charged against Mr. Renteria not true. The prosecution, as argued in the Opening Brief on the Merits, did not sufficiently prove its theory that Mr. Renteria engaged in a retaliatory shooting. (OB, pp. 35-36.) The prosecution never identified the “hit up” provocateurs, nor established them as the victims or intended victims of the shooting. No evidence showed that the persons who

lived at the Duran home had any connection, nexus or affinity with the anonymous persons who perpetrated the “hit up.” The prosecutor argued that the shooting suspect “retaliated,” but he offered no substantial proof of it. Reasonable jurors could have simply found the enhancement true because they agreed with Officer Adney’s conclusion that the shooting enhanced the reputation of the gang. That conclusion, although consistent with the statute at the time, could now under AB 333 appear to reasonable jurors insufficient to show a benefit to the gang.

Further, the language of new subsection (g) evidences an intent by the legislature to narrow the statute by requiring the jury to show a tangible rather than a mere hypothetical benefit. Its language seems to require more than the broad generalities regarding the importance of the gang’s reputation as testified to by Officer Adney and echoed by the prosecutor. The language of Penal Code section 186.22, subdivision (g) that a gang’s action benefits the gang where it engages in “targeting a perceived or actual gang rival” or attempts the “intimidation or silencing of a potential current or previous witness or informant,” suggests that the legislature meant to require evidence of the targeting of an actual person, so that the factfinder could determine that the gang specifically committed a crime against a particular person, a specific suspected enemy or identifiable witness to gang activity in order to prove a “benefit” to the gang. Here, the prosecution offered no evidence to connect the crime

against Mr. Duran and his family to any known or perceived specific gang purpose. The prosecution failed to prove any known or specific link between the persons who “hit up” Mr. Renteria and the persons at whom he shot. A reasonable juror, given the new definition of “benefit” in the enhancement statute, could rationally find that Officer Adney’s testimony did not provide solid proof of the enhancement and therefore find the enhancement allegation untrue.

CONCLUSION

This Court should hold AB 333 applicable to Mr. Renteria’s pending appeal, and further determine that the legislative findings and amendments in AB 333 compel this Court to treat the statute narrowly as to the lone gang actor, follow the interpretation of that statute set forth in the Opening and Reply Briefs on the Merits and strike the gang enhancements as not proved by sufficient evidence. Such a finding amounts to an acquittal for the purposes of double jeopardy and bars a second trial on the enhancements. (People v. Seal (2004) 34 Cal.4th 535, 541-542.) As he has consistently urged in the Opening Brief, the Reply Brief and this Supplemental Brief, appellant contends that the prosecution simply did not prove the gang enhancements beyond a reasonable doubt and that the indeterminate life sentences the trial court imposed on account of them should fall.

Alternatively, if, despite the appellant's arguments to the contrary, this Court finds the proof offered by the prosecution of the gang enhancements sufficient, it should grant Mr. Renteria a new trial, on the ground that the failure to instruct the jury regarding the new elements of the AB 333 statute does not appear harmless beyond a reasonable doubt.

Respectfully Submitted,

_____/S/_____
James Bisnow
Attorney for Cristian Renteria

CERTIFICATE OF WORD COUNT

I hereby certify that this Supplemental Brief contains 3342 words.

November 24, 2021

_____/s/_____
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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 SUPPLEMENTAL BRIEF 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.

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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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