

No. S280551

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

LOUIS SANCHEZ EMANUEL,
Defendant and Appellant.

Sixth Appellate District, Case No. H049147
Santa Clara County Superior Court, Case No. C1246799
The Honorable Vanessa A. Zecher, Judge

ANSWER TO PETITION FOR REVIEW

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ISSUE PRESENTED

Does substantial evidence support the finding that appellant acted with reckless indifference for human life within the meaning of Penal Code section 1172.6?

INTRODUCTION

Appellant Louis Sanchez Emanuel petitioned to vacate his murder conviction and for resentencing under Penal Code section 1172.6 on the ground that he was convicted under a felony-murder theory, and he was not a major participant in the underlying felony and did not act with reckless indifference to human life.¹ Based on the record of the original criminal proceeding, the superior court held that the People proved beyond a reasonable doubt that Emanuel was a major participant who acted with reckless indifference to human life and denied the petition. The Court of Appeal, applying well-settled rules of substantial evidence review, affirmed in an unpublished opinion. Review of that decision is unwarranted.

Emanuel asserts that this case raises important questions about “the significance of physical presence” in the reckless-indifference determination. (E.g., PR 9-10.) But this Court has already provided ample guidance on the factors relevant to

¹ Emanuel filed his petition under former Penal Code section 1170.95. However, the Legislature renumbered the provision as section 1172.6 without substantive changes, effective June 30, 2022. (Stats. 2022, ch. 58, § 10.) For clarity, and consistent with Emanuel’s petition for review (PR), this brief will refer to the current statutory designation.

evaluating reckless indifference to human life. (E.g., *People v. Banks* (2015) 61 Cal.4th 788, 804-807; *People v. Clark* (2016) 63 Cal.4th 522, 617-688; *In re Scoggins* (2020) 9 Cal.5th 667, 677.) Those cases clearly establish that physical presence, alone, does not support a reckless indifference finding. The Court of Appeal did not hold otherwise. While Emanuel contends that the Court of Appeal’s opinion “endorsed a virtual per se rule that physical presence, alone, supports a finding of reckless indifference” (PR 12), as discussed below, the evidence established that Emanuel’s involvement went beyond mere physical presence. Thus, the issue that Emanuel highlights is not presented here.

And review is not warranted to address the Court of Appeal’s application of the law to the facts of this case—in particular, its determination that Emanuel acted with reckless disregard for human life. While the evidence of Emanuel’s reckless indifference may not have been overwhelming, or even particularly strong, the substantial evidence standard requires only enough evidence to permit a reasonable trier of fact to make the required findings. The record in this case, properly construed in a light favorable to the judgment, satisfies that standard.

STATEMENT OF THE CASE

In 2012, Emanuel and Jacob Whitley arranged to buy a pound of marijuana from Mansour Amini and Cody S. (Opn. 2-4; see 6ORT² 478, 480, 482-489.)³ On December 11, Cody and

² Consistent with the petition for review, “ORT” and “OCT” refer to the reporter’s transcript and clerk’s transcript in Emanuel’s underlying direct appeal, case number H043651. (See (continued...))

Amini went to Cherry Park to meet Emanuel and Whitley. (6ORT 524, 529-531.) Cody and Amini argued, and Cody drove away without Amini. (6ORT 533-539.)

Shortly after that, in an area very close to Cherry Park, witnesses heard a gunshot, screeching tires, and a loud bang. (4ORT 284, 289, 297-298, 307-308, 366-367; 5ORT 402.) Cody's truck travelled at a high speed from one side of the road to the other (5ORT 367-369) and Cody "fell out" of the moving truck "and rolled down the street" into the gutter (5ORT 369-371). It was later determined that Cody had died from a close-range gunshot to his neck. (4ORT 256.) He also had injuries on his forehead and face consistent with being struck with a solid object. (4ORT 254-256.)

The next day, Breanna Santos, who had been in an "on and off" relationship with Emanuel, the father of her child, went to the police and spoke with Sergeant Stewart Davies. (8ORT 749-

(...continued)

PR 7.) "RT" and "CT" refer to the reporter's transcript and clerk's transcript in the appeal from the section 1172.6 proceedings, case number H049147.

³ The details of how the drug deal was arranged are not relevant to the issue of reckless indifference, and on appeal, Emanuel does not challenge the finding that he was a major participant in the robbery of the drug dealer. (Opn. 11, fn. 14.) In short, the superior court found that Emanuel was "intimately involved in planning the robbery" and "was integral in setting up the marijuana sale at which he and Whitley planned to rob Cody." (1CT 201.) Emanuel's role as the principal architect of the transaction was well established by Amini's testimony. (6ORT 482-489, 492, 500-501.)

751; 10ORT 1054.) She said that her boyfriend Emanuel had lent her phone to Whitley, who used it “to set something up,” and she had not gotten it back. (10ORT 1054-1055, 1058.) Whitley told Santos that he “had shot a white boy” at Cherry Park. (10ORT 1057-1058.)

Santos returned to the police station on December 14 and told Sergeant Davies that she had lied at Emanuel’s request about lending her phone to Whitley. (10ORT 1066, 1069-1070, 1079, 1089, 1093.) Emanuel told her that Whitley used her phone to set up the transaction and there would be text messages on her phone leading the police to her. (10ORT 1078, 1085.) Emanuel initially lied to her about where he was on December 11 but later admitted being at the crime scene. (10ORT 1073, 1077, 1108.) When Santos arrived home that day, Emanuel and Whitley were in Emanuel’s room. (10ORT 1068.) Whitley said, “I shot him,” and Emanuel said, “[Whitley] just shot him and then we came home.” (10ORT 1077.) According to Emanuel, “Whitley ‘had set something up to meet a guy at Cherry Park . . . to get some weed,’” but when the guy would not “give it up,” Emanuel told Whitley “let’s go,” but Whitley “wouldn’t come on.” (10ORT 1078, 1080-1081.) Emanuel said that the guy “wouldn’t like, you know, let go, so [Whitley] hit him with the gun.” (10ORT 1081.) “[T]he guy started fighting back and [Whitley] pointed the gun.” (10ORT 1081.) Emanuel said that Whitley had said he was trying to aim the gun down, but the guy hit his hand, causing the gun to move up, and Whitley fired the gun, shooting the guy in the neck. (10ORT 1078, 1081.)

Emanuel had asked Whitley, “[W]hat the fuck you doing?” (10ORT 1081.) Emanuel and Whitley told her they “got rid of everything” after the shooting. (10ORT 1079.)

Santos reported that Emanuel cried and told her, “I didn’t do nothing.” (10ORT 1078, 1087, 1089.) Emanuel had had long dreadlocks earlier on December 11, but when Santos saw him after the shooting, he had cut his hair. (10ORT 1071.)

In 2015, a Santa Clara County jury convicted Emanuel and Whitley of the first degree felony murder of Cody (Pen. Code, § 187; former Pen. Code, § 189) and found true as to Whitley an allegation that he had personally and intentionally discharged a firearm (Pen. Code, § 12022.53, subd. (d)). (3OCT 821-822.)⁴ The trial court sentenced Emanuel to 25 years to life in state prison. (25ORT 4646.)

After Emanuel was convicted, the Legislature amended the felony-murder rule. (Stats. 2018, ch. 1015, § 3.) Under those amendments, the perpetrator of an enumerated felony is liable for first degree felony murder only in certain circumstances. (§ 189, subs. (e) & (f).)⁵ As relevant here, if a person dies in the commission of a robbery, a robber is liable for murder if he was “a major participant in the underlying felony and acted with reckless indifference to human life.” (§ 189, subd. (e)(3); see *People v. Gentile* (2020) 10 Cal.5th 830, 842.)

⁴ All further statutory references are to the Penal Code.

⁵ Because a peace officer was not killed, the remainder of the discussion ignores the peace officer exception of subdivision (f) of section 189.

Emanuel filed a petition pursuant to section 1172.6 to vacate his murder conviction, alleging that under the new felony-murder rule, he was no longer guilty of murder because he was not a major participant in the robbery and he did not act with reckless indifference. (1CT 141-168.) Following an evidentiary hearing based on the trial record, the superior court found that Emanuel was a major participant in the underlying crime who acted with reckless indifference to human life. (1CT 187-211.)

The Court of Appeal affirmed, rejecting Emanuel's challenge to the sufficiency of the evidence supporting the finding that he acted with reckless indifference to human life. (Opn. 1, 14.) After considering the totality of the circumstances, the Court of Appeal concluded that Emanuel's "close proximity to the crime," his failure to "take the opportunity to minimize the risk of violence during the robbery when Whitley pulled out a gun and Cody refused to give up the marijuana," and his failure "to either render assistance to Cody or call for help after he was shot" supported the finding that Emanuel had acted with reckless indifference to human life.

Emanuel petitioned for rehearing, arguing that the Court of Appeal's opinion rested on "several material misunderstandings about the facts shown at trial." (Ct.App. PFR 5.) The Court of Appeal denied the petition.

REASONS FOR DENYING REVIEW

I. THERE IS NO NEED FOR THE COURT TO FURTHER ELABORATE ON THE FACTORS RELEVANT TO RECKLESS INDIFFERENCE

This Court has extensively addressed the most common factors that are relevant to a determination that a person acted with reckless indifference to human life. And the Court has made clear that a reckless indifference finding cannot be based on physical presence alone, which is the central point made by Emanuel in his petition. Review is not warranted to again address the governing legal standard, particularly because the record in this case does not implicate any important unresolved question.

The relevant mental state for liability on a felony murder theory is reckless indifference to human life. (§ 189, subd. (e)(3).) As this Court has explained, reckless indifference “has a subjective and an objective element.” (*In re Scoggins* (2020) 9 Cal.5th 667, 677.) Subjectively, “[t]he defendant must be aware and willingly involved in the violent manner in which the particular offense is committed,’ and he or she must consciously disregard ‘the significant risk of death his or her actions create.’” (*Ibid.*) Objectively, “[t]he risk [of death] must be of such a nature that, considering the nature and purpose of the actor’s conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor’s situation.” (*Ibid.*, internal quotation marks omitted.) Reckless indifference “encompasses a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire

that death as an outcome of his actions.” (*Clark, supra*, 63 Cal.4th at p. 617.)

This Court has identified the following factors as among those relevant to the reckless indifference analysis: (1) the defendant’s knowledge of weapons, the number of weapons, and the defendant’s use of weapons; (2) the defendant’s physical presence at the crime and opportunity to prevent the crime or help the victim; (3) the duration of the felony; (4) the defendant’s knowledge, if any, of an accomplice’s likelihood to kill; and (5) the defendant’s efforts to minimize the risk of violence during the felony. (*Clark, supra*, 63 Cal.4th at pp. 618-619.) “[N]o one of these considerations is necessary, nor is any one of them necessarily sufficient.” (*Id.* at p. 618.)

Factors bearing on reckless indifference “significantly overlap” with the factors bearing on whether the defendant is a major participant. (*Clark, supra*, 63 Cal.4th at pp. 614-615; *People v. Medina* (2016) 245 Cal.App.4th 78, 788.) Generally, “the greater the defendant’s participation in the felony murder, the more likely that he acted with reckless indifference to human life.” (*Clark, supra*, 63 Cal.4th at p. 615.) And, as relevant to this case, participation in an armed robbery by itself is not sufficient to show reckless indifference to human life. (*Scoggins, supra*, 9 Cal.5th at p. 677; *Clark, supra*, 63 Cal.4th at pp. 615-616; *Banks, supra*, 61 Cal.4th at p. 810.) “[T]he defendant must be aware of and willingly involved in the violent manner in which the particular offense is committed,’ and he or she must

consciously disregard ‘the significant risk of death his or her actions create.’” (*Scoggins, supra*, 9 Cal.5th at p. 677.)

This Court’s cases, as outlined above, provide ample guidance on the facts relevant to a finding of reckless indifference. Emanuel posits that the Court of Appeal “endorsed a virtual per se rule that physical presence, alone, supports a finding of reckless indifference.” That assertion mischaracterizes the Court of Appeal’s decision, which cited and applied this Court’s established precedent. As recognized in *Scoggins, Banks*, and *Clark*, even participation in an armed robbery is not sufficient by itself to prove reckless indifference. Emanuel’s “physical presence, alone” principle is akin to the mere fact of participation in the robbery, or of even lesser significance, and is therefore addressed by existing authority.

Emanuel also poses various hypothetical scenarios in an effort to demonstrate the existence of an open legal question. He asks, “But what if the aider and abettor **does** use his physical presence to try to act as a restraining influence by urging his accomplice to leave and then leaving himself—thus, signaling his desire to opt out of an encounter which has become unforeseeably fraught with danger?.... And what if the deadly violence occurs only after the aider and abettor has already left the scene—with no affirmative evidence he was in position to see or prevent it?” (PR 12.) Even if those questions are worth considering, Emanuel is incorrect in asserting that they “are precisely the questions presented by this case.” (PR 12.) They are not implicated here because they are based on a version of the facts favorable to

Emanuel, not the version that the superior court found, as properly viewed in a light most favorable to the judgment.

II. THE COURT OF APPEAL DID NOT MISAPPLY THE SUBSTANTIAL EVIDENCE STANDARD

Review is also unwarranted to address the Court of Appeal’s substantial-evidence determination on the issue of reckless indifference. Properly considering the facts in the light most favorable to the judgment, the Court of Appeal—taking into account a number of factors, including but not limited to Emanuel’s presence at the scene—correctly concluded that the evidence was sufficient to support the trial court’s reckless indifference finding.

Sufficiency of the evidence review protects against “irrationality.” (*United States v. Powell* (1984) 469 U.S. 57, 67.) The court reviews “the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant [liable] beyond a reasonable doubt.” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) The reviewing court does not reweigh evidence or second-guess credibility determinations. (*People v. Ramirez* (2021) 13 Cal.5th 997, 1118.) Additionally, the reviewing court presumes the existence of every fact the trier of fact could reasonably deduce from the evidence to support the judgment. (*Ibid.*) Thus, reversal cannot be had on the ground that “the circumstances might also reasonably be reconciled with a contrary finding.” (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.)

Emanuel’s petition for review is largely premised on his characterization of the facts as follows: “[W]hen [Cody] unexpectedly refused to give up [the marijuana], Emanuel left and told Whitley to leave, as well. Afterwards, Whitley struck [Cody] with his gun and fatally shot him. The prosecution presented no evidence that, after Emanuel left, he remained close enough to the ongoing confrontation to see and intervene in the escalating violence, see [Cody] being shot, or come to [Cody’s] aid.” (PR 6.) That characterization, however, does not view the facts in a light favorable to the judgment. Properly viewed under the foregoing standard, the record is sufficient to support the trial court’s reckless-indifference determination, as the Court of Appeal held.

A. Knowledge of the gun and its use

The first *Clark* factor, knowledge of a weapon and the weapon’s use, supports a finding that Emanuel acted with reckless indifference. The evidence showed that Emanuel saw Whitley pull a gun and hit Cody with it to get Cody to let go of the marijuana. (10ORT 1077, 1081 [Emanuel told Santos that Cody “wasn’t trying to give it up,” and Whitley “hit him with the gun”].) Emanuel saw that Cody resisted, and Whitley shot him. (4ORT 256; 10ORT 1077, 1081 [Emanuel told Santos that “the guy started fighting back and [Whitley] pointed the gun” and that Whitley “shot him”].)⁶ The superior court found that “once

⁶ The courts below noted the absence of direct evidence that Emanuel knew Whitley had a gun before he pulled it or that Whitley was likely to use deadly force. (1CT 203; Opn. 12.)

[Emanuel] became aware that Whitley had a gun, he did not attempt to prevent the shooting as Whitley and Cody struggled.” (1CT 205.) The court also found that when Emanuel saw that Whitley had pulled a gun, “it was not too late to prevent the shooting.” (1CT 205.) Substantial evidence in the record supports this finding. At least once Whitley pulled out the gun, Emanuel had full awareness of the lethal weapon. Moreover, once Whitley started using the gun to hit Cody in the head, Emanuel had confirmation that Whitley intended to use the gun in a way that was dangerous to life. “Any pistol, even a short one, may be a ‘dangerous’ weapon . . . since it is capable of being used as a bludgeon.” (*People v. Aranda* (1965) 63 Cal.2d 518, 532; see also *In re McDowell* (2020) 55 Cal.App.5th 999, 1011 [defendant knew “by no later than the warning shot” that his accomplice was “both carrying and willing to fire a gun”].)

B. Physical presence and opportunity to intervene or aid the victim

The second *Clark* factor, being present at the scene and having an opportunity to act as a restraining influence or aid the victim, likewise supports the superior court’s finding that Emanuel acted with reckless indifference to human life. As that court found, “it is undisputed that [Emanuel] was present at the scene during the robbery.” (1CT 206.) Although Emanuel argued that he began to walk away from the scene, the court found that Emanuel’s “statements to [Breanna] Santos indicate that he was present to observe Whitley hit Cody on the head with the gun and saw Cody start fighting back before Whitley pointed the gun at Cody and shot him in the neck.” (1CT 206; see 10ORT 1078,

1080-1081.) Further, “there was at least a minimal period of time in which [Emanuel] was aware of the gun and in which he could have tried to prevent the shooting.” (1CT 206.) As the court concluded, “clearly, [Emanuel] had at least some opportunity to prevent the shooting and he did not attempt to do so.” (1CT 207.)

The superior court acknowledged Emanuel’s claim that he attempted to prevent the shooting by telling Whitley to leave, but it noted that the timing of Emanuel’s purported statement “let’s go” was unclear. (1CT 207.) Even if Emanuel said, “[L]et’s go,” at some point in the interval that began with Whitley’s pulling the gun and ended after Whitley hit Cody, that statement fell short of the sort of intervention that might weigh against reckless indifference in the context of all the other evidence.⁷ As the superior court found, Emanuel was present and knew there was a gun. (1RT 45 [“We know from his words he saw a weapon”]; see 10ORT 1081 [Emanuel told Santos that Whitley hit Cody with a gun].) And he knew Whitley had used it to strike Cody in the head, an act dangerous to life. As the superior court also found,

⁷ Contrary to Emanuel’s version of events, a rational factfinder was not obligated to find that the statement was made then or that it was made at all. (*People v. Crooker* (1956) 47 Cal.2d 348, 355 [factfinder “may accept as true a portion of the testimony of a witness and disbelieve the remainder”].) The evidence that Emanuel uttered the phrase came from Emanuel’s “on and off” girlfriend, who told the police that Emanuel had told her that he made the statement. (10ORT 1081.) Emanuel *and* his girlfriend had an incentive to tell the story of the killing in a way that exculpated Emanuel.

Emanuel “made no attempt to check if Cody was still alive, to render aid, or to obtain medical assistance” after the shooting. (1CT 209; 5ORT 404-405 [witness observed Cody face down]; 10ORT 1076-1077 [Emanuel said he and Whitley left after Whitley shot Cody].) Instead of helping Cody or stopping Whitley, Emanuel “heard a shot and left. He just left someone to die.” (1RT 45; see 10ORT 1078, 1081-1082 [Emanuel was at the scene and had an opportunity to prevent Whitley from shooting Cody, but failed to prevent or minimize the risk of violence].)

Emanuel’s inaction is similar to that of the petitioner in *In re Loza* (2017) 10 Cal.App.5th 38. In *Loza*, the shooter counted down from five to one before shooting the victim. (*Id.* at p. 54.) “And in those five seconds, petitioner could have done any number of things to intercede or assist the victims—e.g., yell at [the shooter] to stop, try to halt the countdown, demand that they leave, distract [the shooter], or attempt to calm [the shooter], to name a few. But instead, petitioner did nothing during that crucial time period other than stand idly by with indifference—with reckless indifference to human life, to be precise.” (*Ibid.*)

Like *Loza*, Emanuel had at least five seconds to take action to try to prevent Whitley from shooting and killing Cody. (10ORT 1081.) Emanuel could have taken a variety of actions to prevent Cody’s death. Emanuel could have deescalated the situation, demanded that Whitley put away the gun, or yelled at Whitley to stop. (*Loza, supra*, 10 Cal.App.5th at p. 54.) Instead, Emanuel may have said, “[L]et’s go,” but he said and did nothing to discourage or impede Whitley’s shooting Cody. (10ORT 1081.)

The evidence supported the inference that Emanuel had an opportunity to prevent the shooting, and he failed to make any real attempt to do so.

The Court of Appeal correctly recognized many of these available inferences. The court explained that the superior court “could legitimately conclude that, as one who planned the robbery and was one of its intended beneficiaries, Emanuel had the ability to prevent it from happening or could have done more to prevent Whitley from shooting Cody.” (Opn. 12.) The Court of Appeal concluded it was apparent to Emanuel that Whitley ignored his purported advice to leave when Whitley struck Cody with the gun. (Opn. 12.) “There was no evidence that Emanuel made any further attempt to dissuade Whitley or intercede, perhaps by trying to take the gun from Whitley or distracting him so that Cody might have driven away.” (Opn. 12.) A rational factfinder could infer from the absence of such evidence—particularly in light of Emanuel’s efforts to exculpate himself when speaking to Santos—that Emanuel made no such efforts.

Emanuel tries to diminish the inference of reckless indifference arising from his presence and his failure to aid Cody by comparing himself to defendants in other cases where the defendant was at the scene but there was not substantial evidence of reckless indifference. (PR 13-15.) However, when deciding “issues of sufficiency of evidence, comparison with other cases is of limited utility, since each case necessarily depends on its own facts.” (*People v. Thomas* (1992) 2 Cal.4th 489, 516.) In any event, the evidence supporting the inference that Emanuel

acted with reckless disregard is stronger than the evidence in the cases he cites.

In *In re Ramirez* (2019) 32 Cal.App.5th 384, 404, “[t]here was no evidence [the defendant] was involved in any planning beyond agreeing the group should ‘jack’ someone, after which he simply acquiesced in whatever [his codefendant] said to do.” Additionally, the defendant was on the street, and “there were cars parked in the parking lot between [his] location and where the shooting occurred.” (*Id.* at p. 405.) Accordingly, the court concluded that the evidence did not show “he was close enough to exercise a restraining effect on the crime or his colleagues.” (*Ibid.*)

In *People v. Ramirez* (2021) 71 Cal.App.5th 970, 989, the defendant was “present at the scene, at the time of the shooting,” but he was on “the passenger side of the car” and did not have “a meaningful opportunity to intervene” when the shooter, who was on the driver’s side of the car, “[went] crazy’ and began to shoot.” On those facts, the court concluded the defendant was “not ‘close enough to exercise a restraining effect on the crime’” on the shooter. (*Ibid.*)

Unlike in those cases, a reasonable factfinder could conclude here that Emanuel was not only present during the shooting but also had the opportunity to intervene or render aid, as detailed above. Indeed, Emanuel’s own description of the relevant events to Santos, which was in turn relayed to police, supported the superior court’s conclusion that he had the ability to intervene.

Emanuel’s reliance on *People v. Keel* (2022) 84 Cal.App.5th 546 is equally unavailing. In that case, “[t]he decision to rob was made quickly,” and Keel’s codefendant’s “decision to shoot was apparently made even more quickly.” (*Id.* at p. 560.) Importantly, “there was no evidence the robbery was prearranged. By all accounts, the encounter was unexpected and unplanned.” (*Ibid.*) Unlike Keel, Emanuel was the principal architect of the planned robbery, which evolved over weeks, so Emanuel likely would not have been surprised that a dispute might arise during the transaction. Also, there was “some struggle” that provided “at least a brief window of opportunity for Emanuel to intervene or attempt to deescalate the violence.” (Opn. 13; see 6ORT 478, 480, 482-483, 487-488, 497, 500 [Emanuel initiated contact with Amini and heavily pursued the transaction over a two-week period]; 10ORT 1081 [Emanuel told Santos that when Cody “wouldn’t like, you know, let go,” Whitley “hit him with the gun,” and when Cody “started fighting back,” Whitley “pointed the gun”].)

Emanuel asserts that even if he was nearby, “his view would have been obstructed since the shooting took place inside Cody’s truck.” (PR 19.) He cites his account to Santos wherein he used the phrase “Jacob [Whitley] said” to suggest that he did not see the struggle firsthand. (PR 19, citing 10ORT 1078, 1081.) Santos did use that phrase.⁸ But Santos’s account to the police also

⁸ Emanuel purportedly used the phrase “Jacob said” three times when he told Santos what had happened: “[Whitley] said he hit him on the head with the gun”; “[Whitley] said that he
(continued...)

included statements by Emanuel that were not prefaced by “Jacob said,” from which a factfinder could infer that Emanuel had personally observed the events he was describing to Santos: “[T]he dude [Cody] was trying—wasn’t trying to give it up. So I told [Whitley], let’s go, but he wouldn’t come on. He wouldn’t let go, so [Whitley] hit him with the gun.” (10ORT 1077-1078, 1081.) Santos also stated that Emanuel said, “[Whitley] just shot him, “[Whitley] hit him,” and “[Whitley] hit him with the gun.” (10ORT 1077-1078, 1081.) Moreover, the factfinder was not obligated to accept Emanuel’s or Santos’s statements inculpatory Whitley. (*Crooker, supra*, 47 Cal.2d at p. 355.)

Given the entirety of Santos’s statements to Sergeant Davies, it was not irrational for the superior court to infer that Emanuel’s “statements to Santos indicate that he observed Whitley hit Cody on the head with the gun and saw Cody start fighting back before Whitley pointed the gun at Cody and shot him in the neck.” (1CT 206.)

C. Duration of the felony

As to the third *Clark* factor, duration of the felony, the record does not reveal how long the robbery or the struggle between Whitley and Cody lasted. Neither the superior court nor the Court of Appeal discussed this factor. (1CT 203 [order denying resentencing petition “discuss[ed] the factors of the most

(...continued)

tried to aim for Cody’s leg” and he shot him; and “[Whitley] said ‘he shot him in his neck.’” (10ORT 1078, 1081.)

significance in this case”]; Opn. 12 [acknowledging some factors were “either neutral or do not support a finding of reckless indifference”].) However, as this Court has stated, “no one of these considerations is necessary, nor is any one of them necessarily sufficient.” (*Clark, supra*, 63 Cal.4th at p. 618.) It is the totality of the circumstances that determine whether a defendant acted with reckless indifference to human life. (See *Scoggins, supra*, 9 Cal.5th at p. 677.)

D. Knowledge of accomplice’s likelihood of killing

The fourth *Clark* factor, Emanuel’s knowledge of Whitley’s likelihood of killing, also supports a finding of reckless indifference to human life. Once Whitley hit Cody on the head with the gun, Emanuel was on notice that Whitley could use lethal force against Cody. (10ORT 1078, 1081.) Whitley after all not only displayed the gun, conveying the implied threat of use, he actually used the gun to bludgeon Cody, an act carrying a risk to life. (*Aranda, supra*, 63 Cal.2d at p. 532.) It is of no consequence that Emanuel may have been unaware of this likelihood before Whitley pulled out the gun. (See *Clark, supra*, 63 Cal.4th at p. 621 [knowledge of cohort’s likelihood of killing “may be evident before the felony or may occur during the felony”].) The Court of Appeal concluded that there was no evidence that prior to the robbery Emanuel knew Whitley “was likely to use lethal force,” but it noted that “it became apparent Whitley was ignoring his advice when Whitley struck Cody with

his gun.” (Opn. 12.)⁹ Indeed, viewing the evidence in the light most favorable to the judgment, Whitley’s conduct of hitting Cody in the head with the gun put Emanuel on notice of Whitley’s likelihood of killing. (See *People v. Lasko* (2000) 23 Cal.4th 101, 112 [“the evidence strongly suggested an intent to kill” where the defendant hit the victim multiple times on the head with extreme force, causing extensive and multiple fractures to the head area].) Whitley’s intentional use of deadly force put Emanuel on notice that there was a likelihood of additional deadly force, whether bludgeoning Cody to death or shooting him.

E. Efforts to minimize risk of violence during felony

As to the fifth *Clark* factor, Emanuel claims he “made attempts to minimize violence by planning the robbery for ‘a public [park] during the daytime, when the possible presence of witnesses might reasonably be thought to keep [Whitley] within the bounds of the plan.’” (PR 11, bracketed matter added by Emanuel, quoting *Scoggins, supra*, 9 Cal.5th at p. 683.) However, as the superior court found, “[a]lthough the commission of the crime during daylight hours in public view may have had the potential for minimizing violence, there is no evidence that the robbery was planned for that time or that it was planned to occur at that time for the purpose of minimizing the risk of

⁹ The superior court, in contrast, concluded this factor was neutral or did not weigh in favor of a finding of reckless indifference. (See 1CT 205 [concluding that Whitley’s action of hitting Cody in the head with the gun “did not necessarily inform [Emanuel] that Whitley was willing to shoot”].)

violence.” (1CT 208; see 6ORT 516-517, 519 [transaction initially was to occur at residence of marijuana supplier], 519-520 [Amini and Cody declined to identify house of supplier after Emanuel and Whitley admitted they did not have money for the marijuana], 521-522 [the four men agreed to meet at Cherry Park the next day].) Here too, the absence of such evidence given Emanuel’s attempts when speaking to Santos to blame Whitley and exculpate himself could lead a rational factfinder to infer Emanuel was indifferent to the risk of violence. Moreover, as the court noted, “if, in fact the plan did involve the use of a gun, the fact that innocent bystanders were present may have actually increased the risk of violence.” (1CT 208; see 4ORT 284, 289, 298, 207-208; 5ORT 367-369, 404-405 [numerous bystanders were in the area at time of crime].)

F. Actions after the shooting

In addition to the five *Clark* factors, a defendant’s actions after the shooting may bear on the trier of fact’s determination about the required mental state. (*Scoggins, supra*, 9 Cal.5th at pp. 679-680; *In re Taylor* (2019) 34 Cal.App.5th 543, 560 [defendant’s conduct after murder is insufficient by itself to constitute reckless indifference but may be relevant to mental state].) Here, the evidence showed that Emanuel did not check on or assist Cody in any fashion. (5ORT 367-371 [Cody fell out of his truck and rolled down the street into the gutter, where he lay face down, moaning].) It also showed that Emanuel remained with Whitley after the shooting. (10ORT 1068, 1077, 1079 [Santos saw Emanuel and Whitley together at home after the

shooting; Emanuel said they had left the scene].) The pound of marijuana that had been in Cody's truck when Cody met Emanuel and Whitley was missing when the police arrived. (6ORT 532 [Amini testified that Cody had a pound of marijuana in his truck shortly before the incident]; 9ORT 922, 927, 929, 957 [there was no marijuana in the truck after Cody was shot].) This likely meant that either Whitley or Emanuel removed the marijuana after Whitley shot Cody. Emanuel and Whitley then "got rid of everything" and jointly returned to Emanuel's home. (10ORT 1077, 1079.) Emanuel told Santos to lie to the police by saying she had lent her phone to Whitley. (10ORT 1054-1055, 1058, 1066, 1069-1070, 1079, 1089, 1093.) Emanuel altered his appearance by cutting his hair. (10ORT 1071.) All of this occurred within two hours of Whitley shooting Cody. (4ORT 284, 289, 298, 307-308; 5ORT 402 [gunshot heard between 3:00 and 3:20 p.m.]; 10ORT 1057, 1078 [when Santos arrived home between 5:00 and 5:30, Emanuel and Whitley were home].) The superior court stated that Emanuel's actions after fleeing the scene were "inherently of less value than his failure to attempt to prevent the shooting or render aid," but it found "probative [Emanuel's] actions after he reached a place of safety." (1CT 209-210.) The Court of Appeal considered Emanuel's postshooting actions "ambiguous." (Opn. 13-14.) But under *Scoggins*, the postshooting conduct was relevant to Emanuel's mental state. (*Scoggins, supra*, 9 Cal.5th at 679-680; see also *People v. Gonzalez* (2016) 246 Cal.App.4th 1358, 1385 [first codefendant acted with reckless indifference where she lured victim to the

scene, was present when victim was shot, failed to assist the victim or call police, and remained with the shooter and took him home; second codefendant acted with reckless disregard where he failed to aid the victim, fled with the shooter, and accompanied shooter while he disposed of gun].)

* * *

Viewed in the light most favorable to the superior court's order denying the section 1172.6 petition, the record reflects substantial evidence supporting the superior court's finding that Emanuel was a "major participant in the underlying robbery and that he acted with reckless indifference to human life." (Opn. 14.)¹⁰ Review of the Court of Appeal decision is not warranted.

¹⁰ Accordingly, Emanuel's additional claim that his murder conviction violates the Fourteenth Amendment's due process clause (PR 23) also fails. (See *People v. Osband* (1996) 13 Cal.4th 622, 690 [where judgment is supported by substantial evidence, the due process clauses of the state and federal constitutions are satisfied].)

CONCLUSION

The petition for review should be denied.

Respectfully submitted,

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August 11, 2023

CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER TO THE PETITION FOR REVIEW uses a 13 point Century Schoolbook font and contains 5,938 words.

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August 11, 2023

DECLARATION OF ELECTRONIC SERVICE

Case Name: *People v. Emanuel*

No.: **S280551**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence.

On August 11, 2023, I electronically served the attached **ANSWER TO PETITION OF REVIEW** by transmitting a true copy via this Court's TrueFiling system as follows:

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The Honorable Jeffrey F. Rosen District Attorney Santa Clara County District Attorney's Office Email: DCA@dao.sccgov.org	Clerk of the Court Santa Clara County Superior court Email: sscriminfo@scscourt.org
Sixth District Court of Appeal	

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 11, 2023, at San Francisco, California.

S. Chiang
Declarant

/s/ S. Chiang
Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. EMANUEL**

Case Number: **S280551**

Lower Court Case Number: **H049147**

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Date

/s/Susan Chiang

Signature

Murphy, Linda (148564)

Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

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