
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 SECOND 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 also set out the Statement of Facts in his Opening Brief. He adds that as proof of the predicate acts, the prosecution presented evidence that Francisco Cortez, a Sureño gang member, suffered a criminal conviction for illegally possessing a firearm on April 10, 2014 with a gang enhancement; that Fabio Delreal, a Sureño gang member, was convicted of illegally possessing a firearm on June 12, 2014 with a gang enhancement; and that Armando Flores was convicted on February 4, 2009 of a drive by shooting with a gang enhancement where another Sureño, Daniel Gomez, drove the car. (RT 550, 556.) In each case the prosecution gang

expert, Deputy Adney opined that the offense “fits the pattern of criminal activity that the Sureño gang has engaged in Tulare County.” (RT 551, 553, 555.)

ARGUMENT

ASSEMBLY BILL NO. 333'S AMENDMENT TO PENAL CODE SECTION 186.22, PROVIDING THAT THE PREDICATE OFFENSES MUST “BENEFIT” THE GANG IN A MANNER MORE THAN “REPUTATIONAL,” AND THAT PREDICATE OFFENSES MUST BE COMMITTED COLLECTIVELY AND NOT INDIVIDUALLY, SIGNIFICANTLY NARROW THE STATUTE; IF SUFFICIENT EVIDENCE SUPPORTED THE ENHANCEMENT, THEN ASSEMBLY BILL NO. 333 NEVERTHELESS REQUIRES THAT MR. RENTERIA BE GRANTED A NEW TRIAL ON THE ENHANCEMENT

A. Background

Penal Code section 186.22, subdivision (b) requires that to prove the gang enhancement, the prosecutor must show that the defendant sought to benefit a “criminal street gang,” as defined in section 186.22, subdivision (f). To prove the existence of a “criminal street gang” the prosecutor must show a “pattern of criminal activity” (Pen. Code, § 186.22, subd. (f)), consisting of at least two or more predicate offenses (Pen. Code, § 186.22, subd. (e)).

Assembly Bill No. 333 (AB 333) changed the definition of a “criminal street gang,” and thus changed that which the prosecutor must show to prove the predicate

offenses necessary to prove the gang enhancement. As set forth in Petitioner’s Supplemental Brief (and now conceded by Respondent in its Response to the Amicus Brief at p. 9) these changes should operate retroactively.

Penal Code section 186.22, subdivision (f) now defines a criminal street gang as “an ongoing, organized association or group of three or more persons, whether formal or informal,” and requires that members of the gang “collectively engage in, or have engaged in a pattern of criminal gang activity,” as opposed to “individually or collectively,” under the previous version of the law. Two recent cases in the court of appeal have held that pursuant to AB 333, predicate offenses committed solely by an individual member of the gang no longer can prove the elements of “criminal street gang.” (People v. Delgado (2022) 74 Cal.App.5th 1067, 1088-1090; People v. Lopez (2021) 73 Cal.App.5th 327, 344.)

Further, AB 333 redefined “pattern of criminal gang activity” to require that the prosecution prove that the predicate offenses “were committed on separate occasions or by two or more members, the offenses commonly benefitted a criminal street gang, and the common benefit of the offenses “is more than reputational.” (Pen. Code, § 186.22, subd. (e)(1).)

B. Discussion

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, a 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 jury never received instructions regarding the new elements of 186.22, subdivision (b) regarding the predicate offenses required by AB 333. These new requirements of AB 333 could have led reasonable jurors to find the gang enhancements charged against Mr. Renteria not true.

First, two of the predicate offenses relied upon by the prosecution in Mr. Renteria’s case to show the existence of a “criminal street gang,” namely the illegal firearm possessions of Cortez and Delreal, appear to involve “individual,” rather than the “collective” action as required by the statute. Reasonable jurors could conclude

the prosecution failed to prove “collective” action as to either predicate crime.

Second, in all three of the trial predicates, the prosecution did not offer proof that the alleged gang members sought to benefit their gang in a non-reputational manner as required by the new law. The gang expert’s opinion, that their respective actions “fit the pattern” of Sureño gang activity, did not explicitly inform jurors that each man acted to benefit his gang, nor explain how the gang benefitted from each man’s activity. Although Cortez, Delreal and Flores each suffered a conviction on the gang enhancement for their predicate acts, such enhancement, based on the old law, does not necessarily reflect that, under the new “non-reputational” amendment, the act of each benefitted the gang. A reasonable juror, given the new definition of “benefit” relating to the predicate offenses 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.

Further, “[t]o rule that the existence of evidence in the record that would permit a jury to make a particular finding means that the jury need not actually be asked to make that finding would usurp the jury's role and violate [appellant’s] right to a jury trial on all the elements of the charged allegations.” (People v. Lopez, supra, 73 Cal.App.5th at p. 346.) Because the jury was never required to make determinations concerning the sufficiency of proof of the predicate offenses under the amended

statute, the enhancements must be vacated.

CONCLUSION

This Court should strike the gang enhancements imposed upon Petitioner 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 the first Supplemental Brief, Petitioner 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 nevertheless should grant Mr. Renteria a new trial on those enhancements, 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

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.
RENTERIA**

Case Number: **S266854**

Lower Court Case Number: **F076973**

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