

# SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Respondent,

v.

TIMOTHY JOSEPH MCGHEE,

Appellant.

CAPITAL CASE

Case No. S169750

Los Angeles County Superior Court Case No. BA244114  
The Honorable Robert J. Perry, Judge

SUPREME COURT  
**FILED**

DEC 14 2016

Jorge Navarrete Clerk

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DEATH PENALTY



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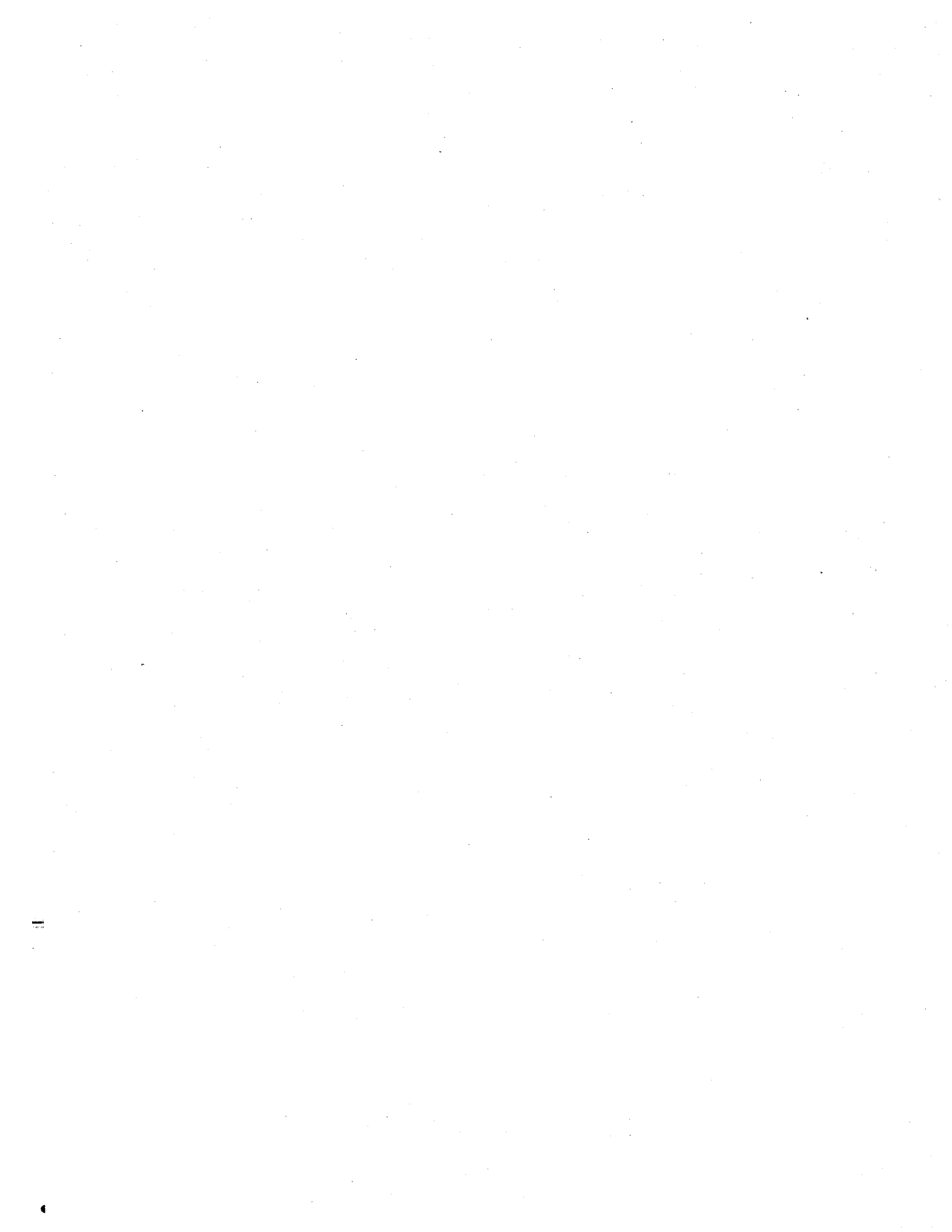
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## STATEMENT OF THE CASE

The Los Angeles County District Attorney filed an information charging appellant with three counts (counts 3, 4, and 12) of murder (Pen. Code, § 187, subd. (a))<sup>1</sup> and six counts (counts 1, 2, 5, 6, 13, and 14) of attempted murder (§§ 664/187, subd. (a)).<sup>2</sup> The information also alleged personal firearm use enhancements within the meaning of sections 12055.5 and 12022.53, gang enhancements within the meaning of section 186.22, subdivision (b)(1), and two prior “strike” convictions within the meaning of sections 1170.12, subdivisions (a)-(d), and 667, subdivisions (b)-(i). Finally, it was also alleged that the murders constituted a special circumstance of multiple murder within the meaning of section 190.2, subdivision (a)(3), and that an active gang participant special circumstance within the meaning of section 190.2, subdivision (a)(22), applied as to the murders in counts 4 and 12. (7CT 1477-1486.) appellant pleaded not guilty to the charges. (7CT 1488.)

Appellant was tried by jury. (14CT 3688.) The jury found appellant guilty on the three murder counts and four of the six attempted murder counts. The jury further found, as to those seven counts, all of the enhancements and special circumstance allegations to be true. As to counts 1 and 2, the jury found appellant not guilty of attempted murder. (15CT 3826-3835.)

The trial court declared a mistrial after appellant’s first penalty phase ended with a hung jury. (29RT 5764; see also 15CT 3894-3895.) A new jury panel was sworn in, and at the conclusion of a second penalty phase trial the jury returned a verdict of death. The court denied appellant’s

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<sup>1</sup> All future statutory references are to the California Penal Code unless otherwise noted.

<sup>2</sup> Counts 7 through 11, and 15, were dismissed before trial in the furtherance of justice. (See 4CT 918-920; 7CT 1460.)

motion for a new trial and his automatic motion to modify his sentence. (16CT 4082; 22CT 5713-5714, 5807-5809; 31RT 6394-6401; 39RT 7779-7780, 7785-7789.) For the three counts of murder, the court imposed a sentence of death. As to count 3, the court imposed a consecutive term of 10 years for the firearm enhancement. As to count 4, the court imposed a consecutive term of 25 years to life for the firearm enhancement. As to count 12, the court imposed a consecutive term of 20 years for the firearm enhancement. As to each of counts 5 and 6, the court imposed a consecutive term of 45 years to life for the attempted murder and 20 years for the firearm enhancements.<sup>3</sup> As to each of counts 13 and 14, the court imposed a consecutive term of 25 years to life and 20 years for the firearm enhancement. (16RT 7793-7799.) The court awarded appellant presentence custody credit of 2,158 days, including 2,158 days of actual custody and zero days of conduct credit. (16RT 7800-7801.)

This appeal is automatic.

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<sup>3</sup> Although the abstract of judgment reflects consecutive terms of 75 years to life for counts 5 and 6 (see 22CT 5819-5820), this appears to be incorrect. The trial court, despite its later summary of these imposed sentences as terms of “75 years to life” (see 39RT 7800), imposed terms of 15 years to life, pursuant to section 664, subdivision (f), which were tripled due to appellant’s two prior strike convictions. (See 39RT 7796-7797.) When there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls. Thus, the abstract of judgment should be corrected to conform with the oral pronouncement. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186.)

## STATEMENT OF FACTS

Appellant was the leader of Toonerville, a violent criminal street gang based out of the Atwater Village neighborhood. For years appellant brazenly terrorized the community, attacking and executing rival gang members with no regard for collateral damage; he even organized and directed a coordinated attack on Los Angeles Police officers. To maintain the fear with which he ruled, appellant would search out people to murder, and was ruthless to those who would turn against him and cooperate with the police.

### A. Guilt Phase Evidence

#### 1. Prosecution evidence

##### a. Sanchez and Cardiel shooting (Counts 1 and 2)

Rascals gang member Pedro Sanchez lived in the Atwater Village area of Los Angeles. (12RT 2413-2414.) Appellant is a Toonerville gang member known as both “Eskimo” and “Huro.” (13RT 2768; 15RT 3174; 20RT 3982.) Appellant was a “shot-caller” within the Toonerville gang and had a lot of power. (13RT 2788; 15RT 3178-3179.) Appellant conducted gang meetings where he would direct the gang and establish rules. (13RT 2777-2779; 15RT 3179-3182.) The Rascals gang was a rival of Toonerville. (13RT 2763; 15RT 3170-3171; 20RT 3986-3987.) Sanchez had known appellant for approximately 30 years. (12RT 2450.)

On October 10, 1997, Sanchez was drinking with Juan Cardiel, Javier Mendiola, and some other friends in a parking lot. (12RT 2419-2420, 2422.) After drinking some beer, Sanchez and his friends “dropped some acid” before proceeding to his house in Atwater Village. (12RT 2419, 2422.) The group then drank more beer at Sanchez’ house before leaving on their bikes. (12RT 2423.)

While riding around on their bikes, Sanchez and Cardiel separated themselves from the others in the group. (12RT 2429-2431.) They were near a Shell gas station on Glendale Boulevard when they were approached by two cars. (12RT 2431-2433.) Sanchez prepared himself to fight when he saw what appeared to be gang members in the cars. (12RT 2434.) After someone from inside one car exposed a rifle, Sanchez and Cardiel ran toward the Shell station. (12RT 2436-2437.) A gunman chased after and fired at the two men as they ran away. (12RT 2437-2441.)

Cardiel was shot in the back and in the leg, leaving him paralyzed from the waist down. (12RT 2496, 2506-2507.) Sanchez was also shot in the back as he was running away but was able to get inside the Shell station, where he held the door closed against the pursuing gunman. (12RT 2441, 2444-2445, 2449.) Before leaving, the gunman fired into the building, shattering the glass door Sanchez was holding onto. (12RT 2447-2448.)

Bullet fragments and expended shell casings were recovered from in and around the Shell station. (12RT 2532-2533.) After comparing some of the expended casings found at the scene with some of those recovered from another murder scene in 1997, the murder of Frogtown gang member Ronald Martin, it was determined that they had been fired from the same gun. (17RT 3554-3556.) Similarly, after comparing some of the expended bullet fragments found at the Shell station with some of the fragments found at the scene of the Martin murder, it was determined that they had been fired from the same gun. (17RT 3556-3562, 3566-3568.)

On October 14, 1997, Los Angeles Police Officer Luis Rivera interviewed Cardiel. (12RT 2540-2541.) Cardiel identified appellant from a photographic lineup as someone who looked like the person who shot him. (12RT 2543-2545.) At the time, Cardiel did not have the use of his

hands so was unable to sign or circle the photograph of appellant. (12RT 2545-2547.)

On July 1, 2002, Los Angeles Police Officer James King interviewed Sanchez. (12RT 2557.) When asked if appellant was the person who had shot him, Sanchez smiled and said, "you already know it." (12RT 2561.) On July 2, 2002, Officer King interview Cardiel. (12RT 2561.) Cardiel again identified appellant as the person who shot him. (12RT 2562-2564.)

**b. Daniel Medina attack**

On October 12, 1997, Rascals gang member Daniel Medina was walking in Atwater Village with his girlfriend and two other Rascals members when he was approached by appellant and another Toonerville gang member. (12RT 2468- 2472, 2480-2481.) One of the men asked Medina where "Peter" was. (12RT 2474.) Medina knew Pedro Sanchez as Peter. (12RT 2469, 2471-2472.) Medina asked them where they were from, and appellant and his companion told him "Toonerville" before getting out of the car to fight Medina and his friends. (12RT 2474-2476.) The fight broke up, and appellant and the other man got back into their car and drove away. (12RT 2477.)

As the car drove away, Medina shouted at them. The car turned around, and once again appellant and his companion got out and began to fight Medina and his friends. (12RT 2477-2478.) After Medina heard someone say "get the gun," Medina and his friends ran. (12RT 2478-2479.) Appellant chased Medina into a backyard where he beat him with a steering wheel club, breaking Medina's hand and arm and causing Medina to require stitches in his head. (12RT 2479, 2482-2483.)

On October 15, 1997, Los Angeles Police Officer Luis Rivera interviewed Medina. (12RT 2547.) Medina identified appellant from a photographic lineup as the person who attacked him. (12RT 2547-2549.) Medina circled appellant's photograph, signed and dated it, and wrote that

appellant was the individual who “piped him down in the back of some lady’s house.” (12RT 2549.)

**c. Ronald Martin murder (Count 3)**

On October 13, 1997, Frogtown gang member Ronald Martin, also known as “Cloudy,” left his mother’s house for the Elysian Valley Recreational Center. (12RT 2575-2577.) The Frogtown gang was a rival of Toonerville. (13RT 2763; 15RT 3170-3171; 20RT 3986-3987.) Wilson Olivera lived across the street from the recreational center. (12RT 2579-2581.) A few minutes after midnight, on October 14, 1997, Olivera was in his living room when he heard approximately 20 gunshots, from what sounded like multiple guns, from across the street at the center. (12RT 2579-2582.) After the shooting stopped, Olivera looked out his window and saw a body lying on the sidewalk and a white Sport Utility Vehicle driving away. (12RT 2582-2585, 2587-2588.)

At approximately 12:05 a.m., Los Angeles Police Officer John Gomperz responded to the recreation center after a report of shots being fired. (13RT 2596-2597.) Officer Gomperz arrived in time to observe Martin lying on the ground, surrounded by a large number of expended bullet casings and fragments, taking his final breaths. (13RT 2601-2602, 2611.) At the same time that he observed Martin, Officer Gomperz heard a vehicle speeding away. (13RT 2600-2601.) It was determined that Martin was shot 27 times and the cause of death was multiple gunshot wounds. (14RT 3027-3029.) It was also determined that Martin continued to be shot after he had fallen and while he was lying on the ground. (15RT 3049-3050.)

The expended casings and fragments were recovered and booked into evidence. (13RT 2611-2612.) The casings were of two different sizes, .40 and .45 caliber, and it was determined that more than one .45 caliber firearm had been used, indicating that at least three different weapons had



been fired during the murder. (13RT 2614, 2616-2617; 17RT 3566-3567, 3569-3570.) It was also determined that some of the expended bullet fragments found at the Martin murder scene matched fragments found at the scene of the Sanchez and Cardiel shooting and had been fired from the same firearm. (17RT 3556-3562, 3566-3568.) Some of the expended .45 caliber bullet casings and fragments were matched to a firearm that was booked into evidence and recovered from an arrestee, Jason Kim, on November 5, 2000. (17RT 3564-3566.)

On November 5, 2000, Los Angeles Police Officer John Ferreria approached Jason Kim, Miguel Zamora, and a third unidentified male standing outside on Bemis Street. (19RT 3904-3905.) Kim was a Toonerville gang member known as "Chino" and appellant's friend. He was known to carry a .45 caliber firearm with a 30-round clip, which he received from Juan Serna, a Toonerville gang member known as "Panther." (13RT 2784-2786, 2792-2793.) All three men ran away after Officer Ferreria approached them. (19RT 3906-3907.) As Kim ran, he grabbed and held his waistband, indicating that he had drugs or a weapon in his possession. (19RT 3907.) As part of the pursuit of Kim, Los Angeles Police Officer Elias Villasenor helped maintain a perimeter in the area of Bemis Street and Brunswick Avenue. (19RT 3895-3896.) Officer Villasenor found Kim hiding beneath some bushes in the backyard of a house on Bemis Street. (19RT 3896-3899.) Next to Kim, officers found a black beanie with "Toonerville" on it, black gloves, a .45 caliber handgun with a high-capacity magazine attached, and small bindles of rock cocaine. (19RT 3909-3912.)

Gabriel Rivas, a former Toonerville gang member known as "Acer," had been friends with appellant for over 20 years. (13RT 2626-2627, 2632-

2634.) Rivas was interviewed by Los Angeles Police detectives on April 28, 2003, regarding the Martin murder. (13RT 2652, 2686-2687.)<sup>4</sup> A portion of the recorded interview was played for the jury. (13RT 2692; see Exh. A.)<sup>5</sup> Rivas knew Michael Quintinilla, a Toonerville gang member known as “Frosty,” who owned a white Toyota 4Runner. (13RT 2634-2635; 15RT 3175; Exh. A at p. 1.) Rivas told detectives that appellant had borrowed Quintinilla’s white 4Runner before Martin was murdered. (Exh. A at pp. 1-2.) After the murder, appellant told Rivas that Martin had been shot “like thirty, forty times,” and also stated that the “fucking fool got smoked” and that they had “fucked him.” (Exh. A at p. 2.)

A few years after the Martin murder, appellant had a conversation with his good friend Mark Gonzalez, a former Toonerville gang member. (15RT 3166, 3168, 3183-3184; 16RT 3288.) Appellant told Gonzalez that, on the night of Martin’s murder, he and Quintinilla had been driving through Frogtown territory to avenge the death of a Toonerville gang member known as “Hozer.” When they passed the recreational center, they saw three men standing in front near the handball courts. (15RT 3186, 3188-3191.) Appellant and Quintinilla turned around, returned to the center, and found Martin by himself. (15RT 3186-3187.) Appellant approached Martin and “hit him up,” asking what neighborhood he was from. (15RT 3187.) After Martin refused to identify a neighborhood, appellant made him lift up his shirt, exposing a Frogtown tattoo. (15RT 3187.) As Martin begged for his life, appellant told him to “Die like a man, not like a bitch” before he and Quintinilla shot him to death. (15RT 3187-3188.)

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<sup>4</sup> At trial, Rivas largely did not recall the statements he made during this recorded interview.

<sup>5</sup> Exhibits A and B are attached to respondent’s motion to augment the record, granted by this Court on August 9, 2016.

**d. Officer Baker and Officer Langarica shooting (Counts 5 and 6)**

On the night of July 3, 2000, Mark Gonzalez was in his apartment on Bemis Street with appellant and some other Toonerville gang members. (16RT 3257-3260.) Bemis Street, located near Chevy Chase Park, was a primary area of activity for the Toonerville gang. (15RT 3171.) Earlier that evening, two of the members had been at Chevy Chase Park test firing a couple guns. (16RT 3258-3260.) Although one of the guns jammed while test firing it, appellant suggested they take both guns into a rival neighborhood and “put them into use.” (16RT 3261-3262.) Raymond “Chubbs” Maldonado, Mario “Little Man” or “Little Boy” Aleman,<sup>6</sup> and Joseph Aghazadeh, a Toonerville gang member known as “Tiny,” left the apartment, got into a “gold Honda,” and headed into Rascals gang territory to look for “somebody” at a house that Maldonado was familiar with. (15RT 3074-3075, 3082, 3176; 16RT 3262-3264.)

On July 4, 2000, at approximately 3:30 a.m., Elias Bonilla left his house on Larga Avenue for work. (13RT 2715-2716.) As Bonilla stepped outside, he observed two men, one of which was armed with a machine gun, across the street looking into the window of an apartment. (13RT 2717-2721.) Bonilla also saw a third man sitting in a parked and running Honda. (13RT 2718, 2720-2721.) When Bonilla attempted to alert the Honda driver to the two men across the street, the Honda driver called out and alerted the two men to Bonilla. (13RT 2721-2722.) The two men from across the street approached Bonilla and asked where he was from before taking his wallet and chain. (13RT 2723.) One of the men stated “someone

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<sup>6</sup> Because there are two Toonerville gang members with the same last name Aleman, respondent will refer to them by their first names.

is going to die” before all three of them drove away in the Honda. (13RT 2723-2724.) Bonilla’s wife called in the incident to police. (13RT 2724.)

Appellant and the remaining Toonerville members were in Gonzalez’ kitchen when they heard a report of the Bonilla robbery over a police scanner.<sup>7</sup> (16RT 3264-3265.) Realizing that the report concerned the three Toonerville members who had left the apartment earlier, and that they were being pursued by police in the direction of Gonzalez’ apartment, Juan Serna and appellant mobilized the rest of the group to “do something to help them out.” (16RT 3264-3270.) Appellant was armed with a nine-millimeter handgun. (16RT 3283.) As they left the apartment, Gonzalez and another member lagged behind. (16RT 3269-3271.) When Gonzalez finally left the apartment it was just in time to hear cars screeching down his street, followed by gunshots coming from the corner of Bemis Street and Brunswick Avenue. (15RT 3271, 3275-3278.) Gonzalez saw the Honda and a police car pass his apartment with bullets striking the back of the police car. (16RT 3271-3272.) After the cars passed Gonzalez, a second set of gunshots erupted from the direction of the park at the end of Bemis Street. (16RT 3278-3279.)

At approximately 3:54 a.m., on July 4, 2000, Los Angeles Police Officers Carlos Langarica and Tom Baker responded to a report of the Bonilla robbery. (15RT 3052-3053.) After spotting a Honda that matched the robbery description, the officers activated their lights and siren and pursued the vehicle. (15RT 3054-3057.) Travelling at high rates of speed, the Honda ran several red lights and stop signs before turning onto Bemis Street. (15RT 3058-3064.) After the Honda turned, a man standing at the corner threw a bicycle into the path of the police car. (15RT 3062-3064.)

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<sup>7</sup> Appellant and other Toonerville gang members often utilized police scanners to learn the whereabouts of police officers. (13RT 2780.)