

SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

_____)	California Supreme Court
PEOPLE OF THE STATE OF CALIFORNIA)	No. S169750
)	
Plaintiff and Respondent,)	
)	Superior Court
v.)	No. BA244114
)	
TIMOTHY J. McGHEE,)	
)	
Defendant and Appellant.)	
_____)	

**SUPREME COURT
FILED**

JUN - 1 2015

APPEAL FROM THE LOS ANGELES COUNTY SUPERIOR COURT

Frank A. McGuire Clerk

Deputy

The Honorable Robert J. Perry, Judge

APPELLANT'S OPENING BRIEF

PATRICK MORGAN FORD
Attorney at Law
1901 First Avenue, Suite 400
San Diego, CA 92101
619 236-0679
State Bar No. 114398

Attorney for Appellant
TIMOTHY McGHEE

Under appointment of the
California Supreme Court

DEATH PENALTY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA)	California Supreme Court
)	No. S169750
Plaintiff and Respondent,)	
)	Superior Court
v.)	No. BA244114
)	
TIMOTHY J. McGHEE,)	
)	
Defendant and Appellant.)	

APPEAL FROM THE LOS ANGELES
COUNTY SUPERIOR COURT

The Honorable Robert J. Perry, Judge

APPELLANT'S OPENING BRIEF

PATRICK MORGAN FORD
Attorney at Law
1901 First Avenue, Suite 400
San Diego, CA 92101
619 236-0679
State Bar No. 114398

Attorney for Appellant
TIMOTHY McGHEE

Under appointment of the
California Supreme Court

TOPICAL INDEX

TABLE OF AUTHORITIES	v
Introduction	1
Statement of Appealability	3
Statement of the Case	3
Statement of the Facts	5
Argument	50
I The trial court prejudicially erred by discharging the lone holdout juror during guilt phase deliberations because the juror was properly performing his function but accepted the defense arguments that the informant witnesses had been coached by the police and were not believable	50
II The investigating detectives committed outrageous government conduct by coaching the prosecution's key witnesses, essentially conditioning the benefits the witnesses would receive (dismissal of pending charges) on specific testimony implicating appellant in the charged murder	76
(a) The police misconduct in repeatedly manufacturing evidence by coaching the informants on what to say during subsequent recorded interviews and telling witnesses to select appellant's photo from the lineup constitutes outrageous government conduct in violation of appellant's right to due process	83
(b) The misconduct by the members of the prosecution's team also amounts to prosecutorial misconduct	95

(c)	Prosecuting a capital defendant with such manufactured evidence also violates the Eighth and Fourteenth Amendments	99
III	Gabriel Rivas's statement to Detective Teague was a product of police coercion and its admission violated appellant's right to due process	101
IV	Introduction of the videotape of Rivas's statement also violated appellant's Sixth Amendment right of confrontation because Detective Teague had lost his memory and could not be questioned	110
V	The trial court violated appellant's Sixth Amendment confrontation clause rights by admitting Christina Duran's videotaped police interview at the guilt and penalty phase trial	114
VI	The prosecutor committed misconduct by releasing to the press rap lyrics allegedly authored by appellant	124
VII	The state of the law at the time of appellant's trial excluding defense evidence of the secure conditions for life without parole prisoners violated the Eighth and Fourteenth Amendments, requiring reversal of the judgment of death	135
VIII	Appellant was subjected to a due process violation where the prosecution filed an old case it had not previously charged and tried it before the penalty retrial simply to improve the chances of a death verdict	142
IX	California's death penalty statute, as interpreted by this court and applied at appellant's trial, violates the United States Constitution	148
	Conclusion	165

Certificate of Compliance 166

TABLE OF AUTHORITIES

Cases

Andres v. United States
(1948) 333 U.S. 740 63

Apodaca v. Oregon
(1972) 406 U.S. 404 63

Apprendi v. New Jersey
(2000) 530 U.S. 466 155-158, 160

Beck v. Alabama
(1980) 447 U.S. 625 99

Berger v. Unites States
(1935) 295 U.S. 78 96, 128

Blackledge v. Perry
(1974) 417 U.S. 21 145

Blakely v. Washington
(2004) 542 U.S. 296 155-158, 160

Brady v. Maryland
(1963) 373 U.S. 83 97

Chapman v. California
(1967) 386 U.S. 18 100, 109, 113, 141

County of Sacramento v. Lewis
(1998) 523 U.S. 833 85

Crawford v. Washington
(2004) 541 U.S. 36 111, 112, 119, 120

<i>Crist v. Bretz</i> (1978) 437 U.S. 28	63
<i>Cunningham v. California</i> (2007) 549 U.S. 270	155, 157, 158, 160
<i>Davis v. Washington</i> (2006) 547 U.S. 813	111
<i>Delaware v. Van Arsdall</i> (1986) 475 U.S. 673	123
<i>Donnelly v. DeChristoforo</i> (1974) 416 U.S. 637	96, 128
<i>Duncan v. Louisiana</i> (1968) 391 U.S. 145	63
<i>Giglio v. United States</i> (1972) 405 U.S. 150	97
<i>Giles v. California</i> (2008) 554 U.S. 353	121
<i>Hampton v. United States</i> (1976) 426 U.S. 484	84
<i>Hitchcock v. Duggar</i> (1987) 481 U.S. 393	139
<i>Johnson v. Louisiana</i> (1972) 406 U.S. 356	63
<i>Jurek v. Texas</i> (1976) 428 U.S. 262	139
<i>Kansas v. Marsh</i> (2006) 548 US.163	149

<i>Kyles v. Whitely</i> (1995) 514 U.S. 419	97, 98
<i>Maynard v. Cartwright</i> (1988) 486 U.S. 356	153
<i>McClesky v. Zant</i> (1987) 481 U.S. 279	139
<i>North Carolina v. Pearce</i> (1968) 395 U.S. 711	145
<i>Ohio v. Roberts</i> (1980) 448 U. S. 56	119, 120
<i>Olmstead v. United States</i> (1928) 277 U.S. 438	92
<i>Pulley v. Harris</i> (1984) 465 US. 37	149, 161
<i>Ring v. Arizona</i> (2002) 536 U.S. 584	155, 156, 158-160
<i>Rochin v. California</i> (1952) 342 U.S. 165	83
<i>Rogers v. Richmond</i> (1961) 365 U.S. 534	104
<i>Schneckloth v. Bustamonte</i> (1973) 412 U.S. 218	104
<i>Skipper v. South Carolina</i> (1986) 746 U.S. 1	139
<i>Stein v. New York</i> (1953) 346 U.S. 156	105

<i>Tuilaepa v. California</i> (1994) 512 U.S. 967	153
<i>Turner v. Louisiana</i> (1965) 379 U.S. 466	63
<i>United States v. Booker</i> (2005) 543 U.S. 220	157
<i>United States v. Gomez-Lupe</i> (9th Cir. 2000) 207 F.3d 623	63
<i>United States v. Goodwin</i> (1982) 457 U.S. 368	145
<i>Wade v. Hunter</i> (1949) 336 U.S. 684	63
<i>Walton v. Arizona</i> (1990) 497 U.S. 639	156
<i>Williams v. Florida</i> (1970) 399 U.S. 78	64
<i>Woodson v. North Carolina</i> (1976) 428 U.S. 280	99
<i>Auto Equity Sales, Inc. v. Superior Court</i> (1962) 57 Cal.2d 450	140
<i>Barber v. Municipal Court</i> (1979) 24 Cal.3d 742	100
<i>Boulas v. Superior Court</i> (1986) 188 Cal.App.3d 422	86, 100
<i>In re Shawn D.</i> (1990) 20 Cal.App.4th 200	105

<i>Morrow v. Superior Court</i> (1994) 30 Cal.App.4th 1252	86, 92, 100
<i>People v. Adcox</i> (1988) 47 Ca1.3d 207	152
<i>People v. Bacigalupo</i> (1993) 6 Ca1.4th 857	150
<i>People v. Badgett</i> (1995) 10 Cal.4th 330	102, 104, 109
<i>People v. Barnwell</i> (2007) 41 Cal.4th 1038	51, 52
<i>People v. Bittaker</i> (1989) 48 Ca1.3d 1046	152
<i>People v. Bolton</i> (1979) 23 Cal.3d 208	97, 128
<i>People v. Boyette</i> (2007) 29 Cal.4th 381	141
<i>People v. Brommel</i> (1961) 56 Cal.2d 629	106, 129, 131
<i>People v. Cahill</i> (1993) 5 Cal.4th 478	129
<i>People v. Clark</i> (2011) 52 Cal.4th 856	113
<i>People v. Cleveland</i> (2001) 25 Cal.4th 466	51, 52, 64
<i>People v. Daniels</i> (1991) 52 Cal.3d 815	137

<i>People v. Dillon</i> (1984) 34 Cal.3d 441	151
<i>People v. Douglas</i> (1990) 50 Cal.3d 468	103
<i>People v. Dyer</i> (1988) 45 Cal.3d 26	152
<i>People v. Edelbacher</i> (1989) 47 Cal.3d 983	150
<i>People v. Ervin</i> (2000) 22 Cal.4th 48	138
<i>People v. Ervine</i> (2009) 47 Cal.4th 745	138
<i>People v. Espinoza</i> (1992) 3 Cal.4th 806	128, 134
<i>People v. Eubanks</i> (2011) 53 Cal.4th 110	138
<i>People v. Fairbank</i> (1997) 16 Cal.4th 1223	155, 158
<i>People v. Feagley</i> (1975) 14 Cal.3d 338	63
<i>People v. Fudge</i> (1994) 7 Cal.4th 1075	138, 139
<i>People v. Garcia</i> (2000) 84 Cal.App.4th 316	143
<i>People v. Giles</i> (2007) 40 Cal.3d 833	116, 120

<i>People v. Gionis</i> (1995) 9 Cal.4th 1196	96, 127, 133
<i>People v. Gordon</i> (1990) 50 Cal.3d 1223	137
<i>People v. Grant</i> (1988) 45 Cal.3d 829	137, 139
<i>People v. Hawthorne</i> (1992) 4 Cal.4th 43	158
<i>People v. Hill</i> (1998) 17 Cal.4th 800	141
<i>People v. Hillhouse</i> (2002) 27 Cal.4th 469	151
<i>People v. Hogan</i> (1982) 31 Cal.3d 815	105
<i>People v. Jenkins</i> (2000) 22 Cal.4th 900	103
<i>People v. Jimenez</i> (1978) 21 Cal.3d 585	106
<i>People v. Keenan</i> (1988) 46 Cal.3d 478	64
<i>People v. Kelly</i> (1997) 75 Cal.App.3d 672	96, 128
<i>People v. Lee</i> (2002) 95 Cal.App.4th 772	104, 109
<i>People v. Loy</i> (2011) 52 Cal.4th 46	113

<i>People v. Majors</i> (1998) 18 Cal.4th 385	138
<i>People v. McClary</i> (1977) 20 Cal.3d 218	106
<i>People v. McIntire</i> (1979) 23 Cal.3d 742	85
<i>People v. McKinzie</i> (2012) 54 Cal.4th 1302	128, 130
<i>People v. Moore</i> (1976) 57 Cal.App.3d 437	86
<i>People v. Nicolaus</i> (1991) 54 Cal.3d 551	152
<i>People v. Olguin</i> (1994) 31 Cal.App.4th 1355	132
<i>People v. Quartermaine</i> (1997) 16 Cal.4th 600	138
<i>People v. Robinson</i> (2005) 37 Cal.4th 592	152
<i>People v. Smith</i> (2003) 31 Cal.4th 1207	85
<i>People v. Smith</i> (April 27 th , 2015) – Cal.4th –	136, 138, 140, 141
<i>People v. Sullivan</i> (1988) 204 Cal.App.3d 511	105
<i>People v. Thompson</i> (1988) 45 Cal.3d 86	137, 139

<i>People v. Watson</i> (1956) 46 Cal.2d 818	134
<i>People v. Welch</i> (1993) 5 Cal.4th 228	140
<i>People v. Wilkins</i> (2013) 56 Cal.4th 333	134
<i>People v. Williams</i> (2001) 25 Cal.4th 441	51
<i>People v. Zepeda</i> (2008) 167 Cal.App.4th 25	132
<i>Sanders v. Lamarque</i> (9th Cir. 2004) 357 F.3d 943	64
<i>United States v. Auten</i> (5th Cir. 1980) 632 F.2d 478	97
<i>United States v. Simpson</i> (9th Cir. 1987) 813 F.2d 1462	85
<i>United States v. Smith</i> (9th Cir. 1991) 924 F.2d 889	85
<i>United States v. Solorio</i> (9 th Cir. 1994) 37 F.3d 454	100
<i>United States v. Thomas</i> (2nd Cir. 1997) 116 F.3d 606	64
 <i>Statutes</i>	
Evidence Code	
section 1350	116, 117, 123
section 1350, subd.(a)(4)	122

section 352	132, 133
Penal Code	
section 1089	51, 63, 64
section 1239, subd.(b)	3
section 186.22, subd.(b)	126
section 190.2	150, 153
section 190.2, subd.(a)(22)	126
section 190.3	136, 137, 152, 153, 160, 161
section 190.3(a)	151, 153
United States Constitution	
Fifth Amendment	151
Sixth Amendment ..	63, 86, 110, 113, 119, 121, 151, 156, 157, 160
Fourteenth Amendment	63, 85, 99, 109, 139, 151, 156, 164
California Constitution	
Article 1, section 16	63
Article 6, section 11	3
Other Authorities	
CALJIC 8.88	160

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

_____)	California Supreme Court
PEOPLE OF THE STATE OF CALIFORNIA)	No. S169750
)	
Plaintiff and Respondent,)	
)	Superior Court
v.)	No. BA244114
)	
TIMOTHY J. McGHEE,)	
)	
Defendant and Appellant.)	
_____)	

APPEAL FROM THE LOS ANGELES
COUNTY SUPERIOR COURT

The Honorable Robert J. Perry, Judge

APPELLANT'S OPENING BRIEF

Introduction

Appellant was charged with several counts of murder and attempted murder, but the state's case relied almost exclusively on the testimony of unreliable witnesses.

During guilt phase deliberations, the trial court discharged a juror who acknowledged that he didn't believe the state's witnesses.

The witnesses were mostly gang members who were high at the time of the killings, and all had received substantial benefits from the state, saving many of them from life prison terms. But the primary problem was the affirmative coaching by detectives who provided the witnesses with facts related to the killings, told them that appellant was responsible, and then conducted formal interviews.

Two of the jurors wrote a note during deliberations informing the court that the holdout juror was biased against the prosecution. During an inquiry into the claim, many jurors indicated the holdout was deliberating properly but simply didn't believe the state's witnesses who had been coached by the police. The trial court ultimately discharged the juror.

Appellant argues that the justice system broke down in two significant ways in the present case.

First, the discharge of a dissenting juror who accepted the defense theory of the case that the state's witnesses should not be believed does great damage to the credibility of our justice system.

Perhaps worse though, was the practice of the Los Angeles Police Department homicide detectives involved in the present investigation (all of whom would later claim memory loss) of manufacturing evidence

through coaching and incentives in an effort to build a case against a person they believed was responsible for committing serious crimes.

The practices adopted by the detectives in this case insult our commitment to fairness and embarrass our system.

The idea that the state could execute one of its citizens after cheating so badly in its zeal to convict is chilling.

Statement of Appealability

This is an automatic appeal from a final judgment following a jury trial that resulted in a death verdict. It is authorized by the California Constitution (Article 6, section 11) and Penal Code section 1239, subd.(b).

Statement of the Case

Appellant was charged by way of an information with three counts of murder in violation of Penal Code section 187¹ (counts three, four and 12), and six counts of attempted willful, deliberate and premeditated murder in violation of sections 664 and 187 (counts one, two, five, six, 13 and 14)². (7 CT 1478-1485.) The information also

¹ All further references will be to the California Penal Code unless otherwise specified.

² The numbered charges in the information are the same as those listed in the original felony complaint although counts seven through 11 were

alleges various enhancements for personal gun use under sections 12022.5 and 12022.53, as well as the gang enhancement described in section 186.22, subd.(b)(1). (7 CT 1478-1484.)

The information was later amended to add two prior convictions that qualified as “strike priors” under sections 1170.12, subs. (a)-(d) and 667, subd.(b)-(i). (7 CT 1486.)

The information also alleged the multiple-murder special circumstance described in section 190.2, subd.(a)(3), and the active gang participant special circumstance described in section 190.2, subd.(a)(22). (7 CT 1478-1484.)

The jury convicted appellant of all three murder counts, four of the six attempted murder counts, and further found all of the enhancement and special circumstance allegations to be true. (15 CT 3828-3835.) The jury found appellant was not guilty of two of the attempted murder counts. (15 CT 3826-3827.) The penalty phase jury was unable to agree on the appropriate sentence and so the court declared a mistrial. (29 RT 5764.)

Before the penalty phase retrial began, the state prosecuted appellant for his participation in a jail disturbance incident that had

dismissed before trial.

taken place three years earlier. (30 RT 5822.) The jury convicted appellant of those charges and he received a life term under the three strikes law. (30 RT 5817.)

The trial court then conducted the penalty phase retrial where the jury recommended a death sentence. (39 RT 7768.) The only evidentiary difference at the penalty retrial was the felony conviction for the jail disturbance case.

The trial court denied appellant's motion to modify the verdict and imposed the death sentence. (22 CT 5716-5722.)

The appeal to this court is automatic pursuant to Penal Code section 1239, subd.(b).

Statement of the Facts

Prosecution's Guilt Phase Case

Background

Appellant was an active member in Toonerville, a notorious Hispanic street gang in the Atwater Village area of Los Angeles. (20 RT 3986-3987.) In fact, he was considered to be the gang's "shot-caller," and was known as either "Huero" or "Eskimo." (20 RT 3874, 3982.)

Police suspected that appellant was involved in several killings, and at one point there were several local and federal law enforcement

agencies with hundreds of officers looking for him. (35 RT 7059.) He was even featured on the “America’s Most Wanted” television show that was aired in an effort to find him. (35 RT 7060.) Following a tip, police arrested him on February 12th, 2003, in Bullhead City, Arizona after a 15 month search. (13 RT 2726-2727; 19 RT 3913.) He was driving with his girlfriend, Dawn Butts, at the time of the arrest, and police proceeded to search Butts’ nearby residence. (13 RT 2726-2727; 16 RT 3401.) While searching a box in the closet, police found a notebook that contained handwritten gang-style rap lyrics. (13 RT 2729.)

Appellant had written the lyrics, and wrote a note inside the cover of the notebook stating that everything in the book was fictional. (13 RT 3732.) Appellant enjoyed writing and performing his rap songs (he used a computer program to help with the music) and Butts believed he wanted to become a rapper. (16 RT 3407-3408.) The prosecution repeatedly used appellant’s fictional lyrics against him when trying to establish his guilt for the charged offenses throughout the trial. (20 RT 3975-3979, 3982-3986, 3993-3997.)

The charges involved five incidents:

The Ronald “Cloudy” Martin murder

Cloudy Martin was a member of Frogtown, a Toonerville rival

gang. (12 RT 2575.) On October 14th, 1997, he was shot and killed outside the Elysian Valley Rec Center in the late morning. (14 RT 2858-2583.) A witness saw a white Bronco or Blazer leave the scene and noticed the driver's arm (with no identifying marks) hanging outside the driver's window. (12 RT 2592.)

A coroner would later conclude that Martin was shot 27 times, from an intermediate range, and police determined the shots came from at least two guns. (13 RT 2616-2717; 14 RT 3029, 3035.)

Gabriel "Acer" Rivas, a former Toonerville member with an extensive criminal background testified at trial after the trial court rejected his attempt to exercise his Fifth Amendment privilege against self-incrimination. (13 RT 2619, 2626-2627.) Rivas testified that he did not recall telling police that he heard appellant discussing the incident. (13 RT 2649.) He did not recall telling police that he was next door when appellant and "Frosty" Quintinilla drove away in Quintinilla's old white truck. (13 RT 2649-2650.) Neither did he recall that when appellant and Quintinilla returned, appellant bragged that "the fucking fool got smoked," or that "Cloudy" was shot "like 30 or 40 times." (13 RT 2560-2561.) The prosecutor then played the secretly recorded statement Rivas gave to the police, which contained the statements.

(13 RT 2686.)

Mark Gonzalez was another former Toonerville member with a substantial criminal record who testified for the prosecution. (15 RT 3167-3168.) He faced aggravated kidnapping charges, was still on probation for an earlier criminal threats conviction, and was in restraints while he testified. (15 RT 3166-3167, 3169.)

Gonzalez was a drug dealer during his time with Toonerville, knew appellant well, and described the details of life in the gang. (15 RT 3170-3172.) He indicated that from 1997 through 2001, Frogtown, Rascals and Pinoy Real were all enemies of Toonerville. (15 RT 3171-3171.) He said that appellant had been the “shot-caller” in Toonerville, identified 15 members of the gang, and discussed its territory, hang outs, rules and details of monthly meetings. (15 RT 3171, 3174, 3182.) Gonzalez acknowledged that he was a “snitch.” (15 RT 3182-3183.)

A couple of years after Cloudy Martin’s killing, appellant and Gonzalez were ingesting methamphetamine in Gonzalez’s apartment when appellant told him that he and Frosty Quintinilla shot Cloudy. (15 RT 3185-3187.) Appellant and Frosty went to Frogtown and saw three guys near the handball courts. (15 RT 3185-3186.) When the others left, and Martin was alone, appellant asked where he was from

(which gang), and Martin said “nowhere.” (15 RT 3187.) Appellant then had Martin raise his shirt and saw Frogtown tattoos. (15 RT 3187.) Martin begged for his life, but appellant told him to “die like a man, not like a bitch” and started shooting. (15 RT 3187.) Frosty then began shooting as well. (15 RT 3187.)

Appellant told Gonzalez that they shot Martin as payback for Frogtown’s earlier killing of a Toonerville member known as “Hozer.” (15 RT 3189-3191.)

Gonzalez acknowledged that he first told police he had received the information regarding Cloudy Martin’s killing from Netty, a close family friend. (16 RT 3335.)

The Margie Mendoza Incident

In the late evening of November 9th, 2001, Margie Mendoza was shot in the head and killed. (16 RT 3417, 3425.) She was in the front passenger seat of a car driven by Pinoy Real gang member Duane “Duendo” Natividad, with a friend Erica Rhee riding in the back. (16 RT 3413, 3418, 3457.) Multiple shots were fired from another car, and Natividad was also shot in the hand. (16 RT 3420, 3426.)

Monica Miranda was outside of her house at the time, along with Rascals gang member “Chubbs” Mendoza. (18 RT 3467.) She noticed

two cars driving slowly. (18 RT 3650.) The lead car was a silver Ford Focus hatchback that was being followed closely by a black SUV. (18 RT 3648-3649.) She vaguely recalled seeing the two males in the Focus, including the passenger who had a tattoo on the back of his head that looked like a snake, an eagle and the Mexican flag. (18 RT 3656.) She had about a three-quarters view of his face. (18 RT 3658.)

While she was smoking a cigarette on the porch, she heard gunshots coming from the nearby intersection of Petite Court and Hollydale Avenue. (18 RT 3662.) She hid behind a tree and saw two people fire three shots. (18 RT 3664, 3666-3667.) One man was tall and muscular, with a handgun, and may have been the passenger in the Focus. (18 RT 3673-3675, 3707.) The Focus was stopped in the intersection at the time. (18 RT 3714.)

She went inside her house, but came out again to see if anyone had been hurt. (18 RT 3719.) She then heard squealing tires and hid behind cars parked on Hollydale. (18 RT 3722-3723.) She heard two male voices, with one saying "I dropped it here," and she heard a walkie-talkie type device. (18 RT 3724-3725.) She remained behind the cars. (18 RT 3725.)

Shortly thereafter, Miranda was back in front of her house, and

was approached by a woman acting suspiciously, who was looking for something. (18 RT 3728.) She also claimed to be looking for her relative “Andy,” but Miranda didn’t know of an Andy in the area. (18 RT 3728-3729.) The woman, who Miranda later identified as Christina Duran, was also talking on her cell phone and said “We got ‘em” and “I can’t get through.” (18 RT 3729-3730.) Duran then entered her black SUV and left. (18 RT 3732.)

Natividad, the driver of the victim’s car described two suspects, including one with a bald head under a dark hoodie, and the other with a baseball cap. (16 RT 3447, 3450-3451.) He didn’t know appellant and didn’t remember much about the shooting because he was high on methamphetamine. (16 RT 3448, 3676.)

Erica Rhee, the backseat passenger, didn’t recall the incident as she was high on meth (and hallucinating) and ducked when the shooting started. (16 RT 3462, 3465-3466.)

A police officer later detained a black 4-Runner on Hollydale Boulevard after midnight. (18 RT 3617-3618.) The officer noticed someone trying to hide under a blanket in the rear cargo area of the vehicle. (18 RT 3622.) Another officer arrived after the car was detained and he saw Christina Duran exit the passenger seat and

appellant climb out of the rear cargo area. (17 RT 3475-3477.) Police searched appellant but found no weapons. (17 RT 3487.) He told the officer he was a Toonerville member known as “Eskimo,” the officer prepared a field identification report, and drove appellant home. (17 RT 3479-3480, 3485.) Police released appellant but detained Christina Duran and took her statement while in custody. (17 RT 3485.) She implicated appellant in Mendoza’s murder. (26 RT 5142.) Several days later she was found dead in her car after being shot in the head. (34 RT 6767, 6861-6863.)

On January 31st, 2002, Natividad was stopped by a police officer who noticed a tattoo on his neck that said “In loving memory of my wife, Margie Mendoza, RIP.” (17 RT 3495.) He told the officer that “Eskimo” from Toonerville had killed his wife. (17 RT 3495.) Natividad had three weapons in the car. (17 RT 3496.) The next day at the police station, he described the two suspects in the car who killed his wife, and said the passenger had a shaved head covered by a hoodie. (17 RT 3508.) He was then shown a photo six-pack lineup, that included appellant, and said he didn’t remember the faces but it might have been appellant. (16 RT 3432; 17 RT 3517.) The detective said Natividad pointed to appellant, and the detective asked if he knew his face from a

photo he had seen on posters. (17 RT 3513.) Natividad responded that he could not see the faces of the men in the car, but noted that everyone “on the streets” was saying that appellant killed Margie. (16 RT 3432; 17 RT 3513.) He did see one tall skinny suspect with a black hat carrying a rifle, and Mendoza’s fatal injuries were consistent with a high-powered rifle. (17 RT 3519, 3601.)

The officers who searched the area after the shooting found a Nextel cell phone, and phone company records would later show that the billing address listed for one of the numbers on the account matched the address appellant had provided to the Department of Motor Vehicles. (15 RT 3207-3208.)

The police ambush incident

On July 4th, 2000, just before 4:00 a.m., Mark Gonzalez was in his apartment with appellant, and several other Toonerville members. (16 RT 3257-3258.) Earlier that day, two members (“Little Boy” and “Tiny”) had test-fired automatic weapons at Atwater Park. (16 RT 3258-3259.) The guns were about 14 inches long and resembled machine guns. (16 RT 3259.) When they returned from the park, appellant suggested that they stop testing the weapons, and go out and use them. (16 RT 3260, 3262.) Little Boy, Tiny and Chubbs said they

were going to Rascals territory and left in a gold Honda. (16 RT 3263.)

Gonzalez, appellant, Panther and others were later listening in on a police scanner and heard there had been a robbery involving two males with machine guns. (16 RT 3264.) Gonzalez believed the robbery may have been committed by their friends who had left 30 minutes earlier with the automatic weapons, and the description of the car involved in the robbery also matched. (16 RT 3266.)

Panther decided they should go and help the others, and appellant agreed they needed to “go out there and do it.” (16 RT 3267.) They left with appellant carrying a semiautomatic 9 mm handgun, Panther with a Glock, and a third man carrying a 357 revolver. (16 RT 3283-3284.)

Gonzalez left with the others but returned to get a jacket, when Smokey Cabrera (who never left) tried to convince Gonzalez to stay because the others were about to get into trouble. (16 RT 3270, 3284.) Gonzalez left anyway, but did not have a gun. (16 RT 3270.)

Los Angeles Police Department Officers Langarica and Baker had responded to the robbery call involving the gray Honda Accord at 3:54 a.m. (15 RT 3053.) They were informed that three male Hispanics armed with machine guns had robbed a victim. (15 RT 3050, 3059.)

The officers requested support once they spotted the suspects' car. (15 RT 3257.)

A high speed pursuit followed, and ended on Bemis Street in Chevy Chase Park. (15 RT 3058, 3088.) As the officers approached Bemis Street, someone threw a bicycle at the patrol car. (15 RT 3062, 3101.) The police car swerved to avoid the bike, and swerved again to avoid a washing machine that had been thrown into the middle of the street. (15 RT 3065, 3067.) Officer Langarica then heard eight to 10 shots being fired at the patrol car from behind, but it was dark and he couldn't see anyone shooting. (15 RT 3090, 3095.) At that point, he perceived shots coming from every direction. (15 RT 3097.)

Langarica then saw shots fired from the backseat passenger in the Honda. (15 RT 3071.) When the Honda slowed, Officer Baker forced it to crash near the park. (15 RT 3071-3072.) The front passenger jumped out pointing an Uzi-type gun at Langarica, but he didn't shoot. (15 RT 3071-3072, 3075, 3094.) The rear passenger (who had been shooting earlier) leaned out of the window with what appeared to be an Uzi. (15 RT 3077.) Langarica and Baker then exchanged fire with the suspects until they were finally apprehended by assisting officers. (15 RT 3073-3074, 3078.) Langarica was not injured,