SUPREME COURT MINUTES
WEDNESDAY, MAY 25, 2022
SAN FRANCISCO, CALIFORNIA

S273789 **FILL (LINDA MARIE) ON H.C.**

Petition ordered withdrawn

Petitioner's request, filed on May 23, 2022, to withdraw the petition for writ of habeas corpus is granted.

S273349 C074267 Third Appellate District **PEOPLE v. BLESSETT (ANTOINE LAMAR)**

Petition for review denied
Liu and Groban, JJ., are of the opinion the petition should be granted.

See Dissenting Statement by Groban, J.

Dissenting Statement by Justice Groban

In this case, defendant Antoine Blessett was convicted of first degree murder after shooting the victim Christopher Sisoukchaleun in a gang related altercation. All parties agree that the jury improperly heard extensive accounts of seven prior offenses involving Blessett, as well as the details of three predicate offenses committed by other gang members. Many of these details were upsetting and violent, including a description of Blessett pulling a gun on a police officer and ultimately being shot by the officer; Blessett being shot a second time in a different gang altercation; and Blessett committing a number of violent felonies, including an attempted carjacking of a father while he was loading his child into the automobile. There is no dispute that all of this evidence was improperly before the jury. But the majority below concluded the introduction of this evidence was harmless beyond a reasonable doubt as to Blessett's murder conviction. Because there are significant questions as to whether the introduction of this evidence was harmless, I would grant review. The central issue in this case was whether Blessett was acting in perfect or imperfect self-defense. The People used these prior crimes to full effect, arguing to the jury that "when we talk about the defendant and his ties to that street gang, it illuminates for us a little bit about what his intent was" and "show[s] a little bit of his motive in committing the crime that he committed." The issue of self-defense was close: indeed, Sisoukchaleun's own cousin testified that Blessett and Sisoukchaleun exchanged gang slogans; it was "basically" six on one against Blessett; Sisoukchaleun's companions were "[r]ight there with us"; Sisoukchaleun challenged Blessett to fight; Blessett "didn't really say nothing" and "wasn't squaring up"; and then Sisoukchaleun took the first swing before Blessett shot Sisoukchaleun. In this context, there is significant reason to doubt whether the erroneous admission of a trove of

prior violent acts involving Blessett was harmless beyond a reasonable doubt. (See *Chapman v. California* (1967) 386 U.S. 18 (*Chapman*).) The stakes for Blessett are monumental - he is currently serving 50 years to life on the murder conviction. I would grant review to consider this issue and thereby provide additional guidance to our lower courts on how to apply the *Chapman* standard for review of constitutional error.

I. BACKGROUND

This case returns to us after we decided both *People v. Perez* (2020) 9 Cal.5th 1 (*Perez*) and *People v. Valencia* (2021) 11 Cal.5th 818 (*Valencia*).

Blessett argued unsuccessfully at his murder trial that he shot the victim in self-defense or imperfect self-defense. After his trial, we announced the following rule: "When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay." (*People v. Sanchez* (2016) 63 Cal.4th 665, 686.) Furthermore, "[i]f the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing." (*Ibid*.) The Court of Appeal here subsequently affirmed, finding, among other things, that Blessett's claims under *Sanchez* were forfeited, that a gang expert's testimony about the underlying facts of predicate offenses was general background information and not hearsay, and that even assuming counsel had objected, any error was harmless beyond a reasonable doubt under *Chapman*. Justice Blease dissented. We granted review and held the case pending disposition of *Perez* and then held the case pending disposition of *Valencia*. In *Perez*, we held that failure of defense counsel to object to an expert's testimony on hearsay grounds before *Sanchez* was decided did not forfeit a claim on appeal based on *Sanchez*. (*Perez, supra*, 9 Cal.5th at p. 4.) In *Valencia*, we held (again departing from the Court of Appeal here) that predicate offenses are case-specific under *Sanchez* and must be proven by competent evidence. (*Valencia*, *supra*, 11 Cal.5th at p. 838.) In both *Perez* and *Valencia*, we expressly disapproved the Court of Appeal's original majority opinion. (*Perez*, at p. 14; *Valencia*, at p. 839, fn. 17.) We transferred this case back to the Court of Appeal.

Upon the case's return, the Court of Appeal reversed the gang enhancement but otherwise affirmed. Despite acknowledging the extensive amount of prejudicial gang evidence that was impermissibly admitted at trial under *Sanchez*, the Court of Appeal majority again found the error harmless beyond a reasonable doubt as to Blessett's murder conviction. For a second time, Justice Blease dissented, arguing that the errors required reversal of the murder conviction. Blessett petitioned for review.

II. DISCUSSION

The parties and the Court of Appeal agree that the standard of reviewing the gang expert testimony admitted in violation of *Sanchez* and the Sixth Amendment right to confrontation is that under *Chapman*. Under that standard, "before a federal constitutional error can be held harmless,

the court must be able to declare a belief that it was harmless beyond a reasonable doubt." (*Chapman, supra*, 386 U.S. at p. 24; see *Satterwhite v. Texas* (1988) 486 U.S. 249, 258-259 ["The question . . . is not whether the legally admitted evidence was sufficient to support the death sentence, which we assume it was, but rather, whether the State has proved 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained' "].)

Blessett argues that the majority below erred in finding that the admission of gang expert testimony, admitted in violation of the Sixth Amendment right to confront witnesses, was harmless beyond a reasonable doubt under *Chapman* as to the murder conviction. Blessett's contentions have considerable force. First, this was not a "cut-and-dry" case for the prosecution. Blessett was 36 years old at the time of the encounter. The evidence indicated that his last gang-related activity had been in April 2002, nearly 10 years before the shooting. The video of the incident - a key piece of evidence in the case - is of nominal utility: it is of fairly poor quality, has no sound and, most notably, the actual shooting occurs off camera. The majority below interprets the video as unhelpful to Blessett, noting, among other things, that Blessett retrieved a gun from his truck and "chose to re-engage the group" and that Blessett was not "surrounded" because "the video shows that defendant followed [the victim's] group into the recessed area." The majority below further points to the fact Blessett appeared to ignore the attempts of a third person to de-escalate the situation and that Blessett, rather than disengaging from the confrontation, appears to be walking *toward* Sisoukchaleun as they move off camera. These points certainly buttress the contention that Blessett was: (1) not acting solely in self-defense and that (2) pursuant to CALCRIM No. 3471, the fight constituted "mutual combat" because it "began or continued by mutual consent or agreement" and Blessett cannot demonstrate, as he must, that he "in good faith tried to stop fighting." However, there are several facts evident in the video that are not in dispute and which clearly support Blessett's theory of perfect or imperfect self-defense:

Blessett walked up to the entry area of the liquor store entrance alone and then waits there.

A minute and a half later, a group of six men walk up to the liquor store entrance from different directions. Blessett is clearly outnumbered.

After Blessett returns from the truck, a person in the group gestures with his right hand toward Blessett, and Blessett twice brings his hands down in a downward motion.

Sisoukchaleun takes his outer shirt off and hands it to his companion (the obvious inference being that he was preparing to fight Blessett).

Blessett turns around and walks a few feet away with his back to the group. Sisoukchaleun follows and then the group does as well.

Within a few seconds, Sisoukchaleun walks off camera, one member of the group puts his hands on Blessett, Blessett points to him and then walks off camera as well, and then several others from the group walk off camera (the shooting soon takes place off camera).

In this way, though the video is clearly subject to competing interpretations, it is hard to view it as conclusive, especially since the actual shooting occurs outside of view.

In this way, though the video is clearly subject to competing interpretations, it is hard to view it as conclusive, especially since the actual shooting occurs outside of view.

Moreover, as the majority acknowledged, the jury heard additional testimony that was helpful to Blessett. Weena Vue, who had met Sisoukchaleun earlier in the night at a casino and accompanied him to the liquor store, testified that when initially walking up to the liquor store, Sisoukchaleun uttered the term "cuz." A gang expert testified that "[c]rips use the term 'cuz' in personal identification of another." Vue further testified that Blessett then invoked the gang term "Meadowview Bloods," and Sisoukchaleun invoked the gang term "LAC, Little Asian Crip." Sisoukchaleun's cousin Jack Thammavongsa similarly testified that, when walking up, both he and Sisoukchaleun were saying "cuz" and that Sisoukchaleun threw his hands up. After Blessett said, "Meadowview Bloods," Sisoukchaleun responded, "This is LGC." Blessett obtained the gun from the truck after Sisoukchaleun had announced his gang affiliation. A forensic pathologist testified Sisoukchaleun's blood alcohol level was 0.28 percent. Blessett argues that, outnumbered and afraid, and already having been challenged and confronted by a rival gang member, he retrieved the gun for protection (notably, it appears that Blessett was still waiting for his order to be prepared by the liquor store, which eventually appears at the foot of the entrance and is retrieved by his female companion after the shooting).

The testimony of Sisoukchaleun's own cousin and fellow gang member also provided unexpected support to Blessett's self-defense claim at trial and explained the moments off camera when the shooting occurred.(1) Thammavongsa testified that Sisoukchaleun "got tired of hearing" Blessett say, " 'Blood, Meadowview,' this and that," so "he took his shirt off, walked out to the street." Thammavongsa followed him into the street off camera. The group was "[r]ight there with us." Sisoukchaleun was saying, "What's up? Let's fight. Let's fight," but Blessett "didn't really say nothing" and "wasn't squaring up" to fight. Thammavongsa admitted he was a Lao Gangster Crip and that he would have intervened if Sisoukchaleun was getting beaten up. Thammavongsa acknowledged that it was "basically" six on one but later clarified that the others in the group "didn't really know what was going on." Sisoukchaleun took a swing at Blessett. Blessett "dodged it and pulled a gun out." Blessett shot Sisoukchaleun in the chest and fired "two or three times." This testimony - again from the victim's own cousin and fellow gang member - is highly supportive of the defense theory that Blessett was not engaged in mutual combat and that he ultimately acted out of his fear of his own safety: the victim (who was very intoxicated) exchanged gang challenges with the defendant; the victim then took his shirt off and challenged the defendant to a fight while the defendant was silent and not "squaring up" to fight; the victim's cousin followed the two men and was prepared to back up the victim; the victim's four other male companions were "right there with us" while the defendant was alone (save for his sole female companion); and the victim took the first swing at the defendant, which the defendant dodged and then pulled out a gun and shot the victim.

(1) Thammavongsa's testimony was in contrast with the prosecutor's initial theory in opening

statements "that with no warning whatsoever, the defendant just pulled that gun out of his right rear pocket, put it to the victim's head, and shot him at almost point blank range, right between the eyes."

Against this backdrop of a less than an overwhelming case for first degree murder, the Attorney General concedes that extensive gang evidence was improperly admitted under our three related decisions in *Sanchez*, *Valencia*, and *Perez*. The majority below summarized the improper evidence involving Blessett as follows: "the November 1991 incident when defendant was shot in the back allegedly in relation to a rivalry between the Oak Park Bloods and the Meadowview Bloods; the December 1992 incident where defendant was arrested for a felony warrant and admitted possession of rock cocaine found at the location; the June 1993 incident when he was in a car with another when a firearm was found in the car; an incident in October 1993 when, while running from the police, he displayed a firearm and was shot by the officer; the January 1995 police contact involving a domestic violence call; his commission of armed robbery in September 1995; and his commission of unspecified gang crimes in April 2002 with a Del Paso Heights Blood."

Thus, the gang expert improperly testified to Blessett's participation in seven prior incidents, many of them very violent and with gang overtones. Testimony about the October 1993 incident where Blessett pulled a loaded rifle on a police officer was particularly prejudicial. Specifically, the gang expert testified that a "Sacramento [Police Department] officer was working patrol. He observed an individual riding a bicycle. He attempted to stop that individual, ended up later being identified as Mr. Blessett. The individual on the bicycle attempted to flee, and subsequently got off the bicycle, tried to take off running as the officer was giving chase to him. As [Blessett] was pulling the rifle out, the officer, fearing for his life, shot at Mr. Blessett, striking him at the time, and he was subsequently taken into custody at that location." Testimony about Blessett's October 1992 commission of an armed robbery and a September 1995 attempted carjacking was also highly prejudicial. For the October 1992 armed robbery, the gang expert testified that an "individual by the last name of Walters was approached by two male Blacks. One of them produced a firearm, pointed it at the victim and said, 'Break yourself.' Mr. Blessett was later identified as the individual with the gun." For the September 1995 attempted carjacking, the gang expert testified that while the victim was loading his daughter into his vehicle, "he observed two male Blacks [one of whom was later identified as Blessett] wearing ski masks. And one of the individuals pointed a handgun at him and told - demanded victim's wallet and keys at the time. Victim took off running, at which time the occupants of the vehicle wearing ski masks also fled." This evidence, which all parties concede was improperly before the jury, painted a very damaging image of a defendant claiming self-defense. The jury heard detailed accounts of Blessett's involvement in no less than seven improperly admitted felonies, dating back over two decades. Some of the details are both disturbing and violent, including: Blessett being shot in a gang confrontation; Blessett being shot a second time, this time by police after pulling a rifle on an officer; Blessett committing armed robbery;(2) and Blessett committing an attempted armed carjacking of a father who was with his young child.

(2) The jury heard additional testimony about Blessett robbing a woman, but this testimony was

later stricken for an unspecified reason.

The majority further found that the gang expert improperly testified to the details of three predicate offenses committed by three other fellow gang members - including testimony about active participation in a street gang, battery, first degree burglary, and assault by means likely to cause great bodily injury. While not directly involving Blessett, this testimony went into great detail on a particularly violent incident involving the Meadowview Bloods gang and was damaging to Blessett's defense as well. The gang expert gave extensive testimony regarding three Meadowview Bloods members making an unprovoked attack on a victim standing in his front yard and then assaulting the victim's two sons who had come to their father's aid. The officer described to the jury that the three men then obtained a gun from their vehicle and attempted to gain entry to the house.

The prosecutor's closing arguments and the jury instructions further compounded the prejudice from the improper testimony. The prosecutor argued in closing argument that "when we talk about the defendant and his ties to that street gang, it illuminates for us a little bit about what his intent was and why, really why he would do what he does to benefit the gang. [¶] Okay. So, we use that to some extent to help show that mentality, to help show why it is that he would be looking to benefit that gang. And also, to show a little bit of his motive in committing the crime that he committed." The jury was then instructed to consider the "evidence of gang activity" to decide motive and intent and "to evaluate the credibility or believability of a witness." Thus, consistent with the prosecutor's arguments, the jury was instructed to consider the improper gang evidence for intent, as well as to evaluate the credibility of witnesses in a case that turned on whether Blessett had the intent necessary for first degree murder. Indeed, there was no dispute that Blessett shot and killed Sisoukchaleun. Rather, defense counsel argued at trial that Blessett acted in perfect or imperfect self-defense. The fact that Blessett argued in the alternative is crucial here. The issue of *Chapman* error does not turn solely on whether Blessett might have been *acquitted* under a perfect self-defense theory. Instead, the relevant inquiry also must address whether the improperly admitted evidence prejudiced his theory of imperfect self-defense, whereby even if the jury were to find that Blessett's belief in the need to use deadly force was unreasonable, the jury could nonetheless return a verdict of voluntary manslaughter instead of first degree murder (assuming they found Blessett actually believed that he was in imminent danger of great bodily injury, and the immediate use of deadly force was necessary to defend against the danger). (See CALCRIM No. 571.) As the Supreme Court said in *Chapman*: "[T]hough the case in which this occurred presented a reasonably strong 'circumstantial web of evidence' . . . , it was also a case in which, absent the constitutionally forbidden [evidence], honest, fair-minded jurors might very well have brought in not-guilty verdicts [or verdicts on lesser charges]. Under these circumstances, it is completely impossible for us to say that the State has demonstrated, beyond a reasonable doubt, that the [improper evidence] did not contribute to petitioners' convictions." (*Chapman, supra*, 386 U.S. at pp. 25-26, citation omitted.)(3) In short, in a case in which Blessett put on a robust defense supporting a theory of at least imperfect self-defense (including helpful testimony from the victim's own relative), I find it difficult to conclude "that the State has demonstrated, beyond a reasonable doubt, that" the improper inclusion of evidence concerning seven prior felonies, many of them violent, as well as the details of three violent predicate

offenses, did not contribute to Blessett's conviction for first degree murder. (*Id*. at p. 26.)

(3) As the majority below highlighted, there was properly admitted evidence supporting the prosecution's theory of a gang-motivated shooting, including: Blessett's "Meadowview" tattoo; his jail phone conversations in which he indicated he was a "blood" and that he had previously been shot in a gang shooting; his attempt to conceal evidence after the incident; his statements to police, in which he stated that he was not the shooter; and evidence that he shot Sisoukchaleun in the face in close range, as well as a second shot in the torso.

A grant of review here could not only remedy a potentially erroneous conviction, but would also allow this court to provide further guidance on the application of harmless error review. The decision below shows that the application of harmless error review may well have been applied in a way that *Chapman* does not support. For example, the majority below concludes, in part, that admission of the gang evidence is harmless beyond a reasonable doubt because there was evidence that Blessett killed, not in self-defense, but "because of gang-related animus." While Sisoukchaleun and Blessett initially exchanged gang terms (and that evidence was admissible), seven prior offenses implicating Blessett were improperly admitted to support the idea that Blessett killed "because of gang-related animus." As described above, the prosecutor expressly argued that this improperly admitted evidence "show[s] a little bit of his motive in committing the crime that he committed." Thus, the evidence that the Court of Appeal concedes was improperly admitted helped support the very theory that the Court of Appeal concludes makes his conviction harmless. This cannot be. Blessett rightfully suggests that we grant review to clarify that appellate courts must not overlook evidence and alternate inferences favoring the defense position in conducting harmless error analysis under *Chapman*. Indeed, *Chapman* requires that we look "to the 'whole record' " rather than simply concluding the People's alternate inferences from the evidence seem more plausible than the defendant's. (*People v. Aranda* (2012) 55 Cal.4th 342, 367 ["When there is ' "a reasonable possibility" ' that the error might have contributed to the verdict, reversal is required"].)

In sum, this is a case where a jury heard a detailed description of a string of violent gang-related acts committed by Blessett and his fellow gang members. The People in closing argument, and the jury instructions themselves, instructed the jury that they could use this evidence to determine his intent and motive in committing the charged crime. But there is no dispute that the jury should not have heard this evidence. And the jury considered it in the context of a less than overwhelming case for the prosecution: Blessett was approached at the liquor store by six men who immediately began exchanging gang slogans; the victim "got tired of hearing" Blessett's gang slogan, took off his shirt, and challenged Blessett to fight; Blessett "didn't really say nothing" and "wasn't squaring up"; and then, with his companions "[r]ight there with us," the victim took the first swing at Blessett, who responded by shooting the victim. In this context, there are genuine questions about whether Blessett's conviction, which virtually ensures that he will spend the rest of his life in prison, is valid.(4) I would grant review.

(4) See Penal Code section 1473, subdivision (b)(3)(A) (a writ of habeas corpus may be prosecuted for, inter alia, new evidence "that is credible, material, presented without substantial

delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial").

GROBAN, J.

I Concur:
LIU, J.

S274754 A161573 First Appellate District, Div. 5 **SAVE THE HILL GROUP v. CITY OF LIVERMORE (LAFFERTY COMMUNITIES, INC.)**

Time for ordering review extended on the court's own motion

The time for ordering review on the court's own motion is hereby extended to July 28, 2022. (Cal. Rules of Court, rule 8.512(c).)

S271869 H045791 Sixth Appellate District **CHEVRON U.S.A., INC. v. COUNTY OF MONTEREY (PROTECT MONTEREY COUNTY)**

Extension of time granted

On application of respondents Chevron U.S.A., Inc., Aera Energy LLC, California Resources Corporation, Eagle Petroleum, LLC, Trio Petroleum, LLC, Sunset Exploration Incorporated, Monroe Swell Prospect, J.V., Bradley Minerals, Inc., and National Association of Royalty Owners-California, Inc., and good cause appearing, it is ordered that the time to serve and file the answer brief on the merits is extended to June 27, 2022.

S271869 H045791 Sixth Appellate District **CHEVRON U.S.A., INC. v. COUNTY OF MONTEREY (PROTECT MONTEREY COUNTY)**

Order filed

On application of respondents Chevron U.S.A., Inc., Aera Energy LLC, California Resources Corporation, Eagle Petroleum, LLC, Trio Petroleum, LLC, Sunset Exploration Incorporated, Monroe Swell Prospect, J.V., Bradley Minerals, Inc., and National Association of Royalty Owners-California, Inc., and good cause appearing, it is ordered that the time to serve and file the response to interveners' request for judicial notice is extended to June 27, 2022.

SUPREME COURT MINUTES
WEDNESDAY, MAY 25, 2022
SAN FRANCISCO, CALIFORNIA

The Supreme Court of California reconvened in the courtroom of the Earl Warren Building, 350 McAllister Street, Fourth Floor, San Francisco, California, on May 25, 2022, at 9:00 a.m.

Present: Chief Justice Tani Cantil-Sakauye, presiding, and Associate Justices Corrigan, Liu, Kruger, Groban, Jenkins, and Guerrero.

Officer present: Jorge Navarrete, Clerk and Executive Officer.

S165998 The People, Plaintiff and Respondent,
v.
Ronald Tri Tran, Defendant and Appellant.

Cause called. Catherine White, Court-Appointed Counsel, argued for Appellant.
Christine Y. Friedman, Office of the Attorney General, argued for Respondent.

Ms. White replied.
Case argued but not submitted. The matter will be submitted when the supplemental brief is filed.

Court adjourned.